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Thursday
December 21, 1995

Briefings on How To Use the 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

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Separate Parts In This Issue

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

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.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 60, No. 245
Thursday, December 21, 1995

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1653

Legal Process for the Enforcement of a Participant's Legal Obligations To Provide Child Support or Make Alimony Payments

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is adopting as a final rule without change an interim regulation which explains the Board's procedures for responding to legal process for the enforcement of a participant's legal obligations to provide child support or make alimony payments.

EFFECTIVE DATE: These final rules are effective December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest (202) 942–1662, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Suite 400, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 101 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401–8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant. 5 U.S.C. 8437(g).

FERSA provides that payments from the TSP that would otherwise be made to any participant ''shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659).'' 5 U.S.C. 8437(e)(3).

These regulations address only legal process for the enforcement of a participant's legal obligations to provide child support or make alimony payments. The Board also must honor a court decree of divorce, annulment, or legal separation or a court order or court-approved property settlement agreement incident to such decree that expressly awards a portion of a participant's TSP account to a spouse, former spouse, child or other dependent of the participant, or to the attorney for the spouse, former spouse, child or other dependent of the participant for attorney fees. 5 U.S.C. 8467 and 8435(c). The Board refers to these documents as ''retirement benefits court orders,'' and regulations governing them can be found at 60 FR 13604 (1995) (to be codified at 5 CFR part 1653, subpart A).

On August 31, 1995, the Board published an interim rule with request for comment in the Federal Register (60 FR 45624) relating to the Board's procedures for responding to legal process for the enforcement of participant's legal obligations to provide child support or make alimony payments. The Board received no comments on the interim rule. Therefore, we are adopting the provisions of the interim rule as a final rule without change.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

Accordingly, the interim rule amending 5 CFR part 1653, which was published at 60 FR 45624 on August 31, 1995, is adopted as a final rule without change.

[FR Doc. 95–31016 Filed 12–20–95; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 510

Availability of Information

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations of the Agricultural Research Service (ARS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to inform the public of the change in location and title of the FOIA Coordinator for ARS and to make technical corrections in the regulations.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA requires agencies to publish in the Federal Register regulations describing how the public may obtain information from the agency (5 U.S.C. 552(a)(1)). Part 510 of Title 7, Code of Federal Regulations, is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA.

Pursuant to an internal reorganization of the Department of Agriculture (USDA), the National Agricultural Library (NAL) has been integrated as a subordinate unit within the Agricultural Research Service (ARS), USDA, and the Human Nutrition Information Service (HNIS) has been abolished and the research functions formerly administered by HNIS have been delegated to the Administrator, ARS. Requests for information relating to NAL or HNIS may be directed to the ARS FOIA Coordinator pursuant to the Part.

Former Sections 510.2, Public inspection and copying, and 510.3, Index, have been merged into one new Section 510.2, Public inspection, copying, and indexing. A new Section 510.4, Denials, has been added to clarify the procedures when requested documents are denied by the FOIA Coordinator. This document also amends Part 510 to inform the public of the change in the location and title of the FOIA Coordinator for ARS.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to

internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., do not apply. This rule supersedes the notice published in the Federal Register on May 18, 1988 (53 FR 17685).

List of Subjects in 7 CFR Part 510

Freedom of Information.

Accordingly, 7 CFR Part 510 is revised to read as follows:

PART 510—PUBLIC INFORMATION

Sec.
510.1 General statement.
510.2 Public inspection, copying, and indexing.
510.3 Requests for records.
510.4 Denials.
510.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR Part 1, Subpart A and Appendix A thereto.

§ 510.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Agricultural Research Service (ARS) to the public.

§ 510.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ARS at the following office: Information Staff, ARS, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207. Office hours are 8:00 a.m. to 4:30 p.m.

§ 510.3 Requests for records.

Requests for records of ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.6 of this title and submitted to the FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207; Facsimile (301) 344–2325; TDD (301) 344–2435. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 510.4 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 510.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and should be addressed as follows: Administrator, Agricultural Research Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 18th day of December 1995.

K.D. Murrell,

Acting Associate Administrator, Agricultural Research Service.

[FR Doc. 95–31098 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–03–M

National Agricultural Library

7 CFR Part 4100

Availability of Information

AGENCY: National Agricultural Library, USDA.

ACTION: Final rule.

SUMMARY: This document removes the regulations of the National Agricultural Library (NAL) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to reflect an internal reorganization of the Department of Agriculture (USDA).

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Information Staff, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, Telephone (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA (5 U.S.C. 552(a)(1)) requires Federal agencies to publish in the Federal Register regulations describing how the public may obtain information from the agency. Part 4100 of Title 7, Code of Federal Regulations, was issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA.

Pursuant to an internal reorganization of USDA, NAL has been integrated into the Agricultural Research Service (ARS), USDA. This document removes 7 CFR Part 4100. Requests for information relating to NAL may be obtained through the FOIA Coordinator for ARS pursuant to 7 CFR Part 1, Subpart A, and 7 CFR Part 510.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., do not apply. This rule supersedes the notice published in the Federal Register on May 19, 1988 (53 FR 17914).

List of Subjects in 7 CFR Part 4100

Freedom of Information Act.

Accordingly, under the authority of 5 U.S.C. 301, Part 4100 is removed and chapter XLI is vacated.

Done at Washington, DC, this 18th day of December 1995.

K.D. Murrell,

Acting Associate Administrator, Agricultural Research Service.

[FR Doc. 95–31097 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–12–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 242, 264, 274a, and 299

[INS No. 1414–91]

RIN 1115–AC39

Applicant Processing for Family Unity Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts with amendments the interim rule which was published by the Immigration and Naturalization Service on February 25, 1992, implementing the provisions of the Family Unity Program created by the Immigration Act of 1990 which provides a means by which certain eligible aliens may obtain permanent resident status. This rule also provides voluntary departure and work authorization for certain eligible immigrants.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Hartsoch, Office of Service Center Operations, Immigration and

Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514–3156.

SUPPLEMENTARY INFORMATION: On November 29, 1990, the Immigration Act of 1990, Pub. L. 101–649 (IMMACT 90), was enacted. Section 301 of IMMACT 90 provides for relief from deportation, and the granting of employment authorization, to an eligible immigrant who is the spouse or unmarried child of a legalized alien granted temporary or permanent resident status pursuant to section 210 or 245A of the Immigration and Nationality Act (the Act), or permanent resident status under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment). This new program supersedes the administrative Family Fairness policy which began in November 1987. That policy allowed district directors to exercise the Attorney General's authority to defer deportation proceedings of certain family members of legalized aliens where compelling or humanitarian factors existed. On August 31, 1991, the Immigration and Naturalization Service (Service) published in the Federal Register at 56 FR 42948 a proposed rule to implement the provisions of section 301 of IMMACT 90, as it relates to the Family Unity Program. Subsequently, on February 25, 1992, the Service published in the Federal Register an interim rule at 57 FR 6457–6472 with request for comments. The interim rule as published on February 25, 1992 is adopted as final with amendments to 8 CFR parts 242 and 274a only. This final rule reflects the amendment to section 206 made by the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, § 206, 108 Stat. 4305, 4311–12 (1994). This rule also provides status under § 242.5 for children born to mothers granted status under the Family Unity Program who are authorized to depart and reenter the United States.

Comments

The discussion that follows summarizes the public comments submitted in response to the interim rule and explains the revisions adopted in the final rule.

Residency Since May 5, 1988

The interim rule provided that a qualifying family member would be eligible for Family Unity Program benefits if he or she had been in the United States on May 5, 1988, *and* had resided in the United States since that date. Several commenters asserted that no basis existed for the continuous residency requirement. They did not believe that this requirement had any statutory basis and that it was irrelevant whether an alien actually continued to remain in the United States after May 5, 1988.

Section 301(f) of IMMACT 90 states as follows:

> Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to obtain benefits under this section.

The statute now requires an applicant to have entered the United States before May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A), and also prohibits the admission of an alien for the purposes of obtaining Family Unity Program benefits. The Service interprets these two provisions as requiring an applicant for Family Unity Program benefits to have continuously resided in the United States since May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). Further, the purpose of the Family Unity Program is to prevent the separation of families, and to provide a means by which qualifying family members already in the United States in illegal status can eventually apply for permanent resident status. The underlying administrative Family Fairness policy supports this premise. The Service created the Family Fairness policy as a means of precluding the separation of family members by deferring their deportation. The purpose of the policy was to allow family members to reside together in the United States until they could acquire legal status. Whether relating to the Family Fairness policy or the Family Unity Program, once a family member no longer resides with the family, the reason for which the status was granted no longer exists.

Therefore, the Service will retain the continuous residency requirement. In order to determine if the applicant has maintained a continuous residence in the United States since May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A), the Service will consider the factors set forth in *Matter of Huang,* 19 I&N 749, 753 (BIA 1988). In *Huang,* the Board of Immigration Appeals enumerated several factors which should be considered in determining whether an alien is returning from a temporary visit abroad, thereby retaining his continuous residency in the United States. These factors include the duration of the alien's absence from the United States; the location of the alien's family ties, the alien's property holdings, and job; and the intention of the alien with respect to both the location of his actual home and the anticipated length of his excursion. *Matter of Quijencio,* 15 I&N 95, 97 (BIA 1974); *Matter of Castro,* 14 I&N Dec. 492 (BIA 1973); *Matter of Montero,* 14 I&N 399, 400 (BIA 1973).

The Service will not interpret ''continuous residence'' as requiring ''continuous physical presence.'' A qualifying family member who meets the requirements of the Family Unity Program will be granted a 2-year period of voluntary departure. Voluntary departure is a form of relief from deportation and is available only to persons already in the United States.

Legalized Aliens/Applications After May 5, 1988

The interim rule provides that an alien who filed a legalization application on or before May 5, 1988, will be treated as having been a legalized alien as of May 5, 1988, for purposes of the Family Unity Program.

Section 301(a) of IMMACT 90 states as follows:

> The Attorney General shall provide that in the case of an alien who is [a qualified immigrant and the spouse or unmarried child of a legalized alien] as of *May 5, 1988* * * *. [Emphasis added]

Several commenters believe that the statute was never intended to exclude family members of legalized aliens who filed after May 5, 1988, from the Family Unity Program. They note that the filing deadline for the Special Agricultural Worker Program did not occur until November 30, 1988. They believe that an alien who filed a *timely* application after May 5, 1988, but before November 30, 1988, should also be treated as a legalized alien for purposes of the Family Unity Program.

Congress has acted to resolve this issue. Section 206(a) of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, 108 Stat. at 4311, amends section 301 of IMMACT 90 to distinguish the legalization program under section 245A of the Act and the Cuban-Haitian adjustment provision in section 202 of

IRCA from the SAW program under section 210 of the Act. The Family Unity Program eligibility date for relatives of aliens legalized under the SAW program is now December 1, 1988, to correspond to the filing deadline for that program. This amendment is reflected in this final rule.

Children Born After May 5, 1988

The Service recognizes that the situation may arise where a child may be born abroad to an alien granted voluntary departure status and advance authorization to travel under the Family Unity Program. Although there is no provision in the statute to provide status to the child, it is also true that the intent of the statute was to enable specific family members to reside together in the United States.

Therefore, although the child cannot qualify for benefits under the Family Unity Program, the Service will provide for the granting of voluntary departure under 8 CFR 242.5, to a child of a legalized alien residing in the United States, who was born during an authorized absence of the mother who is currently either a legalized alien or a beneficiary of the Family Unity Program. This provision will also include children born to aliens residing in the United States, who were denied status in the Family Unity Program and granted voluntary departure status under 8 CFR 242.5, where the other parent is a legalized alien residing in the United States.

Waivers

Several commenters sought clarification regarding the availability of existing waivers of deportability for applicants for the Family Unity Program. The interim regulation reflects the statute in making aliens who are deportable under certain grounds ineligible for the Family Unity Program benefits. However, an alien who has been granted any available waiver is not deportable and is not ineligible for the Family Unity Program. The final rule is modified to clarify that existing waivers are applicable to applicants for the Family Unity Program.

Response to Notice of Intent To Deny

One commenter suggested that the Service should allow an applicant for Family Unity Program benefits to submit a good faith request for an extension of time to submit a response to a notice of intent to deny.

An applicant may request more time to respond to a notice to deny. However, the Service's decision whether or not to grant the request is discretionary. To ensure consistency with application procedures in other Service programs, the provisions in this rule are consistent with the general requirements and procedures for applications and petitions in 8 CFR part 103.

Denied Cases

The Service initially proposed an administrative appeal procedure. However, upon further review, this procedure was eliminated in the interim rule. One commenter believed that the Service should not have eliminated the administrative appeal process.

The Service set forth its reasons for eliminating the proposed administrative appeal process in the Supplementary Information to the interim rule published at 57 FR 6459–6460. The Service adheres to that reasoning and will not adopt an administrative appeal procedure.

Issuance of Orders To Show Cause (OSC)

A commenter was concerned that the Service would issue an OSC (Form I–221) while a Family Unity Program application is pending. The Service will not issue an OSC during the pending adjudication of an Application for Voluntary Departure Under the Family Unity Program (Form I–817), unless the OSC is based on a paragraph in section 241(a) of the Act which would render the applicant ineligible for the Family Unity Program.

Several commenters believed that having applicants placed in deportation proceedings as a result of a failure to meet basic eligibility requirements, such as residence by the required date, is a severely disproportionate consequence and a waste of Service resources, as the denied applicants are likely to be eligible for a second preference visa petition and will eventually be allowed to immigrate to the United States. The commenters recommended that the Service continue the policy under the administrative Family Fairness policy of not issuing OSCs in denied cases, except in egregious cases such as a serious criminal conviction.

However, as was discussed in the Supplementary Information to the interim rule, the Service must fulfill its enforcement responsibility under the Act. Therefore, this provision will remain as it is in the interim rule.

Several commenters proposed that the issuance of an OSC be delayed for 90 days after a second denial. They pointed out that the only way an alien may appeal a denial of Family Unity Program benefits would be to file a complaint against the Service in district court alleging abuse of discretion. Further, the commenters allege that the Service is making it difficult for the alien to bring these charges when it will only delay issuance of the OSC for the first denial. The commenters conclude that, in order to balance the removal of the proposed administrative appeals process, the Service should allow applicants more time after a second denial to seek judicial review.

The Service believes that granting a 90-day grace period after every denial before issuing an OSC might simply encourage a person to file repeated applications with the sole intent to protract the adjudication process and delay the issuance of an OSC. The Service believes that ample safeguards exist in the current procedure to enable an applicant to perfect an application and/or appeal a denial of benefits. Denied applicants will have at least 90 days from the first denial to refile a second application before the Service will issue an OSC. If the application is denied again, the applicant may still seek judicial review before the district court. Therefore, the final rule will not be amended to allow for a delayed issuance of an OSC after a second denial.

Release From Detention/Administrative Closure/Automatic Stay of Deportation

Several commenters suggested that the regulations provide that a demonstration of *prima facie* eligibility for Family Unity Program benefits should result in:

(1) The alien's release from detention on his or her own recognizance;

(2) Administrative closure of the deportation proceedings, provided a final administrative order of deportation has not been issued; and

(3) An automatic stay of deportation for a person with a final deportation order.

These commenters asserted that this would promote an efficient use of the budgets of the Service and the Executive Office for Immigration Review (EOIR) to be faithful to Congress' intent and would promote uniformity in national enforcement practice.

The Service may currently consider the requests of release from detention and stays of deportation on a case-by-case basis for Family Unity Program applicants under sections 242 and 243 of the Act. The Service is without authority to consider a request for administrative closure of a deportation proceeding.

Concurrent Jurisdiction of EOIR

Several commenters believe it would be helpful to have a provision stating that EOIR has concurrent jurisdiction with the Service in cases where an

applicant has been denied Family Unity Program benefits and is in deportation proceedings. The commenters suggest that the reference to judicial review in the interim rule includes the possibility of seeking review before an immigration judge.

The statute does not provide for administrative review of the Service's denial of Family Unity Program benefits. If an alien's application for Family Unity Program benefits is denied, he or she may still request relief from deportation in the form of voluntary departure in a deportation hearing before an immigration judge. Such a request would be made pursuant to section 244 of the Act and would be a separate determination from that made by the Service pursuant to section 301 of the Immigration Act of 1990. An immigration judge's denial of voluntary departure in deportation proceedings could then be appealed to the Board of Immigration Appeals and the Federal circuit court of appeals.

Employment Authorization

Several commenters proposed that the Service apply the same practice to the Family Unity Program as was applied to the Legalization Program and the administrative Family Fairness policy regarding employment authorization, for example, granting interim employment authorization for the time period between the granting of the application and the issuance of the employment authorization document (EAD) at a local Service office. Several commenters suggested that such interim work authorization should be stamped directly onto the receipt notice, with the period of validity to coincide with the EAD appointment date plus 90 days.

The Service's position regarding the issue of providing interim work authorization to Family Unity Program applicants remains unchanged. The Service has determined that a uniform procedure for issuance of EADs is necessary. Further, interim work authorization is less secure and presents enforcement problems. For the above reasons and those set forth in the interim rule, the Service will not authorize interim employment for the period between the granting of an application for Family Unity Program benefits and the issuance of an EAD. Instead, the applicant may apply on Form I–765 for issuance of an EAD, concurrently with Form I–817. To file Form I–765 at a Service Center, the applicant must include two (2) ADIT-style photographs.

Identify Document for Employment Authorization

The interim rule, at 8 CFR 242.6(e)(5), contained the language, ''issued by legitimate agency of the United States or a foreign government,'' when referring to an identity document the alien must present at the time of filing for an application for an EAD. Some commenters expressed concern that the language could be construed too narrowly to preclude State or local government-issued identification documents (whether domestic or foreign), and recommended that the final language of the rule clarify that identification documents will be accepted if they have been issued by smaller scale government sources, provided they are legitimate.

The intent of this requirement is to ensure that a person appearing at the local district office to obtain an EAD establish that he or she is the person granted Family Unity Program benefits before being given the EAD. The final rule clarifies this point.

Reference on Forms I–688B and I–551

One commenter requested that the Employment Authorization Card, Form I–688B, and the Alien Registration Receipt Card, Form I–551, include a reference to section 301 of IMMACT 90 to assist in identifying participants in this program.

The Form I–688B does have a reference to the Family Unity Program. Section 274a.12(a)(13) is used exclusively for the Family Unity Program. The Form I–551 reflects the section of law under which the alien immigrated but does not directly indicate the alien's previous participation in the Family Unity Program.

Continuing Relationship Requirement

One commenter requested a clarification regarding the continuing relationship requirement, specifically the definitions of ''child'' and ''spouse.''

The definition of ''child'' is the same as is defined in section 101(b)(1) of the Act, with the exception that the alien will not lose eligibility for the Family Unity Program by virtue of having attained the age of 21 after May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). The definition of ''spouse'' includes the term as described in section 101(a)(35) of the Act. The term ''spouse'' is also described in decisions relating to the petitioning process for sections 201(b) and 203(a)(2) of the Act. There is no special definition of spouse associated with this rule.

In the interim rule, at § 242.6(c)(1)(ii), an eligible immigrant is required to also be eligible for family-sponsored second preference immigrant status under section 203(a)(2) of the Act *based on the same relationship*. One commenter believed that the ''based on the same relationship'' phrase should not be included in the promulgation of final regulations and that marital status on May 5, 1988, and not any time thereafter, be the relevant determination of eligibility. The commenter concluded that the disqualification is inconsistent with the purposes of the Family Unity Program.

Pursuant to section 301 paragraphs (a) and (b)(1) of the Immigration Act of 1990, the required relationship to a legalized alien must have existed on May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). The issue is whether that relationship must continue in order for eligibility to continue, or whether the alien granted benefits under the Family Unity Program should be allowed to retain those benefits even if the required relationship changes.

The purpose of the Family Unity Program is to provide a transition for specific family members of legalized aliens to family-sponsored second preference immigrant status. If benefits under the Family Unity Program were retained even after a required relationship ended by marriage, divorce, or death, and the person became ineligible for family-sponsored second preference classification, the alien could potentially remain in the Family Unity Program without a means to become a permanent resident. This would go far beyond Congress' intent for the program and would be inconsistent with section 205 of the Act.

In essence, this regulation applies the same rules to the Family Unity Program which are applicable to persons with approved family-sponsored immigrant petitions in similar circumstances. If a marriage to a petitioner ends, or the unmarried son or daughter of a lawful permanent resident petitioner marries, approval of an immigrant petition based upon that relationship is automatically revoked, and that petition may no longer be used as a basis for immigration.

Therefore, if the legalized alien's child marries, or if the legalized alien's marriage to the spouse ends through divorce or death, neither the child nor the spouse can retain benefits under the Family Unity Program because of the termination of the relationship by which he or she qualified.

Petition/Extension Application

In order to obtain an extension of voluntary departure, section 242.6(e)(7) of the interim rule requires that a petition for family-sponsored immigrant status be filed on behalf of the applicant during the initial period of voluntary departure. Several commenters asserted that this requirement is unnecessary.

The Service recognizes that the statute does not specifically require that an immigrant petition be filed in order to obtain an extension of voluntary departure; however, since the intent of the program is to provide a bridge to permanent residence, it is reasonable to require the family member to at least file the second-preference petition. Further, this regulation will assist the Service in moving toward closure of the need for the Family Unity Program, and provide lawful permanent resident status for the participants of the Family Unity Program. The requirement continued from the interim rule is being modified so as to relate only to those applicants whose petitioning family member is a lawful permanent resident and thereby eligible to file the petition.

Extension/Demonstration of Continued Eligibility

Several other commenters suggested that the rule be modified to require a person seeking Family Unity Program benefits to demonstrate continued eligibility only from the date of execution of the prior Family Unity Program application. The commenters conclude that this would streamline the extension process and save time and resources for both the Service and the applicants. Several commenters also suggested that such simplification should result in a reduced fee.

The final rule will be amended to reflect that the applicant for an extension will not be required to submit evidence already submitted. However, the applicant will be required to submit evidence of continuing eligibility since the first application for the Family Unity Program was submitted. The applicant will also be required to notify the Service of any changes relating to the first application.

Two commenters suggested that an applicant for voluntary departure under the Family Unity Program only be required to submit a simple half-page extension form or a Form I–817 by itself, along with a reduced fee. Since activities such as mail distribution, fee receipting, data entry, records verification, adjudication, and notification are associated with the processing of any form, the fee will remain the same.

The Service is committed to charging a fee that accurately reflects costs. The Service will continue to use the form created for this program, Form I–817, Application for Voluntary Departure Under the Family Unity Program. The fee is consistent with 31 U.S.C. 9701 and the guidelines of the Office of Management and Budget in OMB Circular A–25, for an application for an initial grant of family unity benefits and for an application to extend family unity benefits.

Condition/Status

In the interim rule, an alien who is granted advance authorization to travel outside the United States and who returns to the United States in accordance with such authorization, and who is found not to be excludable under section 301(a)(1) of IMMACT 90, shall be *inspected and admitted in the same immigration condition the alien had at the time of departure for the remainder of the 2-year voluntary departure previously authorized under the Family Unity Program*. One commenter was troubled about the use of the term ''condition'' instead of ''status'' for persons who depart and return on advance parole.

To avoid an appearance that the Service is not following the statute, the word ''status'' will be used in the final rule. If the person was in status at the time of departure, the alien will be placed in status upon return to the United States. Conversely, if the person was out of status upon departure, the alien will be out of status upon his or her return. Thus, existing sections of the Act, such as section 245, are unaffected by section 301 of IMMACT 90. If an alien was ineligible to adjust status upon departure, the alien will be ineligible to adjust status upon return.

Visa Processing

One commenter requested clarification regarding the processing of immigrant petitions. Section 301 of IMMACT 90 is not affected by procedures relating to immigrant petitions.

Confidentiality

One commenter suggested that the Service adopt a relation providing for confidentiality for the Family Unity Program application, prohibiting the use of information gathered for the Family Unity program in establishing deportability.

The Immigration Reform and Control Act required confidentiality in clear statutory language. No such provision was made in the enabling statute for the Family Unity Program.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have significant economic impact on a substantial number of small entities because the rule relates solely to individual immigration benefits.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will enhance family well-being by providing for family unity of eligible persons.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations [Government agencies], Freedom of Information, Privacy, Reporting and

recordkeeping requirements, Surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens, Crime.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment penalties, Report and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 103, 242, 264, 274a and 299 which was published at 57 FR 6457–6462 on February 25, 1992, is adopted as a final rule with the following changes:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

2. In § 242.5, paragraph (a) is amended by:

a. Removing ''or'' before paragraph (a)(2)(viii);

b. Removing the ''.'' at the end of the paragraph and replacing it with a ''; or'';

c. Adding paragraph (a)(2)(ix); and

d. Revising paragraph (a)(3) to read as follows:

§ 242.5 Voluntary departure prior to commencement of hearing.

* * * * *

(a) * * *

(2) * * *

(ix) who is the child of a legalized alien currently residing in the United States, born during an authorized absence from the United States of the mother who is:

(A) A legalized alien; or

(B) An alien currently residing in the United States under voluntary departure pursuant to the Family Unity Program.

(3) *Periods of time/employment.* (i) Except for paragraphs (a)(2) (v) through (ix) of this section, any grant of voluntary departure shall contain a time limitation of usually not more than 30 days, and an extension of the original voluntary departure time shall not be authorized except under meritorious circumstances, as determined on a case-by-case basis. Upon failure to depart, deportation proceedings will be initiated. As an exception to the 30-day voluntary departure period, an eligible alien under:

(A) Paragraph (a)(2)(v) of this section may be granted voluntary departure in increments of 1 year conditioned upon the F–1 or J–1 alien maintaining a full course of study at an approved institution of learning, or upon abiding by the terms and conditions of the exchange program within the limitations imposed by 22 CFR 514.23; or

(B) Paragraphs (a)(2)(vi) (A), (B), and (C) of this section may be granted voluntary departure until the American Consul issues an immigrant visa and, at the discretion of the district director, issuance may be in increments of 30 days, conditioned upon continuing availability of an immigrant visa as shown in the latest Visa Office Bulletin and upon the alien's diligent pursuit of efforts to obtain the visa; or

(C) Paragraphs (a)(2)(vi) (D) and (E) of this section may be granted voluntary departure, conditioned upon the continued validity of the approved third- or sixth-preference petition, as appropriate, and the alien's retention of the status established in the petition for an indefinite period until an immigrant visa is available; or

(D) Paragraphs (a)(2) (vii) and (viii) of this section may be granted voluntary departure in increments of time, not to exceed 1 year, as determined by the district director to be appropriate in the case; or

(E) Paragraph (a)(2)(ix) of this section may be granted voluntary departure in increments of time, not to exceed 2 years.

(ii) An alien eligible for voluntary departure in paragraphs (a)(2) (v) through (viii) of this section may apply for employment authorization under the appropriate citation in § 274a.12 of this chapter.

* * * * *

3. Section 242.6 is revised to read as follows:

§ 242.6 Family Unity Program.

(a) *General.* Except as otherwise specifically provided in paragraph (b) of this section, the definitions contained in Title 8 of the Code of Federal Regulations shall apply to the administration of this section.

(b) *Definitions.* As used in this section:

Eligible immigrant means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

Legalized alien means an alien who:

(i) Is a temporary or permanent resident under section 210 or 245A of the Act; or

(ii) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

(c) *Eligibility*—(1) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(i) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90)), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(ii) That on May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse of unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Act based on the same relationship.

(2) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

(d) *Ineligible aliens.* The following categories of aliens are ineligible for benefits under the Family Unity Program:

(1) An alien who is deportable under any paragraph in section 241(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); *provided that* an alien

who is deportable under paragraph (1)(A) of such Act is also ineligible for benefits under the Family Unity Program if deportability is based upon an exclusion ground described in section 212(a) (2) or (3) of the Act;

(2) An alien who has been convicted of a felony or three or more misdemeanors in the United States; or

(3) An alien described in section 243(h)(2) of the Act.

(e) *Filing*—(1) *General.* An application for voluntary departure under the Family Unity Program must be filed at the Service Center having jurisdiction over the alien's place of residence. A Form I–817 (Application for Voluntary Departure under the Family Unity Program) must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(2) *Decision.* The Service Center director has sole jurisdiction to adjudicate an application for benefits under the Family Unity Program. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(3) *Referral of denied cases for consideration of issuance of Order to Show Cause.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue an Order to Show Cause (OSC). After an initial denial, an applicant's case will not be referred for issuance of an OSC until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I–817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under paragraph (d)(2) of this section, the Service reserves the right to issue an Order to Show Cause at any time after the initial denial.

(4) *Voluntary departure under § 242.5 and eligibility for employment under § 274a.12(c)(12).* Children of legalized aliens residing in the United States, who were born during an authorized absence from the United States of mothers who are currently residing in the United States under voluntary departure pursuant to the Family Unity Program may be granted voluntary departure under § 242.5(a)(2)(ix) for a period of 2 years.

(5) *Duration of voluntary departure under § 242.6.* An alien whose application for benefits under the Family Unity Program is approved will receive a 2-year period of voluntary departure. The 2-year period will begin on the date the Services approves the application.

(6) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document on Form I–765 (Application for Employment Authorization). The application may be filed concurrently with Form I–817. The application must be accompanied by the correct fee required by § 103.7(b)(1) of this chapter. The validity period of the employment authorization will coincide with the period of voluntary departure.

(7) *Travel outside the United States.* An alien granted Family Unity Program benefits who intends to travel outside the United States temporarily must apply for advance authorization using Form I–131 (Application for Travel Document). The authority to grant an application for advance authorization for an alien granted Family Unity Program benefits rests solely with the district director. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be excludable under section 212(a) (2) or (3) of the Act, shall be inspected and admitted in the same immigration status the alien had at the time of departure, and provided the remainder of the 2-year voluntary departure previously granted under the Family Unity Program.

(8) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I–817 along with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, and a petition for family-sponsored immigrant status has not been filed in behalf of the applicant. In such case the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I–817 once the petition, Form I–130, has been filed in behalf of him or her. No charging document will be issued for a period of 90 days.

(9) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application need only include changes to previous applications and evidence of continuing eligibility since the date of the prior approval.

(f) *Eligibility for Federal financial assistance programs.* An alien granted Family Unity Program benefits based on a relationship to a legalized alien as defined in paragraph (b) of this section is ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under sections 245A(h) or 210(f) of the Act, respectively.

(g) *Termination of Family Unity Program benefits.*

(1) *Grounds for termination.* The Service may terminate benefits under the Family Unity Program whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(i) A determination is made that Family Unity Program benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(ii) The beneficiary commits an act or acts which render him or her inadmissible as an immigrant or ineligible for benefits under the Family Unity Program;

(iii) The legalized alien upon whose status benefits under the Family Unity Program were based loses his or her legalized status;

(iv) The beneficiary is the subject of a final order of exclusion or deportation issued subsequent to the grant of benefits on any ground of deportability or excludability that would have rendered the alien ineligible for benefits under § 242.6(d)(1) of this chapter, regardless of whether the facts giving rise to such ground occurred before or after the benefits were granted; or

(v) A qualifying relationship to a legalized alien no longer exists.

(2) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of § 103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of § 103.5a of the chapter. Nothing in this section

shall preclude the Service from commencing exclusion or deportation proceedings prior to termination of Family Unity Program benefits.

(3) *Effect of termination.* Termination of benefits under the Family Unity Program, other than as a result of a final order of deportation or exclusion, shall render the alien amendable to exclusion or deportation proceedings under sections 236 or 242 of the Act, as appropriate.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

4. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

5. Section 274a.12 is amended by revising paragraph (c)(12) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(12) A deportable alien granted voluntary departure, either prior to or after a hearing, for reasons set forth in § 242.5(a)(2) (v), (vi), (viii), or (ix) of this chapter, may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date, if the alien establishes an economic need to work. Factors which may be considered in adjudicating the application for employment authorization of such an alien granted voluntary departure include, but are not limited to, the following:

(i) The length of voluntary departure granted;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support;

(iii) Whether there is a reasonable chance that legal status may ensure in the near future; and

(iv) Whether there is a reasonable basis for consideration of discretionary relief.

* * * * *

Dated: December 13, 1995.

Doris Meissner,

Commissioner.

[FR Doc. 95–30701 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–30]

Establishment of Class D Airspace and Amendment of Class E Airspace; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and amends Class E airspace areas at Elko Municipal-J.C. Harris Field, Elko, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 5 and the establishment of a Airport Traffic Control Tower has made this action necessary. An intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Elko Municipal-J.C. Harris Field, Elko, NV.

EFFECTIVE DATE: 0901 UTC February 29, 1996.

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:

History

On October 30, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and amending Class E airspace at Elko, NV (60 FR 55222).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D and Class E airspace designations are published in paragraphs 5000, 6002, and 6005 of FAA Order 7900.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Class D and amends the Class E airspace areas at Elko, NV. An intended effect of this action is to provide adequate controlled airspace for aircraft executing the GPS RWY 5 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP NV D Elko, NV [New]

Elko Municipal-J.C. Harris Field, NV
(lat. 40°49′31″N, long 115°47′28″W)

That airspace extending upward from the surface to including 7,700 feet MSL within a 4.3-mile radius of Elko Municipal-J.C. Harris Field and within 1.8 miles each side of the 248° bearing from the Elko Municipal-J.C. Harris Field, extending from the 4.3-mile radius to 6 miles southwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective

date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AWP NV E2 Elko, NV [Revised]

Elko Municipal-J.C. Harris Field, NV
(lat. 40°49′31″N, long. 115°47′28″W)

Within a 4.3-mile radius of the Elko Municipal-J.C. Harris Field and within 1.8 miles each side of the 248° bearing from the Elko Municipal-J.C. Harris Field, extending from the 4.3-mile radius to 6 miles southwest of the Elko Municipal-J.C. Harris Field and within 1.8 miles each side of the 075° bearing from the Elko Municipal-J.C. Harris Field, extending from the 4.3-mile radius to 8.3 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AWP NV E5 Elko NV [Revised]

Elko Municipal-J.C. Harris Field, NV
(lat. 40°49′31″N, long. 115°47′28″W)

That airspace extending upward from 700 feet above the surface within an 8.3-mile radius of Elko Municipal-J.C. Harris Field and within 1.8 miles either side of 248° bearing from the Elko Municipal-J.C. Field, extending from the 8.3-mile radius to the 11.7 miles southwest of the Elko Municipal-J.C. Harris Field and within 3.9 miles east and 8.3 miles west of the 161° bearing from the Elko Municipal-J.C. Harris Field, extending from the 8.3-mile radius to 21.7 miles south of Elko Municipal-J.C. Harris Field and within 4.3 miles each side of the 075° bearing from the Elko Municipal-J.C. Harris Field, extending from the 8.3-mile radius to 17.8 miles northeast of the airport. That airspace extending upward from 1,200 feet above the surface within an 18.7-mile radius of Elko Municipal-J.C. Harris Field, and that airspace bounded on the north by the south edge of V–6, on the south by the north edge of V–32, on the east by the 18.7-mile radius west of the Elko Municipal-J.C. Harris Field and that airspace bounded by a line beginning at lat. 40°34′00″N, long. 116°00′00″W; to lat. 40°27′00″N, long. 116°36′00″W; to lat. 40°31′00″N, long 116°38′00″W; to lat. 40°32′00″N, long. 116°33′00″W; to lat. 40°33′30″N, long. 116°33′30″W; to lat. 40°38′00″N, long. 116°07′00″W, thence via the 18.7-mile radius of Elko Municipal-J.C. Harris Field to the point of beginning.

* * * * *

Issued in Los Angeles, California, on December 6, 1995.

James H. Snow,

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

[FR Doc. 95–31103 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANM–15]

Amendment of Class E Airspace; Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the salt Lake City, Utah, Class E airspace to accommodate a new instrument approach procedure at Salt Lake City International Airport. This amendment brings publications up-to-date giving continuous information to the aviation public.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 95–ANM–15, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: 206 227–2537.

SUPPLEMENTARY INFORMATION:

History

On October 10, 1995, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) by amending the Salt Lake City, Utah, Class airspace designation (60 FR 52639). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

This action is the same as the proposal except for a typographical error discovered (and corrected herein) in the coordinates for the 1200-foot airspace area. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is 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 will be published subsequently in the Order.

The Rule

The amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Salt Lake City, Utah. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 14 CFR part 71 is amended 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 7400.9C, 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.

* * * * *

ANM UT E5 Salt Lake City, UT [Revised]

Salt Lake City International Airport, UT
(lat. 40°47′18″N, long. 111°58′40″W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°00′00″N, long. 111°45′03″W, thence south along long. 111°45′03″W, to lat. 40°22′30″N, thence southeast to lat. 40°10′20″N, long. 111°35′03″W, thence southwest to lat. 40°03′30″N, long. 111°48′33″W, thence northwest to lat. 40°43′00″N, long. 112°22′03″W, thence north along long. 112°22′03″W, to lat. 41°00′00″N, thence east along lat. 41°00′00″N, to the point of beginning; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 41°00′00″N, on the east by long. 111°25′33″W, thence south to lat. 40°11′00″N, thence east to lat. 40°06′00″N, long. 110°15′00″W, thence southwest to lat.

39°33′00″N, long. 110°55′00″W, thence southwest to lat. 39°04′00″N, long. 112°27′30″W, thence northwest to lat. 39°48′00″N, long. 112°50′00″W, thence west via lat. 39°48′00″N, to the east edge of Restricted Area R–6402A, and on the west by the east edge of Restricted Area R–6402A, Restricted Area R–6402B and Restricted Area R–6406B and long. 113°00′03″W; excluding the portion within the Price, UT and the Delta, UT, airspace areas; that airspace east of Salt Lake City extending upward from 11,000 feet MSL bounded on the northwest by the southeast edge of V–32, on the southeast by the northwest edge of V–235, on the southwest by the northeast edge of V–101 and on the west by long. 111°25′33″W; excluding that airspace within the Evanston, WY, 1,200-foot Class E airspace area; that airspace southeast of Salt Lake City extending upward from 13,500 feet MSL bounded on the northeast by the southwest edge of V–484, on the south by the north edge of V–200 and on the west by long. 111°25′33″W; excluding the portion within Restricted Area R–6403 and the Bonneville, UT Class E airspace area.

* * * * *

Issued in Seattle, Washington, on December 8, 1995.

Richard E. Prang,

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

[FR Doc. 95–31101 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 417

Trade Regulation Rule Concerning the Failure To Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning the Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses. The Commission has reviewed the rulemaking record and determined that, because federal law prohibits the sale or distribution of the products that were the subject of the Quick-Freeze Spray Rule, the Rule no longer serves the public interest and should be repealed. This document contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 21, 1995.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street & Pennsylvania Avenue N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy or George Brent Mickum IV, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580, (202) 326–2981, (202) 326–3132.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning the Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses (Quick-Freeze Spray Rule), 16 CFR Part 417, was promulgated on February 20, 1969 (34 FR 2417). The Quick-Freeze Spray Rule requires a clear and conspicuous warning on aerosol spray products used for frosting beverage glasses. The warning states that the contents should not be inhaled in concentrated form and that doing so may cause injury or death.

On May 23, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on the proposed repeal of the Quick-Freeze Spray Rule (60 FR 27244). In accordance with Section 18 of the Federal Trade Commission (FTC) Act, 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The comment period closed on June 22, 1995. The Commission received no comments.

On September 18, 1995, the Commission published a Notice of Proposed Rulemaking (NPR) initiating a proceeding to consider whether the Quick-Freeze Spray Rule should be repealed or remain in effect (60 FR 48073).[1] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[2] The comment period closed on October 18, 1995. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission has determined to repeal the Quick-Freeze Spray Rule for the following reasons:

1. The active ingredient in quick-freeze spray products was Fluorocarbon 12. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and its implementing regulations, ban chlorofluorocarbons in aerosols and foams for non-essential uses because they are ozone depleting agents. The ban, which includes Fluorocarbon 12, became effective on January 17, 1994.[3] A number of aerosol products containing fluorocarbons have been exempted from the ban, but glass-frosting aerosols are not among them.

2. Based on a 1989 review of the Rule, the Commission determined that the last known producer of glass-frosting products was Ronco, Inc. Ronco last produced its glass-frosting machines in 1980. The product was last sold to retailers in 1982. Ronco has none of the product in its warehouse and has sold the tooling machinery that was used to manufacture the product.[4]

3. Commission staff was unable to locate any glass-frosting products for sale anywhere in the country.[5]

4. Poison treatment centers have reported no cases involving the product.[6]

Because the products addressed by this Rule are no longer available and cannot be sold or distributed legally, the Quick-Freeze Spray Rule has become obsolete and should be repealed.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the

[1] In accordance with Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the Federal Register.

[3] 40 CFR 82.64 (1994).

[4] See Rulemaking Record, Staff Submissions: Letter from Donna Wellington, Executive Vice President, Ronco, Inc., dated April 18, 1995, to Mr. Lemuel W. Dowdy.

[5] See Rulemaking Record, Staff Submissions: Memorandum to File, George Brent Mickum IV, dated April 18, 1995.

[6] *Id.*

Rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Quick-Freeze Spray Rule does not impose ''information collection requirements'' under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Although the Rule contains disclosure requirements, these disclosures are not covered under the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 417

Hazardous substances, Labeling, Trade practices.

PART 417—[REMOVED]

The Commission, under authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing part 417.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–30916 Filed 12–20–95; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 95]

Staff Accounting Bulletin No. 95

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin rescinds the views of the staff contained in Staff Accounting Bulletin No. 57 (Topic 5K—Contingent Stock Purchase Warrants).

DATES: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Morrissey, Office of the Chief Accountant (202) 942–4400, or Douglas Tanner, Division of Corporation Finance (202) 942–2960, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Margaret H. McFarland,

Deputy Secretary.

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 95 to the table found in Subpart B.

PART 211—[AMENDED]

Staff Accounting Bulletin No. 95

The staff hereby deletes Staff Accounting Bulletin No. 57 (Section K to Topic 5 of the Staff Accounting Bulletin Series). Staff Accounting Bulletin No. 57 provided interpretative guidance on the accounting for contingent stock purchase warrants.

Footnote 2 to Staff Accounting Bulletin No. 57 notes that in March 1984, the Financial Accounting Standards Board (FASB) added a project to its agenda to reconsider Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25). Footnote 2 indicates that when this project is completed, the staff will consider whether the accounting articulated in this staff accounting bulletin is still appropriate.

The FASB's reconsideration of APB 25 is now complete with the issuance of Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (FAS 123). Consistent with our stated intention, the staff has reconsidered the guidance in Staff Accounting Bulletin No. 57 and concludes that the interpretative guidance providing for an intrinsic value measurement is no longer necessary due to the general guidance in FAS 123 that provides for fair value measurement for transactions with other than employees.

FAS 123 does not provide specific guidance on the methodology for determining fair value for such an arrangement or the measurement date on which the fair value of the equity instrument is determined. The staff intends to request that the Emerging Issues Task Force consider the need to issue additional guidance that would address those issues.

[FR Doc. 95–31086 Filed 12–20–95; 8:45 am]

BILLING CODE 8010–01–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 366 and 367

RIN 3220–AB09

Collection of Debts

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations pertaining to the collection of debts by offset against other Federal payments and against tax refunds to authorize use of these collection methods for collection of debts from businesses.

EFFECTIVE DATE: December 21, 1995.

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

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

SUPPLEMENTARY INFORMATION: Part 366 of the Board's regulations deals with collection of debts by means of offset from Federal tax refunds through referrals to the Internal Revenue Service. This procedure is authorized by 31 U.S.C. 3720A. Part 367 deals with the collection of debts by administrative offset under the authority of the Debt Collection Act of 1982, 31 U.S.C. 3716. As currently in effect, the Board's regulations as to tax refund offset and administrative offset apply to individual debtors only. The Board believes that amendment of these regulations to authorize these collection procedures against business debtors will facilitate collection of debts which may be owed to the Board.

On August 17, 1995, the Board published this rule as a proposed rule (60 FR 42818), inviting comments on or before September 18, 1995. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required. Information collections associated with this rule have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Parts 366 and 367

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, parts 366 and 367 of title 20, chapter II of the Code of Federal Regulations are amended as follows:

PART 366—COLLECTION OF DEBTS BY FEDERAL TAX REFUND OFFSET

1. The authority citation for part 366 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3720A.

§ 366.1 [Amended]

2. Section 366.1 is amended by removing the word ''individuals'' and adding in its place the word ''debtors''.

3. Section 366.2 is amended by revising the introductory text, and paragraphs (a), (b), (e), and (f) to read as follows:

§ 366.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to the Internal Revenue Service is a debt:

(a) Which arose under any statute administered by the Board or under any contract;

(b) Which is an obligation of a debtor who is a natural person or a business;

* * * * *

(e) With respect to which the rights regarding reconsideration, waiver, and appeal, described in part 260 or 320 of this chapter or in other law, if applicable, have been exhausted;

(f) With respect to which either:

(1) The Board's records do not contain evidence that the debtor (or, if an individual, his or her spouse) has filed for bankruptcy under Title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the debtor (or, if an individual, his or her spouse) and the debt was not discharged in the bankruptcy proceeding;

* * * * *

§ 366.2 [Amended]

3. Section 366.2(j) is amended by removing the word ''individual'' and adding in its place the word ''debtor''.

4. Section 366.2(k) is amended by removing the word ''individual'' and adding in its place the word ''debtor''.

§ 366.6 [Amended]

5. Section 366.6(c) is amended by removing the words ''individual owing the debt'' and adding in their place the word ''debtor''.

PART 367—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY ADMINISTRATIVE OFFSET

6. The authority citation for part 367 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3716.

7. Section 367.2 is amended by revising the introductory text and paragraphs (a), (b), (e), and (f) to read as follows:

§ 367.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to another governmental agency for administrative offset is a debt:

(a) Which arose under any statute administered by the Board or under any contract;

(b) Which is an obligation of a debtor who is a natural person or a business;

* * * * *

(e) With respect to which the rights described in part 260 or 320 of this chapter or the applicable law regarding reconsideration, waiver, and appeal, if applicable, have been exhausted;

(f) With respect to which either:

(1) The Board's records do not contain evidence that the debtor (or, if an individual, his or her spouse) has filed for bankruptcy under Title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the debtor (or, if an individual, his or her spouse) and the debt was not discharged in the bankruptcy proceeding;

* * * * *

§ 367.2 [Amended]

8. Section 367.2(i) is amended by removing the word ''individual'' and adding in its place the word ''debtor'', and by removing the words ''that person'' and adding in their place the words ''the debtor'';

9. Section 367.2(j) is amended by removing the words ''such individual'' and adding in their place the words ''the debtor'';

§ 367.7 [Amended]

10. Section 367.7(c) is amended by removing the words ''individual owing the debt'' and adding in their place the word ''debtor''.

Dated: December 13, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–30999 Filed 12–20–95; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs, Overseas Citizens Services

22 CFR Part 94

[Public Notice 2290]

International Child Abduction

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends regulations regarding incoming parental abduction cases pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. Incoming cases will be processed by a non-governmental organization with oversight by the Department of State.

DATES: Effective Date: December 21, 1995. Comments are due on or before January 22, 1995.

ADDRESSES: Interested persons are invited to submit comments in duplicate to the Director of the Office of Children's Issues, Bureau of Consular Affairs, Room 4811, U.S. Department of State, Washington, DC 20520; fax: 202–647–2835.

FOR FURTHER INFORMATION CONTACT: Leslie Rowe, Director of the Office of Children's Issues, Room 4811, U.S. Department of State, Washington, D.C. 20520. tele: 202–647–2688.

SUPPLEMENTARY INFORMATION: Since 1988, the Bureau of Consular Affairs has served as the U.S. Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction. As U.S. Central Authority, the Office of Children's Issues is responsible for processing all Hague Convention applications seeking the return of children wrongfully removed or retained in the United States or any other Hague Convention contracting state. In addition, the U.S. Central Authority is responsible for facilitating access rights under the Convention. The Office of Children's Issues processes approximately 700 Hague Convention applications annually; roughly 300 of these cases are incoming cases, i.e., applications for the return of a child wrongfully removed to or retained in the United States.

The processing of incoming Hague applications requires case officers to

communicate with foreign Central Authorities about incoming cases, to determine the whereabouts of children wrongfully taken to the United States, to attempt to promote voluntary return of abducted children, and to facilitate the initiation of judicial proceedings with a view toward securing the return of abducted children. Many of the case officer functions involve extensive contact with local law enforcement officials, social service agencies, legal aid organizations and local bar associations.

The Office of Children's Issues has recently entered into an agreement with the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, and the National Center for Missing and Exploited Children (National Center). Under this agreement, the National Center will assist the U.S. Central Authority in fulfilling its responsibilities under the Hague Convention.

The National Center, a non-governmental organization, is a national resource center and clearinghouse that provides technical assistance to parents seeking to locate and recover children missing in the United States. For more than ten years, the National Center has been performing case management and analysis functions for domestic abductions; it handles more than 1,200 parental child abduction cases annually. By agreement with the Department of Justice, the National Center provides legal technical assistance, maintains a toll-free hotline as well as an online information network, and operates a photo distribution service.

Transferring specified case officer functions to the National Center with respect to incoming Hague Convention cases will result in the provision of better service to parents seeking the return of children under the Convention. Parents will benefit from the National Center's expertise in finding missing children and liaising with contacts in the local law enforcement and social services communities.

This transfer of case officer functions to the National Center will not in any way alter the role of the State Department as U.S. Central Authority under the Hague Convention. The Office of Children Issues will continue as the U.S. Central Authority under the Convention and will retain ultimate responsibility for all incoming cases. Under the agreement, all inherently governmental functions, including matters of Hague Convention interpretation and policy direction are to be carried out by the Department of State. Congressional and White House correspondence as well as media relations will continue to be handled by the Office of Children's Issues.

The Department of State is publishing this as an interim final rule, rather than as a notice of proposed rulemaking as allowed by 5 U.S.C. 553(b)(3)(B) when an agency determines, for good cause, that it is unnecessary to publish a proposed rule. The Department of State has determined that publication of a proposed rule is unnecessary, as the transfer of responsibility over incoming Hague Convention cases to the National Center primarily affects workload distribution and management of U.S. Central Authority functions. The Department of State's Office of Children's Issues will continue to perform all inherently governmental functions of the U.S. Central Authority.

This rule is exempt from E.O. 12866, but nonetheless has been reviewed and found to be consistent with the objectives and policies thereof. This rule is not expected to have a significant impact on a substantial, number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction. Act, 44 U.S.C. Chapter 35. Nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith.

List of Subjects in 22 CFR Part 94

Infants and children, reporting and recordkeeping requirements, Treaties.

For the reasons set forth in the preamble, 22 CFR 94 is amended as follows:

PART 94—INTERNATIONAL CHILD ABDUCTION

1. The authority citation for part 94 continues to read as follows:

Authority: Hague Convention on the Civil Aspects of International Child Abduction; International Child Abduction Remedies Act, Pub. L. 100–300.

2. Section 94.6 is amended by revising the introductory text and paragraph (1), removing paragraph (k), redesignating paragraphs (a) through (j) as paragraphs (b) through (k), and adding a new paragraph (a) to read as follows:

§ 94.6 Procedures for children abducted to the United States.

The National Center for Missing and Exploited Children shall act under the direction of the U.S. Central Authority and shall perform the following operational functions with respect to all Hague Convention applications seeking the return of children wrongfully removed to or retained in the United States or seeking access to children in the United States:

(a) Receive all applications on behalf of the U.S. Central Authority;

* * * * *

(l) Perform such additional functions as set out in the ''Cooperative Agreement Adjustment Notice'' between the Department of State, Department of Justice, and National Center for Missing and Exploited Children.

Dated: November 3, 1995.

Mary A. Ryan,

Assistant Secretary of State for Consular Affairs.

[FR Doc. 95–31106 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1208

[NHTSA Docket No. 85–12; Notice 4]

RIN 2127–AF95

National Minimum Drinking Age

AGENCY: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: This final rule amends Part 1208 of title 23 of the Code of Federal Regulations (CFR). Part 1208 prescribes the requirements necessary to implement 23 U.S.C. 158, which established the National Minimum Drinking Age Act. This final rule is amending Part 1208 by removing outdated and obsolete provisions from that regulation.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. James Wright, Office of Traffic Safety Programs, National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–2724; or Ms. Heidi L. Coleman, Office of Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–1834. In FHWA: Ms. Mila Plosky, Office of Highway Safety, Federal Highway

Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–6902; or Mr. Paul Brennan, Office of the Chief Counsel, Federal Highway Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton directed all Federal Departments and agencies to take a number of steps to overhaul the nation's regulatory system. The first step was to conduct a page-by-page review of all agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform.

NHTSA and FHWA conducted a thorough, page-by-page review of all agency regulations, including those that pertain to State and community highway safety programs.

As a result of these efforts, NHTSA and FHWA have determined that Part 1208 of title 23 of the Code of Federal Regulations (CFR) should be amended, because portions of the regulation are outdated and obsolete.

Part 1208 prescribes the requirements necessary to implement 23 U.S.C. § 158, which established the National Minimum Drinking Age. The regulation clarifies the provisions which a State must have incorporated into its laws in order to avoid the withholding of Federal-aid highway funds for noncompliance with the National Minimum Drinking Age. It also describes, in detail, the consequences of noncompliance.

The regulation was first published in the Federal Register on March 26, 1985 (51 F.R. 10376). It was amended, to reflect statutory changes made to the National Minimum Drinking Age Act, on August 18, 1988 (53 F.R. 31318).

Some of the provisions of the regulation are no longer applicable. For example, under the National Minimum Drinking Age (NMDA), funds withheld from a State prior to FY 1989 remained available for apportionment to the State for a period of time, and States were permitted for a limited period of time to include in their laws ''grandfather rights'' for persons who were between the ages of 18 and 21. The regulation contained provisions implementing these statutory requirements. These requirements no longer apply. Funds now withheld under the NMDA are not available for apportionment to the State, and grandfather rights may no longer be included in State laws. This final rule deletes these outdated and obsolete provisions.

The NMDA provides that the Secretary must withhold from non-complying States, ten percent of the funds required to be apportioned under 23 U.S.C. §§ 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6). At the time the NMDA was enacted, these sections corresponded with the Federal-aid primary, secondary, Interstate and urban systems funding categories.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was enacted on December 18, 1991, revised or eliminated these funding categories, and created new ones, including the National Highway System (NHS) and the Surface Transportation Program (STP). The Interstate System funding category was maintained, although the Interstate system itself is now a component of NHS. The Interstate funding category involves resurfacing, restoring, rehabilitating and reconstruction.

Since the enactment of ISTEA, the agencies have administered the penalty provisions of 23 U.S.C. § 158 by withholding ten percent of a State's apportionments for the NHS, STP and Interstate System programs (23 U.S.C. §§ 104(b)(1), 104(b)(3) and 104(b)(5)), the successors to the funding categories referenced in the NMDA. However, the NMDA has not been amended to reflect the changes made to the funding categories by ISTEA. Accordingly, the implementing regulation for NMDA continues to reflect the language contained in the NMDA. This final rule does not amend this portion of the regulation.

Rulemaking Analyses and Notices

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

The agencies have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. This final rule does not impose any additional burden on the public. It is technical in nature and does not change the requirements of the program. It is anticipated that there will be no economic impact as a result of this rulemaking. Accordingly, a full regulatory evaluation is not required and was not prepared.

(b) Regulatory Flexibility Act.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this rule on small entities. Based on the evaluation, the agencies hereby certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, a Regula-tory Flexibility Analysis is not necessary and was not prepared.

(c) 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 have sufficient federalism implications to warrant the preparation of a federalism assessment.

(d) Paperwork Reduction Act.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

(e) National Environmental Policy Act.

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that implementation of this action will not have any significant impact on the quality of the human environment.

(f) Executive Order 12778 (Civil Justice Reform)

This amendment to the regulation does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather simply removes from the regulation outdated and obsolete provisions that no longer apply. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Notice and Comment

Because the amendments relate to a grant program and are therefore not covered by the Administrative Procedure Act, and since they merely contain technical changes that remove outdated and obsolete provisions from the regulation and do not impose any additional requirements, the amendments are being made without prior notice and opportunity to comment.

List of Subjects in 23 CFR Part 1208

Alcohol, Highway Safety.

In accordance with the foregoing, Part 1208 of Title 23 of the Code of Federal Regulations is amended as follows:

PART 1208—[AMENDED]

1. The authority citation for Part 1208 continues to read as follows:

Authority: 23 U.S.C. 158; delegation of authority at 49 CFR 1.48 and 1.50.

2. Section 1208.4 is revised to read as follows:

§ 1208.4 Adoption of National Minimum Drinking Age.

The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of §§ 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 U.S.C. on the first day of each fiscal year in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

3. Section 1208.5 is revised to read as follows:

§ 1208.5 Unavailability of withheld funds.

Funds withheld under § 1208.4 from apportionment to any State will not be available for apportionment to the State.

§§ 1208.6—1208.8 [Removed]

4. Sections 1208.6 through 1208.8 are removed.

§ 1208.9 [Redesignated as § 1208.6]

5. Section 1208.9 is redesignated as 1208.6.

Issued on: December 18, 1995.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration

[FR Doc. 95–31118 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8647]

RIN 1545–AS51

Withholding of Tax on Dispositions of U.S. Real Property Interests by Foreign Persons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to withholding upon certain distributions or dispositions of U.S. real property interests. These regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 and affect withholding agents required to withhold tax due on certain dispositions and distributions of U.S. real property interests.

DATES: These final regulations are effective January 22, 1996. These regulations are applicable to transactions occurring after August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gwendolyn A. Stanley (202) 622–3860 (not a toll free-call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations reflecting changes made by the Omnibus Budget Reconciliation Act of 1993 to the withholding rates on certain distributions and dispositions of U.S. real property interests. These regulations were not preceded by a Notice of Proposed Rulemaking because the withholding rates were changed by the Act. This document also updates the address of the Assistant Commissioner (International) to whom various forms must be sent.

Explanation of Provisions

The rate of withholding under section 1445(e) (1) and (2) of the Internal Revenue Code was increased from 34% to 35% by the Omnibus Budget Reconciliation Act of 1993. The existing regulations reflect the prior 34% withholding rate. These regulations reflect the increase in withholding to 35% (or the highest rate specified in section 1445(e) (1) or (2)) for dispositions occurring on or after August 10, 1993.

Special Analyses

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

Drafting Information

The principal author of these regulations is Gwendolyn Stanley, Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Section 1.1445–5 also issued under 26 U.S.C. 1445(e)(6).

Section 1.1445–8 also issued under 26 U.S.C. 1445(e)(6). * * *

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

Par. 2. In section 1.1445–1, the section heading and paragraph (g)(10) are revised to read as follows:

§ 1.1445–1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.

* * * * *

(g) * * *

(10) *Address of the Assistant Commissioner International.* Any written communication directed to the Assistant Commissioner (International) is to be addressed as follows: Director, Philadelphia Service Center; 11601 Roosevelt Blvd.; Philadelphia, PA 19255; ATTN: Drop Point 543X.

Par. 3. Section 1.1445–5 is amended as follows:

1. Paragraph (c)(1)(ii) is revised.

2. The third sentence and the last sentence of paragraph (c)(1)(iii)(A) are revised.

3. Paragraph (c)(1)(iii)(B) is removed.

4. Paragraph (c)(1)(iii)(C) is redesignated as (c)(1)(iii)(B) and revised.

5. Paragraph (c)(1)(iv) is revised.

6. Paragraph (c)(3)(ii) is revised.

7. The first sentence of paragraph (d)(1) is revised.

8. The second sentence of paragraph (d)(1) is removed.

The revisions read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(c)(1) * * *

(ii) *Disposition by partnership.* A partnership must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of each foreign partner's distributive share of the gain realized by the partnership upon the disposition of each U.S. real

property interest. Such distributive share of the gain must be determined pursuant to the principles of section 704 and the regulations thereunder. For the rules applicable to partnerships, interests in which are regularly traded on an established securities market, see § 1.1445–8.

(iii) *Disposition by trust or estate*—(A) *In general.* * * * The fiduciary must withhold 35 percent (or the highest rate specified in section 1445(e)(1)) of any distribution to a foreign beneficiary that is attributable to the balance in the U.S. real property interest account on the day of the distribution. * * * For rules applicable to trusts, interests in which are regularly traded on an established securities market and real estate investment trusts, see § 1.1445–8.

(B) *Example.* The following example illustrates the rules of paragraph (c)(1)(iii)(A) of this section.

On January 1, 1994, A establishes a domestic trust (which has as its taxable year, the calendar year) for the benefit of B, a nonresident alien, and C, a U.S. citizen. The trust is not a trust subject to sections 671 through 679. Under the terms of the trust, the trustee, T, is given discretion to distribute income and corpus of the trust to provide for the reasonable needs of B and C. During the trust's 1994 tax year, T disposes of three parcels of vacant land located in the United States. The following chart illustrates the computation of the amount subject to withholding under section 1445 with respect to distributions made by T to B and C during 1994.

Date	Parcel sold	Gains or (loss) realized	Distributions to C	Distributions to B (before withholding)	Section 1445 withholding 35% rate	U.S. real property interest account
1/01/94						
3/01/94	Parcel 1	140,000				140,000
3/05/94			5,000	10,000	3,500	125,000
3/15/94			10,000	5,000	1,750	110,000
5/01/94	Parcel 2	300,000				410,000
5/15/94	Parcel 3	(50,000)				360,000
12/01/94			170,000	170,000	59,500	20,000
1/01/95						

(iv) *Disposition by grantor trust.* The trustee or equivalent fiduciary of a trust that is subject to the provisions of subpart E of part 1 of subchapter J (sections 671 through 679) must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the gain realized from each disposition of a U.S. real property interest to the extent such gain is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part 1 of subchapter J.

* * * * *

(3) * * *

(ii) *Amount to be withheld.* A partnership or trust electing to withhold under this § 1.1445–5(c)(3) shall withhold from each distribution to a foreign person an amount equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the amount attributable to section 1445(e)(1) transfers.

* * * * *

(d) *Distributions of U.S. real property interests by foreign corporations*—(1) *In general.* A foreign corporation that distributes a U.S. real property interest must deduct and withhold a tax equal to 35 percent (or the rate specified in section 1445(e)(2)) of the amount of gain recognized by the corporation on the distribution. * * *

* * * * *

Par. 4. Section 1.1445–8(c)(2)(i) is revised to read as follows:

§ 1.1445–8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITS).

* * * * *

(c) * * *

(2) *REITS*—(i) *In general.* The amount to be withheld with respect to a distribution by a REIT, under this section shall be equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the amount described in paragraph (c)(2)(ii) of this section.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 28, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30871 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8648]

RIN 1545–AB21

Controlling corporation's basis adjustment in its controlled corporation's stock following a triangular reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 358, 1032, and 1502 of the Internal Revenue Code of 1986. The final regulations provide rules for adjusting the basis of a controlling corporation in the stock of a controlled corporation as the result of certain triangular reorganizations involving the stock of the controlling corporation. They also generally provide that the use of the controlling corporation's stock provided by the controlling corporation pursuant to the plan of reorganization is treated as a disposition of those shares by the controlling corporation.

DATES: These regulations are effective December 21, 1995.

For dates of applicability, see the ''Effective Dates'' section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and the effective date provisions of the new or revised regulations.

FOR FURTHER INFORMATION CONTACT: Curt Cutting, (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under sections 358, 1032, and 1502. The proposed regulations were published in the Federal Register on December 23, 1994 (59 FR 66280 [CO–993–71], 1995–4 I.R.B. 59 (January 23, 1995)). The IRS received many comments on the proposed regulations and held a public hearing on March 31, 1995.

After consideration of the comments and the statements made at the hearing, the proposed regulations are adopted as revised by this Treasury decision.

Overview

The final regulations adopt the over-the-top model contained in the proposed regulations. Subject to certain modifications, the model generally adjusts a controlling corporation's (P's) basis in the stock of its controlled corporation (S or T) as a result of certain triangular reorganizations as if P had acquired the T assets (and any liabilities assumed or to which the T assets were subject) directly from T in a transaction in which P's basis in the T assets was determined under section 362(b), and P then had transferred the T assets (and liabilities) to S in a transaction in which P's basis in the S or T stock was adjusted under section 358. The preamble to the proposed regulations contains a discussion of the justification for the model. See 59 FR 66280–81.

The final regulations also provide a special rule that treats S's use of P's stock provided by P pursuant to the plan of reorganization as a disposition of those shares by P.

The final regulations apply only for the purpose of determining P's basis in its S or T stock following a transaction that otherwise qualifies as a reorganization within the meaning of section 368. They do not address issues concerning the qualification of a transaction as a reorganization.

With the publication of these final regulations, the IRS announces the closing of its study project referred to in § 5.14 of Rev. Proc. 95–3, 1995–1 C.B. 385, 395.

The significant comments on the proposed regulations and revisions made are discussed below.

Summary of Comments and Explanation of Revisions P's Basis in T Stock Owned Before a Reverse Triangular Merger

The proposed regulations adjusted basis as a result of a reverse triangular merger to reflect the amount of T stock received in the transaction. Comments on the proposed regulations questioned how an adjustment based on the amount of T stock received in the transaction would apply in the case in which P owns T stock before the transaction.

In response to these comments, the final regulations allow P to treat its T stock as acquired in the transaction or not, without regard to the form of the transaction. Thus, P may retain its basis in the T stock owned before the transaction, or may determine its basis in that stock as an allocable portion of T's net asset basis. The regulations require no explicit election. Instead, it is assumed P will pick the higher basis. This rule applies only for determining basis, and not for qualifying the transaction as a reverse triangular merger. See Rev. Rul. 74–564, 1974–2 C.B. 124.

The Treasury and the IRS continue to study issues relating to restructurings involving related parties and cross-ownership, and welcome comments and suggestions on these issues.

Net Negative Adjustment

Under the proposed regulations, P's basis adjustment was reduced by the fair market value of consideration not provided by P, and by the amount of liabilities assumed by S or to which T assets are subject. These reductions did not result in a net negative basis adjustment to P's basis in its S stock before the transaction. This limitation did not apply, however, where P and S, or P and T, as applicable, were members of a consolidated group following the triangular reorganization. In the consolidated context, the negative adjustments could result in a net negative adjustment to P's basis in its S stock before the transaction, even if the adjustment resulted in an excess loss account under § 1.1502–19.

Some comments on the proposed regulations argued against reducing P's basis in its S stock before the transaction by a net negative adjustment in the consolidated context. Other comments, however, agreed that it is appropriate not to limit the net negative adjustment in this context.

The Treasury and the IRS continue to believe that the proposed regulations reach the correct result. Therefore, the final regulations adopt the rules as proposed.

Overlap of Reverse Triangular Merger and Other Transactions

The proposed regulations provided that if a transaction qualified as both a reverse triangular merger and a stock acquisition under section 368(a)(1)(B), P adjusted its basis in its T stock based either on T's net asset basis or on the aggregate basis of the T stock surrendered in the transaction (as if the transaction were a reorganization under section 368(a)(1)(B)).

One comment noted that a reverse triangular merger might overlap with a section 351 transfer and therefore requested that this rule also apply to such a case. The final regulations adopt this suggestion.

Manner of Making Elections

The proposed and final regulations provide P with elections for its basis adjustments when P owns stock of T and when a reverse triangular merger also qualifies as a section 351 transaction or B reorganization. In these situations, P does not have to declare how it will compute its basis. Rather, P must simply retain appropriate records. See § 1.368–3.

Application of Section 1032

The proposed regulations under section 1032 generally provided that P stock provided by P to S, or directly to T or T's shareholders on behalf of S, pursuant to the plan of reorganization would be treated as a disposition by P of shares of its own stock for T assets or stock, as applicable. Thus, no gain or loss was recognized on the use of such P stock in the transaction. S, however, recognized gain or loss on its use of P stock if S did not receive the stock from P as part of the plan of reorganization. This rule did not apply in the case of a reverse triangular merger; section 361 provides nonrecognition treatment for S's use of P stock in such a case. To clarify this treatment, a cross-reference has been added to the final regulations.

Comments to the proposed regulations requested that they be expanded to cover P debt, warrants and options provided by P to S, or directly to T or T's shareholders on behalf of S, pursuant to the plan of reorganization. Comments also requested that the rule be extended to taxable transactions.

The issues raised in these comments are beyond the scope of this project. However, the Treasury and the IRS are studying issues relating to the scope of section 1032 and welcome comments and suggestions.

Special Analyses

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

Effective Dates

Generally, § 1.358–6 applies with respect to all triangular reorganizations occurring on or after December 23, 1994, the day that the proposed regulations were published in the Federal Register.

As stated in the preamble to the proposed regulations, any adjustment to

P's basis in its S or T stock (as applicable) following a triangular reorganization occurring before December 23, 1994, must be consistent with the adjustment that would be made if P had made the acquisition directly and P then transferred the assets to a controlled subsidiary. However, with respect to reverse triangular mergers occurring before December 23, 1994, P may adjust its basis in its T stock as if P acquired the stock of the former T shareholders in a transaction in which its basis was determined under section 362(b).

Section 1.1032–2 applies with respect to certain triangular reorganizations occurring on or after December 23, 1994. With respect to triangular reorganizations occurring before December 23, 1994, see, e.g., § 1.1032–1 and Rev. Rul. 57–278, 1957–1 C.B. 124.

Section 1.1502–30 applies with respect to triangular reorganizations occurring on or after December 21, 1995, in which P and S, or P and T, as applicable, are members of a consolidated group following the triangular reorganization. For similar triangular reorganizations occurring before December 21, 1995, any adjustments to P's basis in its S or T stock (as applicable) must be consistent with the rules applicable for nonconsolidated taxpayers, except to the extent that § 1.1502–31 applies to a transaction that is a group structure change.

Drafting Information

The principal authors of these regulations are Rose Williams and Curt Cutting, Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects for 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1502–30 also issued under 26 U.S.C. 1502 * * *

§ 1.358–2 [Amended]

Par. 2. Section 1.358–2(d) is removed.

Par. 3. Section 1.358–6 is added to read as follows:

§ 1.358–6 Stock basis in certain triangular reorganizations.

(a) *Scope.* This section provides rules for computing the basis of a controlling corporation in the stock of a controlled corporation as the result of certain reorganizations involving the stock of the controlling corporation as described in paragraph (b) of this section. The rules of this section are in addition to rules under other provisions of the Internal Revenue Code and principles of law. See, e.g., section 1001 for the recognition of gain or loss by the controlled corporation on the exchange of property for the assets or stock of a target corporation in a reorganization described in section 368.

(b) *Triangular reorganizations*—(1) *Nomenclature.* For purposes of this section—

(i) *P* is a corporation—

(A) That is a party to a reorganization,

(B) That is in control (within the meaning of section 368(c)) of another party to the reorganization, and

(C) Whose stock is transferred pursuant to the reorganization.

(ii) *S* is a corporation—

(A) That is a party to the reorganization, and

(B) That is controlled by *P*.

(iii) *T* is a corporation that is another party to the reorganization.

(2) *Definitions of triangular reorganizations.* This section applies to the following reorganizations (which are referred to collectively as *triangular reorganizations*):

(i) *Forward triangular merger.* A forward triangular merger is a statutory merger of *T* and *S*, with *S* surviving, that qualifies as a reorganization under section 368(a)(1)(A) or (G) by reason of the application of section 368(a)(2)(D).

(ii) *Triangular C reorganization.* A triangular C reorganization is an acquisition by *S* of substantially all of *T*'s assets in exchange for *P* stock in a transaction that qualifies as a reorganization under section 368(a)(1)(C).

(iii) *Reverse triangular merger.* A reverse triangular merger is a statutory merger of *S* and *T*, with *T* surviving, that qualifies as a reorganization under section 368(a)(1)(A) by reason of the application of section 368(a)(2)(E).

(iv) *Triangular B reorganization.* A triangular B reorganization is an acquisition by *S* of *T* stock in exchange for P stock in a transaction that qualifies as a reorganization under section 368(a)(1)(B).

(c) *General rules.* Subject to the special rule provided in paragraph (d) of this section, *P*'s basis in the stock of *S* or *T*, as applicable, as a result of a triangular reorganization, is adjusted under the following rules—

(1) *Forward triangular merger or triangular C reorganization*—(i) *In general.* In a forward triangular merger or a triangular C reorganization, *P*'s basis in its *S* stock is adjusted as if—

(A) *P* acquired the *T* assets acquired by *S* in the reorganization (and *P* assumed any liabilities which *S* assumed or to which the *T* assets acquired by *S* were subject) directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b); and

(B) *P* transferred the *T* assets (and liabilities which *S* assumed or to which the *T* assets acquired by *S* were subject) to *S* in a transaction in which *P*'s basis in *S* stock was determined under section 358.

(ii) *Limitation.* If, in applying section 358, the amount of *T* liabilities assumed by *S* or to which the *T* assets acquired by *S* are subject equals or exceeds *T*'s aggregate adjusted basis in its assets, the amount of the adjustment under paragraph (c)(1)(i) of this section is zero. *P* recognizes no gain under section 357(c) as a result of a triangular reorganization.

(2) *Reverse triangular merger*—(i) *In general*—(A) *Treated as a forward triangular merger.* Except as otherwise provided in this paragraph (c)(2), *P*'s basis in its *T* stock acquired in a reverse triangular merger equals its basis in its *S* stock immediately before the transaction adjusted as if *T* had merged into *S* in a forward triangular merger to which paragraph (c)(1) of this section applies.

(B) *Allocable share.* If *P* acquires less than all of the *T* stock in the transaction, the basis adjustment described in paragraph (c)(2)(i)(A) of this section is reduced in proportion to the percentage of *T* stock not acquired in the transaction. The percentage of *T* stock not acquired in the transaction is determined by taking into account the fair market value of all classes of *T* stock.

(C) *Special rule if P owns T stock before the transaction.* Solely for purposes of paragraphs (c)(2)(i)(A) and (B) of this section, if *P* owns *T* stock before the transaction, *P* may treat that stock as acquired in the transaction or not, without regard to the form of the transaction.

(ii) *Reverse triangular merger that qualifies as a section 351 transfer or section 368(a)(1)(B) reorganization.* Notwithstanding paragraph (c)(2)(i) of this section, if a reorganization qualifies as both a reverse triangular merger and

as a section 351 transfer or as both a reverse triangular merger and a reorganization under section 368(a)(1)(B), *P* can—

(A) Determine the basis in its *T* stock as if paragraph (c)(2)(i) of this section applies; or

(B) Determine the basis in the *T* stock acquired as if *P* acquired such stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

(3) *Triangular B reorganization.* In a triangular B reorganization, *P*'s basis in its *S* stock is adjusted as if—

(i) *P* acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b); and

(ii) *P* transferred the *T* stock to *S* in a transaction in which *P*'s basis in its *S* stock was determined under section 358.

(4) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. For purposes of these examples, *P, S,* and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, and the facts set forth the only corporate activity.

Example 1. Forward triangular merger. (a) *Facts. T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. Pursuant to a plan, *P* forms *S* with $5 cash (which S retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth $100 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6(c)(1), *P*'s $5 basis in its *S* stock is adjusted as if *P* acquired the *T* assets acquired by *S* in the reorganization directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of $60 in the *T* assets. *P* is then treated as if it transferred the *T* assets to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358, *P*'s $5 basis in its *S* stock would be increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $65 basis in its *S* stock as a result of the reorganization.

(c) *Use of pre-existing S.* The facts are the same as paragraph (a) of this *Example 1,* except that *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $110 basis in the *S* stock. Under § 1.358–6(c)(1), *P*'s $110 basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $170 basis in its *S* stock as a result of the reorganization.

(d) *Mixed consideration.* The facts are the same as paragraph (a) of this *Example 1,* except that the *T* shareholders receive *P* stock worth $80 and $20 cash from *P*. Under section 358, *P*'s $5 basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $65 basis in its *S* stock as a result of the reorganization.

(e) *Liabilities.* The facts are the same as paragraph (a) of this *Example 1,* except that *T*'s assets are subject to $50 of liabilities, and the *T* shareholders receive $50 of *P* stock in exchange for their *T* stock. Under section 358, *P*'s basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred and decreased by the $50 of liabilities to which the *T* assets acquired by *S* are subject. Consequently, *P* has a net basis adjustment of $10, and a $15 basis in its *S* stock as a result of the reorganization.

(f) *Liabilities in excess of basis.* The facts are the same as in paragraph (a) of this *Example 1,* except that *T*'s assets are subject to liabilities of $90, and the *T* shareholders receive $10 of *P* stock in exchange for their *T* stock in the reorganization. Under § 1.358–6(c)(1)(ii), the adjustment under § 1.358–6(c) is zero if the amount of the liabilities which *S* assumed or to which the *T* assets acquired by *S* are subject exceeds the aggregate adjusted basis in *T*'s assets. Consequently, *P* has no adjustment in its *S* stock, and *P* has a $5 basis in its *S* stock as a result of the reorganization.

Example 2. Reverse triangular merger. (a) *Facts. T* has assets with an aggregate basis of $60 and a fair market value of $100 and no liabilities. *P* has a $110 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders receive $10 cash from *P* and *P* stock worth $90 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(E) apply.

(b) *Basis adjustment.* Under § 1.358–6(c)(2)(i)(A), *P*'s basis in the *T* stock acquired is *P*'s $110 basis in its *S* stock before the transaction, adjusted as if *T* had merged into *S* in a forward triangular merger to which § 1.358–6(c)(1) applies. In such a case, *P*'s $110 basis in its *S* stock before the transaction would have been increased by the $60 basis of the *T* assets deemed transferred. Consequently, *P* has a $170 basis in its *T* stock immediately after the transaction.

(c) *Reverse triangular merger that also qualifies under section 368(a)(1)(B).* The facts relating to *T* are the same as in paragraph (a) of this *Example 2. P,* however, forms *S* pursuant to the plan of reorganization. The *T* shareholders receive $100 worth of *P* stock (and no cash) in exchange for their *T* stock. The *T* shareholders have an aggregate basis in their *T* stock of $85 immediately before the reorganization. The reorganization qualifies as both a reverse triangular merger and a reorganization under section 368(a)(1)(B). Under § 1.358–6(c)(2)(ii), *P* may determine its basis in its *T* stock either as if § 1.358–6(c)(2)(i) applied to the *T* stock acquired, or as if *P* acquired the *T* stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Accordingly, *P* may determine a basis in its *T* stock of $60 (*T*'s net asset basis) or $85 (the *T* shareholders' aggregate basis in the *T* stock immediately before the reorganization).

(d) *Allocable share in a reverse triangular merger.* The facts are the same as in paragraph (a) of this *Example 2,* except that *X*, a 10% shareholder of *T*, does not participate in the transaction. The remaining *T* shareholders receive $10 cash from *P* and *P* stock worth $80 for their *T* stock. *P* owns 90% of the *T* stock after the transaction. Under 1.358–6(c)(2)(i)(A), *P*'s basis in its *T* stock is *P*'s $110 basis in its *S* stock before the reorganization, adjusted as if *T* had merged into *S* in a forward triangular merger. In such a case, *P*'s basis would have been adjusted by the $60 basis in the *T* assets deemed transferred. Under § 1.358–6(c)(2)(i)(B), however, the basis adjustment determined under § 1.358–6(c)(2)(i)(A) is reduced in proportion to the percentage of *T* stock not acquired by *P* in the transaction. The percentage of *T* stock not acquired in the transaction is 10%. Therefore, *P* reduces its $60 basis adjustment by 10%, resulting in a net basis adjustment of $54. Consequently, *P* has a $164 basis in its *T* stock as a result of the transaction.

(e) *P's ownership of T stock.* The facts are the same as in paragraph (a) of this *Example 2,* except that *P* owns 10% of the *T* stock before the transaction. *P*'s basis in that *T* stock is $8. All the *T* shareholders other than *P* surrender their *T* stock for $10 cash from *P* and *P* stock worth $80. *P* does not surrender the stock in the transaction. Under § 1.358–6(c)(2)(i)(C), *P* may treat its *T* stock owned before the transaction as acquired in the transaction or not. If *P* treats that *T* stock as acquired in the transaction, *P*'s basis in that *T* stock and the *T* stock actually acquired in the transaction equals *P*'s $110 basis in its *S* stock before the transaction, adjusted by the $60 basis of the *T* assets deemed transferred, for a total basis of $170. If *P* treats its *T* stock as not acquired, *P* retains its $8 pre-transaction basis in that stock. *P*'s basis in its other *T* shares equals *P*'s $110 basis in its *S* stock before the transaction, adjusted by $54 (the $60 basis in the *T* assets deemed transferred, reduced by 10%), for a total basis of $164 in those shares. See § 1.358–6(c)(2)(i)(A) and (B). Consequently, if *P* treats its *T* shares as not acquired, *P*'s total basis in all of its *T* shares is $172.

Example 3. Triangular B reorganization. (a) *Facts. T* has assets with a fair market value of $100 and no liabilities. The *T* shareholders have an aggregate basis in their *T* stock of $85 immediately before the reorganization. Pursuant to a plan, *P* forms *S* with $5 cash and *S* acquires all of the *T* stock in exchange for $100 of *P* stock. The transaction is a reorganization to which section 368(a)(1)(B) applies.

(b) *Basis adjustment.* Under § 1.358–6(c)(3), *P* adjusts its $5 basis in its *S* stock by treating *P* as if it acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in exchange for the *P* stock in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of $85 in the *T* stock

received by *S* in the reorganization. *P* is then treated as if it transferred the *T* stock to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358, *P*'s basis in its *S* stock would be increased by the $85 basis in the *T* stock deemed transferred. Consequently, *P* has a $90 basis in its *S* stock as a result of the reorganization.

(d) *Special rule for consideration not provided by P*—(1) *In general.* The amount of *P*'s adjustment to basis in its *S* or *T* stock, as applicable, described in paragraph (c) of this section is decreased by the fair market value of any consideration (including *P* stock in which gain or loss is recognized, see § 1.1032–2(c)) that is exchanged in the reorganization and that is not provided by *P* pursuant to the plan of reorganization. This paragraph (d) does not apply to the amount of *T* liabilities assumed by *S* or to which the *T* assets acquired by *S* are subject under paragraph (c)(1) of this section (or deemed assumed or taken subject to by *S* under paragraph (c)(2)(i) of this section).

(2) *Limitation. P* makes no adjustment to basis under this section if the decrease required under paragraph (d)(1) of this section equals or exceeds the amount of the adjustment described in paragraph (c) of this section.

(3) *Example.* The rules of this paragraph (d) are illustrated by the following example. For purposes of this example, *P, S,* **AND** *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, and the facts set forth the only corporate activity.

Example. (a) *Facts. T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $100 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive $70 of *P* stock provided by *P* pursuant to the plan and $30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6(c)(1), *P*'s $100 basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred. Under § 1.358–6(d)(1), the $60 adjustment is decreased by the $30 of cash provided by *S* in the reorganization. Consequently, *P* has a net adjustment of $30 in its *S* stock, and *P* has a $130 basis in its *S* stock as a result of the reorganization.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example,* except that in the reorganization *S* provides an asset with a $20 adjusted basis and $30 fair market value instead of $30 of cash. The basis results are the same as in paragraph (b) of this *Example.* In addition, *S* recognizes $10 of gain under section 1001 on its disposition of the asset in the reorganization.

(d) *Depreciated asset.* The facts are the same as in paragraph (c) of this *Example,* except that *S* has a $60 adjusted basis in the asset. The basis results are the same as in paragraph (b) of this *Example.* In addition, *S* recognizes $30 of loss under section 1001 on its disposition of the asset in the reorganization.

(e) *P stock.* The facts are the same as in paragraph (a) of this *Example,* except that in the reorganization *S* provides *P* stock with a fair market value of $30 instead of $30 of cash. *S* acquired the *P* stock in an unrelated transaction several years before the reorganization. *S* has a $20 adjusted basis in the *P* stock. The basis results are the same as in paragraph (b) of this *Example.* In addition, *S* recognizes $10 of gain on its disposition of the *P* stock in the reorganization. See § 1.1032–2(c).

(e) *Cross-reference.* For rules relating to stock basis adjustments made as a result of a triangular reorganization in which *P* and *S*, or *P* and *T*, as applicable, are, or become, members of a consolidated group, see § 1.1502–30. For rules relating to stock basis adjustments after a group structure change, see § 1.1502–31.

(f) *Effective dates*—(1) *General rule.* Except as otherwise provided in this paragraph (f), this section applies to triangular reorganizations occurring on or after December 23, 1994.

(2) *Special rule for reverse triangular mergers.* For a reverse triangular merger occurring before December 23, 1994, *P* may—

(i) Determine the basis in its *T* stock as if paragraph (c)(2)(i) of this section applied; or

(ii) Determine the basis in its *T* stock acquired as if *P* acquired such stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

Par. 4. Section 1.1032–2 is added to read as follows:

§ 1.1032–2 Disposition by a corporation of stock of a controlling corporation in certain triangular reorganizations.

(a) *Scope.* This section provides rules for certain triangular reorganizations described in § 1.358–6(b) when the acquiring corporation (*S*) acquires property or stock of another corporation (*T*) in exchange for stock of the corporation (*P*) in control of *S*.

(b) *General nonrecognition of gain or loss.* For purposes of § 1.1032–1(a), in the case of a forward triangular merger, a triangular C reorganization, or a triangular B reorganization (as described in § 1.358–6(b)), *P* stock provided by *P* to *S*, or directly to *T* or *T*'s shareholders on behalf of *S*, pursuant to the plan of reorganization is treated as a disposition by *P* of shares of its own stock for *T*'s assets or stock, as applicable. For rules governing the use of *P* stock in a reverse triangular merger, see section 361.

(c) *Treatment of S. S* must recognize gain or loss on its exchange of *P* stock as consideration in a forward triangular merger, a triangular C reorganization, or a triangular B reorganization (as described in § 1.358–6(b)), if *S* did not receive the *P* stock from *P* pursuant to the plan of reorganization. See § 1.358–6(d) for the effect on *P*'s basis in its *S* or *T* stock, as applicable. For rules governing *S*'s use of *P* stock in a reverse triangular merger, see section 361.

(d) *Examples.* The rules of this section are illustrated by the following examples. For purposes of these examples, *P, S,* and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable reorganization provisions, and the facts set forth the only corporate activity.

Example 1. Forward triangular merger solely for P stock. (a) *Facts. T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. Pursuant to a plan, *P* forms *S* by transferring $100 of *P* stock to *S* and *T* merges into *S*. In the merger, the *T* shareholders receive, in exchange for their *T* stock, the *P* stock that *P* transferred to *S*. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *No gain or loss recognized on the use of P stock.* Under paragraph (b) of this section, the *P* stock provided by *P* pursuant to the plan of reorganization is treated for purposes of § 1.1032–1(a) as disposed of by *P* for the *T* assets acquired by *S* in the merger. Consequently, neither *P* nor *S* has taxable gain or deductible loss on the exchange.

Example 2. Forward triangular merger solely for P stock provided in part by S. (a) *Facts. T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *S* also owns *P* stock with a $20 adjusted basis and $30 fair market value. *S* acquired the *P* stock in an unrelated transaction several years before the reorganization. Pursuant to a plan, *P* transfers additional *P* stock worth $70 to *S* and *T* merges into *S*. In the merger, the *T* shareholders receive $100 of *P* stock ($70 of *P* stock provided by *P* to *S* as part of the plan and $30 of *P* stock held by *S* previously). The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Gain or loss recognized by S on the use of its P* stock. Under paragraph (b) of this section, the $70 of *P* stock provided by *P* pursuant to the plan of reorganization is treated as disposed of by *P* for the *T* assets

acquired by *S* in the merger. Consequently, neither *P* nor *S* has taxable gain or deductible loss on the exchange of those shares. Under paragraph (c) of this section, however, *S* recognizes $10 of gain on the exchange of its *P* stock in the reorganization because *S* did not receive the *P* stock from *P* pursuant to the plan of reorganization. See § 1.358–6(d) for the effect on *P*'s basis in its *S* stock.

(e) *Effective date.* This section applies to triangular reorganizations occurring on or after December 23, 1994.

Par. 5. Section 1.1502–30 is added to read as follows:

§ 1.1502–30 Stock basis after certain triangular reorganizations.

(a) *Scope.* This section provides rules for determining the basis of the stock of an acquiring corporation as a result of a triangular reorganization. The definitions and nomenclature contained in § 1.358–6 apply to this section.

(b) *General rules*—(1) *Forward triangular merger, triangular C reorganization, or triangular B reorganization. P* adjusts its basis in the stock of S as a result of a forward triangular merger, triangular C reorganization, or triangular B reorganization under § 1.358–6(c) and (d), except that § 1.358–6 (c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities assumed by *S* or the amount of liabilities to which the *T* assets acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(2) *Reverse triangular merger.* If *P* adjusts its basis in the *T* stock acquired as a result of a reverse triangular merger under § 1.358–6 (c)(2)(i) and (d), § 1.358–6 (c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities deemed assumed by *S* or the amount of liabilities to which the *T* assets deemed acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(3) *Excess loss accounts.* Negative adjustments under this section may exceed *P*'s basis in its *S* or *T* stock. The resulting negative amount is *P*'s excess loss account in its *S* or *T* stock. See § 1.1502–19 for rules treating excess loss accounts as negative basis, and treating references to stock basis as including references to excess loss accounts.

(4) *Application of other rules of law.* The rules for this section are in addition to other rules of law. See § 1.1502–80(d) for the non-application of section 357(c) to *P*.

(5) *Examples.* The rules of this paragraph (b) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, the facts set forth the only corporate activity, and tax liabilities are disregarded.

Example 1. Liabilities. (a) *Facts. T* has assets with an aggregate basis of $60 and fair market value of $100. *T*'s assets are subject to $70 of liabilities. Pursuant to a plan, *P* forms *S* with $5 of cash (which S retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth $30 in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6, *P* adjusts its $5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358–6(c)(1)(ii) does not apply. Thus, *P* adjusts its basis in the *S* stock by –$10 (the aggregate adjusted basis of *T*'s assets decreased by the amount of liabilities to which the *T* assets are subject). Consequently, as a result of the reorganization, *P* has an excess loss account of $5 in its *S* stock.

Example 2. Consideration not provided by P. (a) *Facts. T* has assets with an aggregate basis of $10 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $5 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive $70 of *P* stock provided by *P* pursuant to the plan of reorganization and $30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6, *P* adjusts its $5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358–6(d)(2) does not apply. Thus, *P* adjusts its basis in the *S* stock by –$20 (the aggregate adjusted basis of *T*'s assets decreased by the fair market value of the consideration provided by *S*). As a result of the reorganization, *P* has an excess loss account of $15 in its *S* stock.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example 2*, except that in the reorganization *S* provides an asset with a $20 adjusted basis and $30 fair market value instead of $30 cash. The basis is adjusted in the same manner as in paragraph (b) of this *Example 2*. In addition, because *S* recognizes a $10 gain from the asset under section 1001, *P*'s basis in its *S* stock is increased under § 1.1502–32(b) by *S*'s $10 gain. Consequently, as a result of the reorganization, *P* has an excess loss account of $5 in its *S* stock. (The results would be the same if the appreciated asset provided by *S* was *P* stock with respect to which *S* recognized gain. See § 1.1032–2(c)).

Example 3. Reverse triangular merger. (a) *Facts. T* has assets with an aggregate basis of $60 and fair market value of $100. *T*'s assets are subject to $70 of liabilities. *P* owns all of the only class of *S* stock. *P* has a $5 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders exchange their *T* stock for $2 cash from *P* and $28 worth of *P* stock provided by *P* pursuant to the plan. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(E) apply.

(b) *Basis adjustment.* Under § 1.358–6, *P*'s basis in the *T* stock acquired equals its $5 basis in its *S* stock immediately before the transaction adjusted by the $60 basis in the *T* assets deemed transferred, and the $70 of liabilities to which the *T* assets are subject. Under the rules of this section, the limitation described in § 1.358–6(c)(1)(ii) does not apply. Consequently, *P* has an excess loss account of $5 in its *T* stock as a result of the transaction.

(c) *Effective date.* This section applies to reorganizations occurring on or after December 21, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30875 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8631]

RIN 1545–AT79

Notice of Significant Reduction in the Rate of Future Benefit Accrual; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations (TD 8631) which were published in the Federal Register for Friday, December 15, 1995 (60 FR 64320). The final regulations provide guidance concerning the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the finding standards of section 302 of ERISA.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 411 of the Internal Revenue Code.

Need for Correction

As published, TD 8631 contains an error which is in need of correction.

Correction of Publication

Accordingly, the publication to the final regulations which is the subject of FR Doc. 95–30416, is corrected as follows:

On page 64321, column 3, in the preamble, following the paragraph heading *Effective Dates,* line 5, the language ''or after January 2, 1996.'' is corrected to read ''or after December 30, 1995.''.

Michael Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–30977 Filed 12–15–95; 3:31 pm]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8649]

RIN 1545–AS87

Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to conversion transactions. These regulations provide that certain gains and losses from positions of the same conversion transaction may be netted for purposes of determining the amount of gain that is recharacterized as ordinary income. These regulations reflect changes to the law made by the Revenue Reconciliation Act of 1993 and affect persons who enter into conversion transactions.

DATES: These regulations are effective December 21, 1995.

For applicability of these regulations, see **EFFECTIVE DATES** under the **SUPPLEMENTARY INFORMATION** part of the preamble.

FOR FURTHER INFORMATION CONTACT: Alan B. Munro, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1452. Responses to this collection of information are required to obtain netting relief for conversion transactions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per recordkeeper varies from .05 to 10 hours, depending on individual circumstances, with an estimated average of .10 hour.

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

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 27, 1994, the IRS published in the Federal Register a notice of proposed rulemaking and notice of public hearing at 59 FR 66498 (FI–43–94) under section 1258 of the Internal Revenue Code of 1986.

The IRS received a number of written comments on the proposed regulations. No requests to speak at the public hearing were received, however, and consequently the hearing was cancelled.

Explanation of Provisions

A. General

The proposed regulations allow taxpayers to net gains and losses on the positions of certain conversion transactions for purposes of section 1258(a). For a taxpayer to be eligible, the proposed regulations require the taxpayer to identify, before the close of the day on which the positions become part of the conversion transaction, all the positions that are part of the conversion transaction. In addition, the taxpayer has to dispose of all the positions within a 14-day period that is within a single taxable year. The proposed regulations also define built-in loss and prohibit the netting of built-in loss against gain.

The commenters uniformly supported the netting relief provided by the proposed regulations. Accordingly, the final regulations are substantially unchanged from the proposed regulations.

The proposed regulations provide that the regulations will be effective for conversion transactions entered into on or after the date of filing of final regulations with the Federal Register. Several commenters requested that the regulations also apply to conversion transactions entered into prior to the filing date. In response to these comments, the final regulations provide for application of the regulations to any conversion transaction that is outstanding on December 21, 1995, provided that all the positions which are part of the conversion transaction are identified under § 1.1258–1(b)(2) before the close of business on February 20, 1996. The final regulations also provide a transition rule for the same-day identification requirement that allows taxpayers to identify conversion transactions entered into prior to February 20, 1996, at any time on or before February 20, 1996.

Several commenters criticized the examples for failing to adjust the applicable imputed income amount (AIIA) under section 1258(b) for interest and dividends received. The scope of these regulations, however, is limited to netting relief. The IRS is still studying various situations to determine the extent to which it is appropriate to reduce the AIIA by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise. Accordingly, Example 3 has been deleted and Examples 1 and 2 have been clarified to eliminate any implication on this issue.

One commenter requested that the identification requirement be eliminated as impractical, unnecessary, and a trap for the unwary. This same-day identification requirement is similar to identification requirements under sections 475 and 1221. Identification of all the positions of a conversion transaction will aid examiners attempting to determine whether conversion transactions are present and will prevent mismatching of those positions by both taxpayers and agents. The final regulations retain the same-day identification requirement but provide a transition rule.

Some commenters asked that netting relief be expanded to cover unrealized losses in retained positions by allowing loss positions to be marked to market when a gain position is disposed of or terminated. Allowing retained positions to be marked to market raises valuation and other potentially complex issues. For example, many of the issues addressed by the regulations under section 475 would have to be addressed here. The complexity of these issues outweighs the potential benefit of allowing retained positions to be marked to market. Thus, the final regulations do not include a mark-to-market provision.

To preserve the character of gain that arose before a position became part of a conversion transaction, one commenter requested built-in gain rules similar to the built-in loss rules in the proposed regulations. The appropriateness of a built-in gain rule under section 1258 is beyond the scope of these regulations. Therefore, the final regulations do not address this issue.

The IRS is aware that section 1258 presents a number of issues not addressed by these final regulations. The IRS continues to study the scope of section 1258, the types of transactions that should be included under the regulatory authority of section 1258(c)(2)(D), and what reductions, if any, in the AIIA are appropriate under section 1258(b). The IRS welcomes comments on these and other issues under section 1258.

B. Effective Dates

The regulations are effective for conversion transactions that are outstanding on or after December 21, 1995. In the case of a conversion transaction entered into before February 20, 1996, the same-day identification requirement is treated as satisfied if the identification is made on or before February 20, 1996.

Special Analyses

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

Drafting Information: The principal author of these regulations is Alan B. Munro, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1258–1 is added to read as follows:

§ 1.1258–1 Netting rule for certain conversion transactions.

(a) *Purpose.* The purpose of this section is to provide taxpayers with a method to net certain gains and losses from positions of the same conversion transaction before determining the amount of gain treated as ordinary income under section 1258(a).

(b) *Netting of gain and loss for identified transactions*—(1) *In general.* If a taxpayer disposes of or terminates all the positions of an identified netting transaction (as defined in paragraph (b)(2) of this section) within a 14-day period in a single taxable year, all gains and losses on those positions taken into account for federal tax purposes within that period (other than built-in losses as defined in paragraph (c) of this section) are netted solely for purposes of determining the amount of gain treated as ordinary income under section 1258(a). For purposes of the preceding sentence, a taxpayer is treated as disposing of any position that is treated as sold under any provision of the Code or regulations thereunder (for example, under section 1256(a)(1)).

(2) *Identified netting transaction.* For purposes of this section, an identified netting transaction is a conversion transaction (as defined in section 1258(c)) that the taxpayer identifies as an identified netting transaction on its books and records. Identification of each position of the conversion transaction must be made before the close of the day on which the position becomes part of the conversion transaction. No particular form of identification is necessary, but all the positions of a single conversion transaction must be identified as part of the same transaction and must be distinguished from all other positions.

(c) *Definition of built-in loss.* For purposes of this section, built-in loss means—

(1) Built-in loss as defined in section 1258(d)(3)(B); and

(2) If a taxpayer realizes gain or loss on any one position of a conversion transaction (for example, under section 1256), as of the date that gain or loss is realized, any unrecognized loss in any other position of the conversion transaction that is not disposed of, terminated, or treated as sold under any provision of the Code or regulations thereunder within 14 days of and within the same taxable year as the realization event.

(d) *Examples.* These examples illustrate this section:

Example 1. Identified netting transaction with simultaneous actual dispositions. (i) On December 1, 1995, *A* purchases 1,000 shares of *XYZ* stock for $100,000 and enters into a forward contract to sell 1,000 shares of *XYZ* stock on November 30, 1997, for $110,000. The *XYZ* stock is actively traded as defined in § 1.1092(d)-1(a) and is a capital asset in *A*'s hands. *A* maintains books and records on which, on December 1, 1995, it identifies the two positions as all the positions of a single conversion transaction. *A* owns no other *XYZ* stock. On December 1, 1996, when the applicable imputed income amount for the transaction is $7,000, *A* sells the 1,000 shares of *XYZ* stock for $95,000. On the same day, *A* terminates its forward contract with its counterparty, receiving $10,200. No dividends were received on the stock during the time it was part of the conversion transaction.

(ii) The *XYZ* stock and forward contract are positions of a conversion transaction. Under section 1258(c)(1), substantially all of *A*'s expected return from the overall transaction is attributable to the time value of the net investment in the transaction. Under section 1258(c)(2)(B), the transaction is an applicable straddle as defined in section 1258(d)(1).

(iii) *A* disposed of or terminated all the positions of the conversion transaction within 14 days and within the same taxable year as required by paragraph (b)(1) of this section. The transaction is an identified netting transaction because it meets the identification requirement of paragraph (b)(2) of this section. Solely for purposes of section 1258(a), the $5,000 loss realized ($100,000 basis less $95,000 amount realized) on the disposition of the *XYZ* stock is netted against the $10,200 gain recognized on the disposition of the forward contract. Thus, the net gain from the conversion transaction for purposes of section 1258(a) is $5,200

($10,200 gain less $5,000 loss). Only the $5,200 net gain is recharacterized as ordinary income under section 1258(a) even though the applicable imputed income amount is $7,000. For federal tax purposes other than section 1258(a), *A* has recognized a $10,200 gain on the disposition of the forward contract ($5,200 of which is treated as ordinary income) and realized a separate $5,000 loss on the sale of the *XYZ* stock.

Example 2. Identified netting transaction with built-in loss. (i) The facts are the same as in *Example 1,* except that *A* had purchased the *XYZ* stock for $104,000 on May 15, 1995. The *XYZ* stock had a fair market value of $100,000 on December 1, 1995, the date it became part of a conversion transaction.

(ii) The results are the same as in *Example 1,* except that *A* has built-in loss (in addition to the $5,000 loss that arose economically during the period of the conversion transaction), as defined in section 1258(d)(3)(B), of $4,000 on the *XYZ* stock. That $4,000 built-in loss is not netted against the $10,200 gain on the forward contract for purposes of section 1258(a). Thus, the net gain from the conversion transaction for purposes of section 1258(a) is $5,200, the same as in *Example 1.* The $4,000 built-in loss is recognized and has a character determined without regard to section 1258.

(e) *Effective date and transition rule*—(1) *In general.* These regulations are effective for conversion transactions that are outstanding on or after December 21, 1995.

(2) *Transition rule for identification requirements.* In the case of a conversion transaction entered into before February 20, 1996, paragraph (b)(2) of this section is treated as satisfied if the identification is made before the close of business on February 20, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. In § 602.101, paragraph (c) is amended by adding the entry ''1.1258–1 * * * .1545–1452'' in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 28, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30900 Filed 12–20–95; 8:45 am]

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26 CFR Parts 1, 25, 301, and 602

[TD 8633]

RIN 1545–AS37

Grantor Trust Reporting Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the method of reporting for trusts that are treated as owned by grantors or other persons under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. These regulations are intended to reduce the current filing burden on trustees, to provide necessary information to grantors or other persons treated as the owners of trusts, to reduce any cases of duplicate filing, and to provide more meaningful information to the IRS. These regulations affect grantors and trustees of trusts that are treated as owned by grantors or other persons, as well as persons who are required to file information returns with respect to payments to these trusts.

DATES: These regulations are effective January 1, 1996. For dates of applicability of these regulations, see § 1.671–4(h).

FOR FURTHER INFORMATION CONTACT: Steven Schneider, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1442. This information is required by the IRS to insure the proper reporting of income and proceeds paid to a trust any portion of which is treated as owned by the grantor or another person.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent is 30 minutes.

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

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On July 22, 1994, the IRS published in the Federal Register a notice of proposed rulemaking and notice of public hearing (59 FR 37450) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 671 of the Internal Revenue Code (Code) and to the Procedure and Administration Regulations (26 CFR part 301) under sections 6012 and 6109 of the Code.

Written comments responding to the notice were received. A public hearing was held on September 21, 1994, pursuant to the notice published in the Federal Register on July 22, 1994. After consideration of all written and oral comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions and Significant Changes in the Final Regulations

Subject to certain new limitations under § 1.671–4(b)(6) and (7), discussed below, § 1.671–4(b) of the final regulations retains the optional alternative methods of reporting contained in the proposed regulations published on July 22, 1994.

Several comments were submitted requesting confirmation that the alternative methods of reporting described in the proposed regulations are optional and not mandatory. Section 1.671–4(b) of the final regulations clarifies that the trustee of a trust all of which is treated as owned by one or more grantors or other persons may, but is not required to, report pursuant to one of the alternative methods.

Certain commentators were unsure of which persons are considered payors for purposes of the alternative filing methods. The final regulations define the term payor as including any person who is required by any provision of the Code and the regulations thereunder to make any type of information return with respect to the trust for the taxable year.

With respect to the alternative methods of reporting, several commentators were unsure of the items

and the amounts of income that must be reported on any Forms 1099 required to be filed by the trustee. Section 1.671–4(b)(5) of the final regulations clarifies that the amounts that must be included on any Forms 1099 required to be filed by the trustee do not include any amounts that are reportable by the payor on an information return other than Form 1099.

For example, in the case of a trustee who furnishes the name, TIN, and address of the trust to all payors pursuant to § 1.671–4(b)(2)(i)(B) of the final regulations, the trustee does not include items of income attributable to an interest in a partnership on any Forms 1099 filed by the trustee because those items are reportable by the partnership on Schedule K–1 of Form 1065 (reporting distributive shares to members of a partnership). While the statement furnished to the grantor or other person treated as the owner of the trust by the trustee will show all items of income, deduction, and credit attributable to the partnership interest, those items will not be reported to the IRS by the trustee on any type of form.

Several commentators were unsure of the dates by which a trustee must file any required Forms 1099 and must furnish any required statements to grantors or other persons treated as owners of the trust. Section 1.671–4(c) of the final regulations provides that the due date for any Forms 1099 required to be filed with the IRS by a trustee is the due date otherwise in effect for filing Forms 1099. Currently, the due date is February 28 of the following year.

Section 1.671–4(d) of the final regulations provides that the due date for the statement required to be furnished by a trustee to the grantor or other person treated as an owner of the trust is the date specified by section 6034A(a). Currently, the due date is April 15 of the following year.

Comments were received requesting clarification of the trustee's obligation, under the first of the alternative reporting methods, to furnish the name and TIN of the grantor to all payors. The final regulations provide that: (1) A trustee may not report under the first alternative reporting method unless the grantor or other person treated as the owner of the trust provides to the trustee a complete Form W–9 or other acceptable substitute form; (2) a trustee reporting under the first alternative reporting method acts as the agent of the grantor or other person treated as the owner of the trust for purposes of furnishing backup withholding information to a payor; and (3) the payor may rely on the name and TIN provided to the payor by the trustee. If the Form W–9 indicates that the grantor or other person is subject to backup withholding, then the trustee must notify all payors of reportable interest and dividend payments of the requirement to backup withhold.

Comments were received requesting clarification of the annuity and unitrust payment dates under § 25.2702–3 of the Gift Tax Regulations for trusts electing one of the alternative methods of reporting. The final regulations contain conforming amendments to § 25.2702–3(b)(1)(i) and § 25.2702–3(c)(1)(i).

One commentator noted the need for more guidance concerning the reporting requirements for widely held fixed investment trusts. Because that guidance is outside the scope of this regulation, the final regulations do not provide special rules for these trusts. However IRS and Treasury anticipate providing guidance for these trusts in a separate project and would welcome comments from interested taxpayers and practitioners regarding such guidance.

Several of the comments received with respect to the proposed regulations emphasized the necessity of making the trustee's choice to report under one of the alternative methods revocable. The final regulations provide that a trustee who has reported pursuant to one of the alternative methods may report pursuant to the general rule requiring the trustee to file a Form 1041 for any subsequent taxable years of the trust, provided that certain conditions are met.

The final regulations provide that the trustee of a trust all of which is treated as owned by one grantor or one other person that is an exempt recipient for information reporting purposes may not report under an alternative method. However, if the trust is treated as owned by two or more grantors or other persons, the trustee may report pursuant to the alternative method for multiple grantors if (1) at least one grantor or one other person who is treated as an owner of the trust is a person who is not an exempt recipient for information reporting purposes and (2) the trustee reports without regard to whether any of the grantors or other persons treated as owners of the trust are exempt recipients for information reporting purposes.

The final regulations also provide that the trustee of a trust all of which is treated as owned by one grantor or other person whose taxable year is a fiscal year may not report under an alternative method. However, the trustee of a trust that is treated as owned by two or more grantors or other persons may report pursuant to the alternative method for multiple grantors even though one or more of the grantors or other persons treated as an owner of the trust has a taxable year that is the fiscal year.

In addition, the final regulations provide that a trustee of a trust that is a qualified subchapter S trust as defined in section 1361(d)(3) may not report under an alternative method.

The final regulations also provide that the trustee of a trust may not report under an alternative method if any person who is treated as an owner of the trust is not a United States person.

Effective Date and Transition Rule

The final regulations are effective for taxable years beginning on or after January 1, 1996, subject to a requirement that certain trustees file a final Form 1041 before adopting one of the alternative methods of reporting. The final regulations retain the transition rule contained in the proposed regulations providing that, for taxable years beginning prior to January 1, 1996, the IRS will not challenge the manner of reporting by trustees of certain trusts.

Special Analyses

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

Drafting Information

The principal author of these regulations is Robert Rio, formerly of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,

Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.671–4 is revised to read as follows:

§ 1.671–4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraph (b) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person are not reported by the trust on Form 1041, but are shown on a separate statement to be attached to that form.

(b) *A trust all of which is treated as owned by one or more grantors or other persons*—(1) *In general.* In the case of a trust all of which is treated as owned by one or more grantors or other persons, and which is not described in paragraph (b)(6) or (7) of this section, the trustee may, but is not required to, report by one of the methods described in this paragraph (b) rather than by the method described in paragraph (a) of this section. A trustee may not report, however, pursuant to paragraph (b)(2)(i)(A) of this section unless the grantor or other person treated as the owner of the trust provides to the trustee a complete Form W–9 or acceptable substitute Form W–9 signed under penalties of perjury. See section 3406 and the regulations thereunder for the information to include on, and the manner of executing, the Form W–9, depending upon the type of reportable payments made.

(2) *A trust all of which is treated as owned by one grantor or by one other person*—(i) *In general.* In the case of a trust all of which is treated as owned by one grantor or one other person, the trustee reporting under this paragraph (b) must either—

(A) Furnish the name and taxpayer identification number (TIN) of the grantor or other person treated as the owner of the trust, and the address of the trust, to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(ii) of this section; or

(B) Furnish the name, TIN, and address of the trust to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(iii) of this section.

(ii) *Additional obligations of the trustee when name and TIN of the grantor or other person treated as the owner of the trust and the address of the trust are furnished to payors.* (A) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee must furnish the grantor or other person treated as the owner of the trust with a statement that—

(*1*) Shows all items of income, deduction, and credit of the trust for the taxable year;

(*2*) Identifies the payor of each item of income;

(*3*) Provides the grantor or other person treated as the owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*4*) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(B) The trustee is not required to file any type of return with the Internal Revenue Service.

(iii) *Additional obligations of the trustee when name, TIN, and address of the trust are furnished to payors*—(A) *Obligation to file Forms 1099.* The trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the income or gross proceeds paid to the trust during the taxable year, and showing the trust as the payor and the grantor or other person treated as the owner of the trust as the payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately. See paragraph (b)(5) of this section regarding the amounts required to be included on any Forms 1099 filed by the trustee.

(B) *Obligation to furnish statement.* (*1*) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee must also furnish to the grantor or other person treated as the owner of the trust a statement that—

(*i*) Shows all items of income, deduction, and credit of the trust for the taxable year;

(*ii*) Provides the grantor or other person treated as the owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*iii*) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(*2*) By furnishing the statement, the trustee satisfies the obligation to furnish statements to recipients with respect to the Forms 1099 filed by the trustee.

(iv) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2):

Example 1. G, a United States citizen, creates an irrevocable trust which provides that the ordinary income is to be payable to him for life and that on his death the corpus shall be distributed to B, an unrelated person. Except for the right to receive income, G retains no right or power which would cause him to be treated as an owner under sections 671 through 679. Under the applicable local law, capital gains must be added to corpus. Since G has a right to receive income, he is treated as an owner of a portion of the trust under section 677. The tax consequences of any items of capital gain of the trust are governed by the provisions of subparts A, B, C, and D (section 641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. Because not all of the trust is treated as owned by the grantor or another person, the trustee may not report by the methods described in paragraph (b)(2) of this section.

Example 2. (i)(A) On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. During the 1996 taxable year the trust has the following items of income and gross proceeds:

Interest	$2,500
Dividends	3,205
Proceeds from sale of B stock	2,000

(B) The trust has no items of deduction or credit.

(ii)(A) The payors of the interest paid to the trust are X ($2,000), Y ($300), and Z ($200). The payors of the dividends paid to the trust are A ($3,200), and D ($5). The payor of the gross proceeds paid to the trust is D, a brokerage firm, which held the B stock as the nominee for the trust. The B stock was purchased by T for $1,500 on January 3, 1996, and sold by T on November 29, 1996. T chooses to report pursuant to paragraph

(b)(2)(i)(B) of this section, and therefore furnishes the name, TIN, and address of the trust to X, Y, Z, A, and D. X, Y, and Z each furnish T with a Form 1099–INT showing the trust as the payee. A furnishes T with a Form 1099–DIV showing the trust as the payee. D does not furnish T with a Form 1099–DIV because D paid a dividend of less than $10 to T. D furnishes T with a Form 1099–B showing the trust as the payee.

(B) On or before February 28, 1997, T files a Form 1099–INT with the Internal Revenue Service on which T reports interest attributable to G, as the owner of the trust, of $2,500; a Form 1099–DIV on which T reports dividends attributable to G, as the owner of the trust, of $3,205; and a Form 1099–B on which T reports gross proceeds from the sale of B stock attributable to G, as the owner of the trust, of $2,000. On or before April 15, 1997, T furnishes a statement to G which lists the following items of income and information necessary for G to take the items into account in computing G's taxable income:

Interest.....$2,500
Dividends.....3,205
Gain from sale of B stock.....500

Information regarding sale of B stock:

Proceeds.....$2,000
Basis.....1,500
Date acquired.....1/03/96
Date sold.....11/29/96

(C) T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(D) T has complied with T's obligations under this section.

(iii)(A) Same facts as paragraphs (i) and (ii) of this *Example 2,* except that G contributed the B stock to the trust on January 2, 1996. On or before April 15, 1997, T furnishes a statement to G which lists the following items of income and information necessary for G to take the items into account in computing G's taxable income:

Interest $2,500
Dividends 3,205

Information regarding sale of B stock:
Proceeds.....$2,000
Date sold.....11/29/96

(B) T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(C) T has complied with T's obligations under this section.

Example 3. On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. The only asset of the trust is an interest in C, a common trust fund under section 584(a). T chooses to report pursuant to paragraph (b)(2)(i)(B) of this section and therefore furnishes the name, TIN, and address of the trust to C. C files a Form 1065 and a Schedule K–1 (Partner's Share of Income, Credits, Deductions, etc.) showing the name, TIN, and address of the trust with the Internal Revenue Service and furnishes a copy to T. Because the trust did not receive any amounts described in paragraph (b)(5) of this section, T does not file any type of return with the Internal Revenue Service. On or before April 15, 1997, T furnishes G with a statement that shows all items of income, deduction, and credit of the trust for the 1996 taxable year. In addition, T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person. T has complied with T's obligations under this section.

(3) *A trust all of which is treated as owned by two or more grantors or other persons*—(i) *In general.* In the case of a trust all of which is treated as owned by two or more grantors or other persons, the trustee must furnish the name, TIN, and address of the trust to all payors for the taxable year, and comply with the additional requirements described in paragraph (b)(3)(ii) of this section.

(ii) *Additional obligations of trustee*—(A) *Obligation to file Forms 1099.* The trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the items of income paid to the trust by all payors during the taxable year attributable to the portion of the trust treated as owned by each grantor or other person, and showing the trust as the payor and each grantor or other person treated as an owner of the trust as the payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately. See paragraph (b)(5) of this section regarding the amounts required to be included on any Forms 1099 filed by the trustee.

(B) *Obligation to furnish statement.* (*1*) The trustee must also furnish to each grantor or other person treated as an owner of the trust a statement that—

(*i*) Shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor or other person;

(*ii*) Provides the grantor or other person treated as an owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(*iii*) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(*2*) Except for the requirements pursuant to section 3406 and the regulations thereunder, by furnishing the statement, the trustee satisfies the obligation to furnish statements to recipients with respect to the Forms 1099 filed by the trustee.

(4) *Persons treated as payors*—(i) *In general.* For purposes of this section, the term payor means any person who is required by any provision of the Internal Revenue Code and the regulations thereunder to make any type of information return (including Form 1099 or Schedule K–1) with respect to the trust for the taxable year, including persons who make payments to the trust or who collect (or otherwise act as middlemen with respect to) payments on behalf of the trust.

(ii) *Application to brokers and customers.* For purposes of this section, a broker, within the meaning of section 6045, is considered a payor. A customer, within the meaning of section 6045, is considered a payee.

(5) *Amounts required to be included on Forms 1099 filed by the trustee*—(i) *In general.* The amounts that must be included on any Forms 1099 required to be filed by the trustee pursuant to this section do not include any amounts that are reportable by the payor on an information return other than Form 1099. For example, in the case of a trust which owns an interest in a partnership, the trust's distributive share of the income and gain of the partnership is not includible on any Forms 1099 filed by the trustee pursuant to this section because the distributive share is reportable by the partnership on Schedule K–1.

(ii) *Example.* The following example illustrates the provisions of this paragraph (b)(5):

Example. (i)(A) On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. The assets of the trust during the 1996 taxable year are shares of stock in X, an S corporation, a limited partnership interest in P, shares of stock in M, and shares of stock in N. T chooses to report pursuant to paragraph (b)(2)(i)(B) of this section and therefore furnishes the name, TIN, and address of the trust to X, P, M, and N. M furnishes T with a Form 1099–DIV showing the trust as the payee. N does not furnish T with a Form 1099–DIV because N paid a dividend of less than $10 to T. X and P furnish T with Schedule K–1 (Shareholder's Share of Income, Credits, Deductions, etc.) and Schedule K–1 (Partner's Share of Income, Credits, Deductions, etc.), respectively, showing the trust's name, TIN, and address.

(B) For the 1996 taxable year the trust has the following items of income and deduction:

Dividends paid by M . . . . . .
. . . . $12
Dividends paid by N . . . . . .
. . . 6
Administrative expense . . . . . .
. . . $20

Items reported by X on Schedule K–1 attributable to trust's shares of stock in X:

Interest $20
Dividends 35

Items reported by P on Schedule K–1 attributable to trust's limited partnership interest in P:

Ordinary income . . . . . .
$300

(ii)(A) On or before February 28, 1997, T files with the Internal Revenue Service a Form 1099–DIV on which T reports dividends attributable to G as the owner of the trust in the amount of $18. T does not file any other returns.

(*B*) T has complied with T's obligation under paragraph (b)(2)(iii)(A) of this section to file the appropriate Forms 1099.

(6) *Trusts that cannot report under this paragraph (b).* The following trusts cannot use the methods of reporting described in this paragraph (b)—

(i) A common trust fund as defined in section 584(a);

(ii) A trust that has its situs or any of its assets located outside the United States;

(iii) A trust that is a qualified subchapter S trust as defined in section 1361(d)(3);

(iv) A trust all of which is treated as owned by one grantor or one other person whose taxable year is a fiscal year;

(v) A trust all of which is treated as owned by one grantor or one other person who is not a United States person; or

(vi) A trust all of which is treated as owned by two or more grantors or other persons, one of whom is not a United States person.

(7) *Grantors or other persons who are treated as owners of the trust and are exempt recipients for information reporting purposes*—(i) *Trust treated as owned by one grantor or one other person.* The trustee of a trust all of which is treated as owned by one grantor or one other person may not report pursuant to this paragraph (b) if the grantor or other person is an exempt recipient for information reporting purposes.

(ii) *Trust treated as owned by two or more grantors or other persons.* The trustee of a trust, all of which is treated as owned by two or more grantors or other persons, may not report pursuant to this paragraph (b) if one or more grantors or other persons treated as owners are exempt recipients for information reporting purposes unless—

(A) At least one grantor or one other person who is treated as an owner of the trust is a person who is not an exempt recipient for information reporting purposes; and

(B) The trustee reports without regard to whether any of the grantors or other persons treated as owners of the trust are exempt recipients for information reporting purposes.

(8) *Husband and wife who make a single return jointly.* A trust all of which is treated as owned by a husband and wife who make a single return jointly of income taxes for the taxable year under section 6013 is considered to be owned by one grantor for purposes of this paragraph (b).

(c) *Due date for Forms 1099 required to be filed by trustee.* The due date for any Forms 1099 required to be filed with the Internal Revenue Service by a trustee pursuant to this section is the due date otherwise in effect for filing Forms 1099.

(d) *Due date and other requirements with respect to statement required to be furnished by trustee.* The due date for the statement required to be furnished by a trustee to the grantor or other person treated as an owner of the trust pursuant to this section is the date specified by section 6034A(a). The trustee must maintain in its records a copy of the statement furnished to the grantor or other person treated as an owner of the trust for a period of three years from the due date for furnishing such statement specified in this paragraph (d).

(e) *Backup withholding requirements*—(1) *Trustee reporting under paragraph (b)(2)(i)(A) of this section.* In order for the trustee to be able to report pursuant to paragraph (b)(2)(i)(A) of this section and to furnish to all payors the name and TIN of the grantor or other person treated as the owner of the trust, the grantor or other person must provide a complete Form W–9 to the trustee in the manner provided in paragraph (b)(1) of this section, and the trustee must give the name and TIN shown on that Form W–9 to all payors. In addition, if the Form W–9 indicates that the grantor or other person is subject to backup withholding, the trustee must notify all payors of reportable interest and dividend payments of the requirement to backup withhold. If the Form W–9 indicates that the grantor or other person is not subject to backup withholding, the trustee does not have to notify the payors that backup withholding is not required. The trustee should not give the Form W–9, or a copy thereof, to a payor because the Form W–9 contains the address of the grantor or other person and paragraph (b)(2)(i)(A) of this section requires the trustee to furnish the address of the trust to all payors and not the address of the grantor or other person. The trustee acts as the agent of the grantor or other person for purposes of furnishing to the payors the information required by this paragraph (e)(1). Thus, a payor may rely on the name and TIN provided to the payor by the trustee, and, if given, on the trustee's statement that the grantor is subject to backup withholding.

(2) *Other backup withholding requirements.* Whether a trustee is treated as a payor for purposes of backup withholding is determined pursuant to section 3406 and the regulations thereunder.

(f) *Penalties for failure to file a correct Form 1099 or furnish a correct statement.* A trustee who fails to file a correct Form 1099 or to furnish a correct statement to a grantor or other person treated as an owner of the trust as required by paragraph (b) of this section is subject to the penalties provided by sections 6721 and 6722 and the regulations thereunder.

(g) *Changing reporting methods*—(1) *Changing from reporting by filing Form 1041 to a method described in paragraph (b) of this section.* If the trustee has filed a Form 1041 for any taxable year ending before January 1, 1996 (and has not filed a final Form 1041 pursuant to § 1.671–4(b)(3) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995)), or files a Form 1041 for any taxable year thereafter, the trustee must file a final Form 1041 for the taxable year which ends after January 1, 1995, and which immediately precedes the first taxable year for which the trustee reports pursuant to paragraph (b) of this section, on the front of which form the trustee must write: ''Pursuant to § 1.671–4(g), this is the final Form 1041 for this grantor trust.''.

(2) *Changing from reporting by a method described in paragraph (b) of this section to the filing of a Form 1041.* The trustee of a trust who reported pursuant to paragraph (b) of this section for a taxable year may report pursuant to paragraph (a) of this section for subsequent taxable years. If the trustee reported pursuant to paragraph (b)(2)(i)(A) of this section, and therefore furnished the name and TIN of the grantor to all payors, the trustee must furnish the name, TIN, and address of the trust to all payors for such subsequent taxable years. If the trustee reported pursuant to paragraph (b)(2)(i)(B) or (b)(3)(i) of this section, and therefore furnished the name and TIN of the trust to all payors, the trustee

must indicate on each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) that it files (or appropriately on magnetic media) for the final taxable year for which the trustee so reports that it is the final return of the trust.

(3) *Changing between methods described in paragraph (b) of this section*—(i) *Changing from furnishing the TIN of the grantor to furnishing the TIN of the trust.* The trustee of a trust who reported pursuant to paragraph (b)(2)(i)(A) of this section for a taxable year, and therefore furnished the name and TIN of the grantor to all payors, may report pursuant to paragraph (b)(2)(i)(B) of this section, and furnish the name and TIN of the trust to all payors, for subsequent taxable years.

(ii) *Changing from furnishing the TIN of the trust to furnishing the TIN of the grantor.* The trustee of a trust who reported pursuant to paragraph (b)(2)(i)(B) of this section for a taxable year, and therefore furnished the name and TIN of the trust to all payors, may report pursuant to paragraph (b)(2)(i)(A) of this section, and furnish the name and TIN of the grantor to all payors, for subsequent taxable years. The trustee, however, must indicate on each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) that it files (or appropriately on magnetic media) for the final taxable year for which the trustee reports pursuant to paragraph (b)(2)(i)(B) of this section that it is the final return of the trust.

(4) *Example.* The following example illustrates the provisions of paragraph (g) of this section:

Example. (i) On January 3, 1994, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. On or before April 17, 1995, T files with the Internal Revenue Service a Form 1041 with an attached statement for the 1994 taxable year showing the items of income, deduction, and credit of the trust. On or before April 15, 1996, T files with the Internal Revenue Service a Form 1041 with an attached statement for the 1995 taxable year showing the items of income, deduction, and credit of the trust. On the Form 1041, T states that ''pursuant to § 1.671–4(g), this is the final Form 1041 for this grantor trust.'' T may report pursuant to paragraph (b) of this section for the 1996 taxable year.

(ii) T reports pursuant to paragraph (b)(2)(i)(B) of this section, and therefore furnishes the name, TIN, and address of the trust to all payors, for the 1996 and 1997 taxable years. T chooses to report pursuant to paragraph (a) of this section for the 1998 taxable year. On each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) which T files for the 1997 taxable year (or appropriately on magnetic media), T indicates that it is the trust's final return. On or before April 15, 1999, T files with the Internal Revenue Service a Form 1041 with an attached statement showing the items of income, deduction, and credit of the trust. On the Form 1041, T uses the same TIN which T used on the Forms 1041 and Forms 1099 it filed for previous taxable years. T has complied with T's obligations under paragraph (g)(2) of this section.

(h) *Effective date and transition rule*—(1) *Effective date.* The trustee of a trust any portion of which is treated as owned by one or more grantors or other persons must report pursuant to this section for taxable years beginning on or after January 1, 1996.

(2) *Transition rule.* For taxable years beginning prior to January 1, 1996, the Internal Revenue Service will not challenge the manner of reporting of—

(i) A trustee of a trust all of which is treated as owned by one or more grantors or other persons who did not report in accordance with § 1.671–4(a) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995) as in effect for taxable years beginning prior to January 1, 1996, but did report in a manner substantially similar to one of the reporting methods described in paragraph (b) of this section; or

(ii) A trustee of two or more trusts all of which are treated as owned by one or more grantors or other persons who filed a single Form 1041 for all of the trusts, rather than a separate Form 1041 for each trust, provided that the items of income, deduction, and credit of each trust were shown on a statement attached to the single Form 1041.

(i) *Cross-reference.* For rules relating to employer identification numbers, and to the obligation of a payor of income or proceeds to the trust to furnish to the payee a statement to recipient, see § 301.6109–1(a)(2) of this chapter.

Par. 3. Section 1.6012–3 is amended by revising paragraph (a)(9) to read as follows:

§ 1.6012–3 Returns by fiduciaries.

(a) * * *

(9) *A trust any portion of which is treated as owned by the grantor or another person pursuant to sections 671 through 678.* In the case of a trust any portion of which is treated as owned by the grantor or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code see § 1.671–4.

* * * * *

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

Par. 4. The authority citation for part 25 continues to read in part as follows:

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

Par. 5. Section 25.2702–3 is amended by adding a sentence to the end of paragraphs (b)(1)(i) and (c)(1)(i), respectively, to read as follows:

§ 25.2702–3 Qualified interests.

* * * * *

(b) * * *

(1) * * * (i) * * * If the trustee reports for the taxable year pursuant to § 1.671–4(b) of this chapter, the annuity payment must be made no later than the date by which the trustee would have been required to file the Federal income tax return of the trust for the taxable year (without regard to extensions) had the trustee reported pursuant to § 1.671–4(a) of this chapter.

* * * * *

(c) * * *

(1) * * * (i) * * * If the trustee reports for the taxable year pursuant to § 1.671–4(b) of this chapter, the unitrust payment must be made no later than the date by which the trustee would have been required to file the Federal income tax return of the trust for the taxable year (without regard to extensions) had the trustee reported pursuant to § 1.671–4(a) of this chapter.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

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

Par. 7. Section 301.6109–1 is amended by revising paragraph (a)(2) to read as follows:

§ 301.6109–1 Identifying numbers.

(a) * * *

(2) *A trust all of which is treated as owned by the grantor or another person pursuant to sections 671 through 678*—(i) *Obtaining a taxpayer identification number.* If a trust does not have a taxpayer identification number and the trustee furnishes the name and taxpayer identification number of the grantor or other person treated as the owner of the trust and the address of the trust to all payors pursuant to § 1.671–4(b)(2)(i)(A) of this chapter, the trustee need not obtain a taxpayer identification number for the trust until either the first taxable year of the trust in which all of the trust is no longer owned by the grantor or another person, or until the first taxable year of the trust for which the trustee no longer reports pursuant to § 1.671–4(b)(2)(i)(A) of this chapter. If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for the trust as provided in paragraph (d)(2) of this

section in order to report pursuant to § 1.671–4(a), (b)(2)(i)(B), or (b)(3)(i) of this chapter.

(ii) *Obligations of persons who make payments to certain trusts.* Any payor that is required to file an information return with respect to payments of income or proceeds to a trust must show the name and taxpayer identification number that the trustee has furnished to the payor on the return. Regardless of whether the trustee furnishes to the payor the name and taxpayer identification number of the grantor or other person treated as an owner of the trust, or the name and taxpayer identification number of the trust, the payor must furnish a statement to recipients to the trustee of the trust, rather than to the grantor or other person treated as the owner of the trust. Under these circumstances, the payor satisfies the obligation to show the name and taxpayer identification number of the payee on the information return and to furnish a statement to recipients to the person whose taxpayer identification number is required to be shown on the form.

(iii) *Persons treated as payors.* For purposes of this paragraph (a)(2), the term payor means a person described in § 1.671–4(b)(4) of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (c) is amended in the table by revising the entry for 1.671–4 to read ''1.671–4 . . . . 1545–1442''.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 5, 1995:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30682 Filed 12–20–95; 8:45 am]

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26 CFR Parts 1, 301 and 602

[TD 8641]

RIN 1545–AN71

Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to Federal financial assistance, as defined in section 597(c) of the Internal Revenue Code, that is received by a financially troubled bank or thrift institution, and to acquisitions of financially troubled bank or thrift institutions in which Federal financial assistance is provided. This document also contains final regulations under section 7507. These regulations provide guidance concerning the proper tax treatment of various transactions involving the receipt of Federal financial assistance.

DATES: These regulations are effective December 21, 1995.

For dates of applicability, see the ''§ 1.597–7 Effective date'' section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and the effective date provisions (§ 1.597–7) of this document.

FOR FURTHER INFORMATION CONTACT: Steven M. Flanagan at 202–622–7790, Vicki J. Hyche at 202–622–7530, William D. Alexander at 202–622–7710, or Steven R. Glickstein at 202–622–4439 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1300. Responses to these collections of information are required to track deferred income and its subsequent recapture, elect to disaffiliate earlier than would otherwise be permitted, elect to apply the provisions of the regulation retroactively, and report uncollected income tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 11 hours, depending on individual circumstances, with an estimated average of 4.4 hours.

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

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations under section 597, as amended by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73) (FIRREA). The regulations provide guidance for banks and domestic building and loan associations (Institutions) and their affiliates in connection with receipt of Federal financial assistance (FFA), as defined in section 597(c).

Section 597(a) delegates to the Secretary of the Treasury authority to prescribe regulations concerning ''any transaction in which Federal financial assistance is provided.'' These regulations are issued under the authority of section 597(a).

This document also amends the regulations under section 7507 to reflect the treatment of FFA under FIRREA.

The IRS published proposed regulations under sections 597 and 7507 on April 22, 1992 (57 FR 14794, FI–46–89, 1992–1 C.B. 1037).

Public Comments and the Final Regulations

The IRS received comments on the proposed regulations, and a public hearing was held on July 17, 1992. After consideration of the comments and the statements made at the hearing, the proposed regulations are adopted as revised by this Treasury decision. The principal comments and revisions are discussed below.

Section 1.597–2 Taxation of FFA

Section 1.597–2 contains rules concerning accounting for FFA as income. The final regulations retain the proposed rule that, generally, FFA is income to the failed Institution when it is received or accrued in accordance with the Institution's method of accounting. Section 1.597–2(c) contains rules permitting certain Institutions to defer the inclusion of FFA.

Deferral formula without Continuing Equity. Under the proposed regulations, unresolved Institutions without Continuing Equity were permitted to defer inclusion of FFA in excess of amounts determined under a formula. The proposed formula required current inclusion equal to the sum of liabilities less aggregate adjusted basis at the

beginning of the assistance year (representing losses already recognized), plus loss in the current year (disregarding FFA). The proposed formula generally allowed the Institution the benefit of any prior losses of its owners' equity, but offset any losses of creditors' capital by the inclusion of FFA. However, with respect to losses during the year FFA is received, the proposed formula did not distinguish between losses of owners' equity and losses of creditors' capital and, therefore, offset losses of owners' equity by inclusion of FFA. The formula (together with related recapture rules) in the final regulations has been changed to reflect that the owners' equity is the first capital lost and, in a transaction without Continuing Equity, is not offset by inclusion of FFA.

Deferral formula with Continuing Equity. The proposed regulations allowed deferral under different conditions where Continuing Equity is present. In that case, the Institution must include currently, in addition to the normal formula amount, income equal to all net operating loss carryovers available to it. Also, an Institution with Continuing Equity must recapture deferred FFA at least as quickly as pro rata over a maximum of six years, regardless of whether it recognizes all of its built-in losses during that time.

Commentators suggested that the proposed regulations unfairly limited deferral for Institutions with Continuing Equity and recommended the same deferral formula apply in all cases. They criticized the Continuing Equity concept because it focused on the identity of the Institution's shareholders after the assistance transaction.

Under the definition of Continuing Equity in the proposed regulations, an Institution generally would have Continuing Equity if five percent or more of its stock at the end of a taxable year was owned by shareholders who owned stock before the Institution was placed in receivership by a supervisory agency (Agency) or first received FFA. The five percent reference was misleading because, under § 1.597–5, a 50 percent change in ownership generally results in a deemed Taxable Transfer (now defined in § 1.597–5(a)(1)) in which the failed Institution is treated as a New Entity. The deferral rules do not apply after a deemed Taxable Transfer. The final regulations thus clarify that Continuing Equity exists only if the Institution is not (i) a Bridge Bank, (ii) in Agency receivership, or (iii) treated as a New Entity. The modification to the definition of Continuing Equity is not intended as a substantive change. The Continuing Equity deferral provisions apply only to the limited number of ''open bank'' resolutions not subject to the deemed Taxable Transfer rules. (As discussed below, the Taxable Transfer definitions have also been modified to clarify that most ''open bank'' assisted transactions are treated as Taxable Transfers.)

The final regulations do not eliminate the special treatment of Institutions with Continuing Equity. The regulations provide deferral rules to ameliorate a timing mismatch between FFA income and related losses. Deferral is not designed to allow built-in losses to offset operating income instead of FFA or to permit the permanent elimination of any subsidy provided by Agency. The requirement that Institutions with Continuing Equity recapture their deferred FFA within six years is a reasonable safeguard against indefinite deferral of FFA income. The results under these rules are comparable in effect to those applicable to acquirors in Taxable Transfers.

The final regulations do, however, modify the Continuing Equity formula, which, in the proposed regulations, counted some losses twice. Recognized losses represented in the first prong of the formula (liabilities minus asset bases) may comprise part of the third prong (net operating losses available to the Institution or its consolidated group). The final regulations correct this double counting of losses.

Transfers of money and property to Agency. The proposed regulations contained rules for taxing FFA if money or property is also transferred to Agency. These rules, together with rules for the treatment of FFA received pursuant to a Loss Guarantee, have been clarified, reorganized, and restated in § 1.597–2(d).

The proposed regulations provided an offset or deduction for payments by an Institution to Agency to the extent of previously received FFA. The rule as proposed provided limited relief for payments made to Agency by a New Entity or Acquiring, because they receive little or no FFA. However, an assisted acquisition can result in income to a New Entity or Acquiring in the form of built-in gain. Under section 597(c) and § 1.597–3(b), an instrument issued to Agency by a New Entity or Acquiring is, in effect, disregarded. If a New Entity or Acquiring issues its instrument to Agency in connection with the acquisition of an Institution, the value of the instrument is not included in the purchase price. Consequently, a New Entity or Acquiring may have a basis shortfall in the assets acquired (or deemed acquired) from the failed Institution. The final regulations provide a New Entity or Acquiring a purchase price adjustment upon any transfer to Agency (e.g., in satisfaction of the disregarded instrument).

In response to comments, the final regulations also specifically provide for repayments to Agency by Institution affiliates. Moreover, the final regulations provide that if Agency sells an Institution's instrument to a third party, the sales price is treated as a repayment to Agency by the issuer. Furthermore, the instrument is treated as having been newly issued by the issuer to the holder at that time. The IRS and Treasury believe that this is an appropriate time for the issuer to offset FFA or increase its basis, because the sales price reasonably fixes the value of the instrument, and any subsequent cost associated with the instrument should be accounted for in accordance with the nature of the instrument.

Section 1.597–4(g) Elective Disaffiliation

The proposed regulations would allow a consolidated group to elect (after the regulations became final) to exclude an Institution in receivership from its group. The election potentially requires the inclusion of a ''toll charge'' in the income of those members owning the common stock of the Institution (the member shareholders). The amount of the toll charge is the excess of the disaffiliated Institution's liabilities over the adjusted basis of its assets. The toll charge is intended to reflect the amount that would be included in income if Agency were to provide the entire amount of FFA necessary to restore the Institution's solvency at the time of the event permitting disaffiliation. Commentators suggested that the final regulations should include the toll charge in the income of the disaffiliated Institution (rather than its member shareholders), provide the group with a ''toll charge deduction,'' and clarify the ability of the member shareholders to take a worthless stock deduction.

Toll charge. Commentators suggested that the final regulations include the toll charge in the income of the failed Institution rather than its member shareholders. According to the commentators, including the toll charge in the income of the member shareholders may result in disadvantageous state tax consequences in those states where banking corporations are not permitted to file consolidated returns with nonbanking corporations. Under the proposed regulations, a bank holding corporation (the disaffiliated Institution's shareholder) would have to include in income the toll charge without the

benefit of the Institution's offsetting losses.

The IRS and Treasury agree that the toll charge is more appropriately included in the income of the Institution (i.e., the entity that is reimbursed by Agency for its loss), because the toll charge represents accelerated FFA income. Thus, the final regulations provide that the Institution, rather than its member shareholders, takes the toll charge into income.

Toll charge deduction. Under the proposed regulations, the Institution does not recognize built-in losses on disaffiliation. One commentator suggested the final regulations provide for a ''toll charge deduction'' for the excess of the Institution's adjusted basis over its liabilities. According to the commentator, such a deduction is appropriate because the Institution incurred economic loss while it was a member of the consolidated group, before the Institution was placed in receivership by Agency.

The commentator's recommendation is not adopted in the final regulations because a toll charge deduction would accelerate recognition of losses in advance of realization. Such a deduction is particularly inappropriate because federal banking laws now permit placing solvent institutions in receivership. In such cases, it is uncertain whether the loss represented by such a deduction will ever be realized.

Worthless stock deduction. Under the proposed regulations, if an election to disaffiliate is made, the members of the consolidated group are treated as having disposed of their stock in the Institution. One commentator suggested that the final regulations clarify that, upon disaffiliation, the Institution's stock is worthless.

The final regulations address the commentator's concerns by providing that, as a consequence of the election, the members of the consolidated group treat their stock in the Institution as worthless if the Institution is factually insolvent on the date the Institution is placed in receivership (or on the date the consolidated group is deemed to make the election to disaffiliate). This rule preempts otherwise applicable tests for worthlessness under section 165 and § 1.1502–19. Any worthless stock deduction is subject to the limitations of the loss disallowance regulations (§§ 1.337(d)–1 and 1.1502–20).

Consistency rule. Under the proposed regulations, a consolidated group could elect to disaffiliate a subsidiary Institution only if the Institution was its first subsidiary placed in Agency receivership after the enactment of FIRREA. The election made for the first subsidiary bound all future subsidiaries placed in Agency receivership. To address the concern that the scope of the proposed consistency rule was too broad, the final regulations modify the consistency rule to require, generally, that a consolidated group must elect consistently only for subsidiary Institutions placed in Agency receivership within five years of each other.

Section 1.597–5 Taxable Transfers

Section 597 applies to FFA and transactions in connection with which FFA is provided. The proposed regulations generally define a Taxable Transfer as a transfer of deposit liabilities or stock while an Institution is under Agency Control. However, IRS and Treasury now understand that it is possible for Agency to resolve an Institution under its control without providing assistance, or to provide assistance without placing an Institution under its control. In light of this information, the final regulations refine the definition of a Taxable Transfer.

Under the final regulations, Taxable Transfers include the transfer of any deposit liability in connection with which FFA is provided or the transfer of any asset for which Agency has an obligation (e.g., assets covered by Loss Guarantees). Certain transfers of stock cause a Taxable Transfer if FFA is provided in connection with the transfer, if the Institution is a Bridge Bank or if the Institution has a balance in its deferred FFA account. The phrase ''in connection with'' should be interpreted broadly. If any party to a transaction receives FFA, all parties and all related transactions are within the scope of these regulations. To provide certainty regarding tax treatment for purchasers of stock of subsidiaries of Institutions under Agency Control, the final regulations treat all transactions in which such a subsidiary leaves its group as Taxable Transfers.

Section 1.597–6 Limitation on Collection of Income Tax

Limitation where tax is borne by Agency. The proposed regulations provided that income tax attributable to the receipt of FFA or gain on a Taxable Transfer would not be collected from an Institution without Continuing Equity if Agency would bear the burden of the tax. Commentators suggested that the limitation on noncollection in cases of Continuing Equity is inappropriate because it requires Agency to gross-up any assistance paid to cover the tax thereon.

The final regulations retain the limitation on noncollection in cases of Continuing Equity. The IRS and Treasury believe that the limitation is appropriate for transactions in which Agency assists an Institution while allowing old shareholders to retain their ownership. Noncollection should not inure to the benefit of the Institution's old shareholders, who would have use of the Institution's losses while escaping responsibility for the tax on related FFA income. The congressional purpose in FIRREA to eliminate any tax subsidy for assisted transactions requires that the IRS not waive its rights as a creditor in cases where all other creditors and equity holders retain their rights.

Transferee liability. The proposed regulations limited the collection of a failed Institution's income taxes from a transferee in a Taxable Transfer (i.e., a New Entity or Acquiring). This rule would not apply if (similar to the Continuing Equity rule discussed above under the heading ''Deferral formula with Continuing Equity'') there is a five percent overlap in the ownership of the transferor Institution and the New Entity or Acquiring.

Commentators suggested that the final regulations should not include the five percent overlap exception because the exception appears to punish former owners of Institutions, Institutions have difficulty tracking ownership, and the exception contains no limits on aggregation.

Because good faith purchasers of assets for value generally do not have transferee liability, the final regulations clarify that Acquiring (the purchaser of Institution's assets in an actual Taxable Transfer) is not subject to such liability in any case. This rule applies even if shareholders of Acquiring were shareholders of the selling Institution.

The final regulations do not, however, except a New Entity (the resulting corporation in a deemed Taxable Transfer) from collection if the Institution's previous equity interests remain outstanding in the New Entity, or are reacquired or exchanged for consideration. As in those cases in which a Taxable Transfer does not occur, the IRS should remain a creditor if all other creditors retain their interests and the Institution's previous equity interests had retained value. However, by focusing on whether previous equity interests retain value, the final regulations eliminate the need to track or aggregate ownership and do not penalize any particular potential acquirors.

Section 1.597–7 Effective Date

As proposed, these final regulations generally apply to taxable years ending on or after April 22, 1992. However, the provisions of these regulations do not apply to FFA received or accrued for taxable years ending after April 22, 1992, in connection with an Agency assisted acquisition that occurs before April 22, 1992. Taxpayers not subject to these regulations must comply with an interpretation of the statute that is reasonable in light of the legislative history and applicable administrative pronouncements. For this purpose, the rules contained in Notice 89–102 (1989–2 C.B. 436) apply to the extent provided in the Notice.

An irrevocable election is available to apply the regulations to taxable years prior to the general effective date. However, the election cannot be made if the Institution's statute of limitations has expired or a section 338 election was available but not made for the Institution. In addition, consistent treatment is required in ''open bank'' resolutions that would result under the regulations in deemed Taxable Transfers before April 22, 1992.

The proposed regulations required an electing taxpayer to extend the statute of limitations for all items for three years from the date of filing the election. The final regulations adopt a commentator's suggestion that the taxpayer extend the statute of limitations only for items affected by application of the regulations.

An Institution or consolidated group makes the election on its first annual income tax return filed on or after March 15, 1996. However, to make the affirmative election to disaffiliate under § 1.597–4(g)(5) for an Institution placed in Agency receivership in a taxable year ending before April 22, 1992, a consolidated group must send the affected Institution the required statement advising it of the elective disaffiliation on or before May 31, 1996. In that case, the consolidated group is deemed to have elected retroactive application of these regulations but must nevertheless attach the required statement to its first annual income tax return filed on or after March 15, 1996.

The final regulations provide that taxpayers may rely on the provisions of the proposed regulations to the extent they acted in reliance on the proposed regulations prior to December 21, 1995. Such reliance must be reasonable and transactions with respect to which such taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history, as well as the overriding policies of the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will generally only apply to certain financially troubled financial institutions and the consolidated groups, if any, to which they belong. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Steven M. Flanagan, Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * *
Sections 1.597–1 through 1.597–7 also issued under 26 U.S.C. 597 and 1502.

Par. 2. Sections 1.597–1 through 1.597–7 are added to read as follows:

§ 1.597–1 Definitions.

For purposes of the regulations under section 597—

(a) Unless the context otherwise requires, the terms *consolidated group, member* and *subsidiary* have the meanings provided in § 1.1502–1; and

(b) The following terms have the meanings provided below—

Acquiring. The term *Acquiring* means a corporation that is a transferee in a Taxable Transfer, other than a deemed transferee in a Taxable Transfer described in § 1.597–5(b).

Agency. The term *Agency* means the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, any similar instrumentality of the United States government, and any predecessor or successor of the foregoing (including the Federal Savings and Loan Insurance Corporation).

Agency Control. An Institution or entity is under *Agency Control* if Agency is conservator or receiver of the Institution or entity, or if Agency has the right to appoint any of the Institution's or entity's directors.

Agency Obligation. The term *Agency Obligation* means a debt instrument that Agency issues to an Institution or to a direct or indirect owner of an Institution.

Bridge Bank. The term *Bridge Bank* means an Institution that is organized by Agency to hold assets and liabilities of another Institution and that continues the operation of the other Institution's business pending its acquisition or liquidation, and that is any of the following—

(1) A national bank chartered by the Comptroller of the Currency under section 11(n) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)) or section 21A(b)(10)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(10)(A)) or any successor sections;

(2) A Federal savings association chartered by the Director of the Office of Thrift Supervision under section 21A(b)(10)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(10)(A)) or any successor section; or

(3) A similar Institution chartered under any other statutory provisions.

Consolidated Subsidiary. The term *Consolidated Subsidiary* means a member of the consolidated group of which an Institution is a member that bears the same relationship to the Institution that the members of a consolidated group bear to their common parent under section 1504(a)(1).

Continuing Equity. An Institution has *Continuing Equity* for any taxable year if, on the last day of the taxable year, the

Institution is not (1) a Bridge Bank, (2) in Agency receivership, or (3) treated as a New Entity.

Controlled Entity. The term *Controlled Entity* means an entity under Agency Control.

Federal Financial Assistance (FFA). The term *Federal Financial Assistance* (FFA), as defined by section 597(c), means any money or property provided by Agency to an Institution or to a direct or indirect owner of stock in an Institution under section 406(f) of the National Housing Act (12 U.S.C. 1729(f)), section 21A(b)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(4)), section 11(f) or 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f), 1823(c)), or under any similar provision of law. Any such money or property is FFA, regardless of whether the Institution or any of its affiliates issues Agency a note or other obligation, stock, warrants, or other rights to acquire stock in connection with Agency's provision of the money or property. FFA includes Net Worth Assistance, Loss Guarantee payments, yield maintenance payments, cost to carry or cost of funds reimbursement payments, expense reimbursement or indemnity payments, and interest (including original issue discount) on an Agency Obligation.

Institution. The term *Institution* means an entity that is, or immediately before being placed under Agency Control was, a bank or domestic building and loan association within the meaning of section 597 (including a Bridge Bank). Except as otherwise provided in the regulations under section 597, the term *Institution* includes a New Entity or Acquiring that is a bank or domestic building and loan association within the meaning of section 597.

Loss Guarantee. The term *Loss Guarantee* means an agreement pursuant to which Agency or a Controlled Entity guarantees or agrees to pay an Institution a specified amount upon the disposition or charge-off (in whole or in part) of specific assets, an agreement pursuant to which an Institution has a right to put assets to Agency or a Controlled Entity at a specified price, or a similar arrangement.

Net Worth Assistance. The term *Net Worth Assistance* means money or property (including an Agency Obligation to the extent it has a fixed principal amount) that Agency provides as an integral part of a Taxable Transfer, other than FFA that accrues after the date of the Taxable Transfer. For example, Net Worth Assistance does not include Loss Guarantee payments, yield maintenance payments, cost to carry or cost of funds reimbursement payments, or expense reimbursement or indemnity payments. An Agency Obligation is considered to have a fixed principal amount notwithstanding an agreement providing for its adjustment after issuance to reflect a more accurate determination of the condition of the Institution at the time of the acquisition.

New Entity. The term *New Entity* means the new corporation that is treated as purchasing all of the assets of an Old Entity in a Taxable Transfer described in § 1.597–5(b).

Old Entity. The term *Old Entity* means the Institution or Consolidated Subsidiary that is treated as selling all of its assets in a Taxable Transfer described in § 1.597–5(b).

Residual Entity. The term *Residual Entity* means the entity that remains after an Institution transfers deposit liabilities to a Bridge Bank.

Taxable Transfer. The term *Taxable Transfer* has the meaning provided in § 1.597–5(a)(1).

§ 1.597–2 Taxation of Federal Financial Assistance.

(a) *Inclusion in income*—(1) *In general.* Except as otherwise provided in the regulations under section 597, all FFA is includible as ordinary income to the recipient at the time the FFA is received or accrued in accordance with the recipient's method of accounting. The amount of FFA received or accrued is the amount of any money, the fair market value of any property (other than an Agency Obligation), and the issue price of any Agency Obligation (determined under § 1.597–3(c)(2)). An Institution (and not the nominal recipient) is treated as receiving directly any FFA that Agency provides in a taxable year to a direct or indirect shareholder of the Institution, to the extent money or property is transferred to the Institution pursuant to an agreement with Agency.

(2) *Cross references.* See paragraph (c) of this section for rules regarding the timing of inclusion of certain FFA. See paragraph (d) of this section for additional rules regarding the treatment of FFA received in connection with transfers of money or property to Agency or a Controlled Entity, or paid pursuant to a Loss Guarantee. See § 1.597–5(c)(1) for additional rules regarding the inclusion of Net Worth Assistance in the income of an Institution.

(b) *Basis of property that is FFA.* If FFA consists of property, the Institution's basis in the property equals the fair market value of the property (other than an Agency Obligation) or the issue price of the Agency Obligation, as determined under § 1.597–3(c)(2).

(c) *Timing of inclusion of certain FFA*—(1) *Scope.* This paragraph (c) limits the amount of FFA an Institution must include in income currently under certain circumstances and provides rules for the deferred inclusion in income of amounts in excess of those limits. This paragraph (c) does not apply to a New Entity or Acquiring.

(2) *Amount currently included in income by an Institution without Continuing Equity.* The amount of FFA an Institution without Continuing Equity must include in income in a taxable year under paragraph (a)(1) of this section is limited to the sum of—

(i) The excess at the beginning of the taxable year of the Institution's liabilities over the adjusted bases of the Institution's assets; and

(ii) The amount by which the excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) over its gross income (determined without regard to FFA); is greater than the excess at the beginning of the taxable year of the adjusted bases of the Institution's assets over the Institution's liabilities.

(3) *Amount currently included in income by an Institution with Continuing Equity.* The amount of FFA an Institution with Continuing Equity must include in income in a taxable year under paragraph (a)(1) of this section is limited to the sum of—

(i) The excess at the beginning of the taxable year of the Institution's liabilities over the adjusted bases of the Institution's assets;

(ii) The greater of—

(A) The excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) over its gross income (determined without regard to FFA); or

(B) The excess for the taxable year of the deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) of the consolidated group of which the Institution is a member on the last day of the Institution's taxable year over the group's gross income (determined without regard to FFA); and

(iii) The excess of the amount of any net operating loss carryover of the Institution (or in the case of a carryover from a consolidated return year of the Institution's current consolidated group, the net operating loss carryover of the group) to the taxable year over the

amount described in paragraph (c)(3)(i) of this section.

(4) *Deferred FFA*—(i) *Maintenance of account.* An Institution must establish a deferred FFA account commencing in the first taxable year in which it receives FFA that is not currently included in income under paragraph (c)(2) or (c)(3) of this section, and must maintain that account in accordance with the requirements of this paragraph (c)(4). The Institution must add the amount of any FFA that is not currently included in income under paragraph (c)(2) or (c)(3) of this section to its deferred FFA account. The Institution must decrease the balance of its deferred FFA account by the amount of deferred FFA included in income under paragraphs (c)(4)(ii), (iv) and (v) of this section. (See also paragraph (d)(5)(i)(B) of this section for other adjustments that decrease the deferred FFA account.) If, under paragraph (c)(3) of this section, FFA is not currently included in income in a taxable year, the Institution thereafter must maintain its deferred FFA account on a FIFO (first in, first out) basis (e.g., for purposes of the first sentence of paragraph (c)(4)(iv) of this section).

(ii) *Deferred FFA recapture.* In any taxable year in which an Institution has a balance in its deferred FFA account, it must include in income an amount equal to the lesser of the amount described in paragraph (c)(4)(iii) of this section or the balance in its deferred FFA account.

(iii) *Annual recapture amount*—(A) *Institutions without Continuing Equity*—(1) *In general.* In the case of an Institution without Continuing Equity, the amount described in this paragraph (c)(4)(iii) is the amount by which—

(*i*) The excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) over its gross income (taking into account FFA included in income under paragraph (c)(2) of this section); is greater than

(*ii*) The Institution's remaining equity as of the beginning of the taxable year.

(*2*) *Remaining equity.* The Institution's remaining equity is—

(*i*) The amount at the beginning of the taxable year in which the deferred FFA account was established equal to the adjusted bases of the Institution's assets minus the Institution's liabilities (which amount may be positive or negative); plus

(*ii*) The Institution's taxable income (computed without regard to any carryover from any other year) in any subsequent taxable year or years; minus

(iii) The excess in any subsequent taxable year or years of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) over its gross income.

(B) *Institutions with Continuing Equity.* In the case of an Institution with Continuing Equity, the amount described in this paragraph (c)(4)(iii) is the amount by which the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (other than net operating and capital loss carryovers) exceed its gross income (taking into account FFA included in income under paragraph (c)(3) of this section).

(iv) *Additional deferred FFA recapture by an Institution with Continuing Equity.* To the extent that, as of the end of a taxable year, the cumulative amount of FFA deferred under paragraph (c)(3) of this section that an Institution with Continuing Equity has recaptured under this paragraph (c)(4) is less than the cumulative amount of FFA deferred under paragraph (c)(3) of this section that the Institution would have recaptured if that FFA had been included in income ratably over the six taxable years immediately following the taxable year of deferral, the Institution must include that difference in income for the taxable year. An Institution with Continuing Equity must include in income the balance of its deferred FFA account in the taxable year in which it liquidates, ceases to do business, transfers (other than to a Bridge Bank) substantially all of its assets and liabilities, or is deemed to transfer all of its assets under § 1.597–5(b).

(v) *Optional accelerated recapture of deferred FFA.* An Institution that has a deferred FFA account may include in income the balance of its deferred FFA account on its timely filed (including extensions) original income tax return for any taxable year that it is not under Agency Control. The balance of its deferred FFA account is income on the last day of that year.

(5) *Exceptions to limitations on use of losses.* In computing an Institution's taxable income or alternative minimum taxable income for a taxable year, sections 56(d)(1), 382 and 383 and §§ 1.1502–15, 1.1502–21 and 1.1502–22 do not limit the use of the attributes of the Institution to the extent, if any, that the inclusion of FFA (including recaptured FFA) in income results in taxable income or alternative minimum taxable income (determined without regard to this paragraph (c)(5)) for the taxable year. This paragraph (c)(5) does not apply to any limitation under section 382 or 383 or § 1.1502–15, 1.1502–21 or 1.1502–22 that arose in connection with or prior to a corporation becoming a Consolidated Subsidiary of the Institution.

(6) *Operating rules*—(i) *Bad debt reserves.* For purposes of paragraphs (c)(2), (c)(3) and (c)(4) of this section, the adjusted bases of an Institution's assets are reduced by the amount of the Institution's reserves for bad debts under section 585 or 593, other than supplemental reserves under section 593.

(ii) *Aggregation of Consolidated Subsidiaries.* For purposes of this paragraph (c), an Institution is treated as a single entity that includes the income, expenses, assets, liabilities, and attributes of its Consolidated Subsidiaries, with appropriate adjustments to prevent duplication.

(iii) *Alternative minimum tax.* To compute the alternative minimum taxable income attributable to FFA of an Institution for any taxable year under section 55, the rules of this section, and related rules, are applied by using alternative minimum tax basis, deductions, and all other items required to be taken into account. All other alternative minimum tax provisions continue to apply.

(7) *Earnings and profits.* FFA that is not currently included in income under this paragraph (c) is included in earnings and profits for all purposes of the Internal Revenue Code to the extent and at the time it is included in income under this paragraph (c).

(d) *Transfers of money or property to Agency, and property subject to a Loss Guarantee*—(1) *Transfers of property to Agency.* The transfer of property to Agency or a Controlled Entity is a taxable sale or exchange in which the Institution is treated as realizing an amount equal to—

(i) The property's fair market value; or

(ii) For property subject to a Loss Guarantee, the greater of the property's fair market value or the guaranteed value or price at which the property can be put at the time of transfer.

(2) *FFA with respect to property covered by a Loss Guarantee other than on transfer to Agency.* (i) FFA provided pursuant to a Loss Guarantee with respect to covered property is included in the amount realized with respect to the property to the extent the total amount realized does not exceed the greater of—

(A) The property's fair market value; or

(B) The guaranteed value or price at which the property can be put at the time of transfer.

(ii) For the purposes of this paragraph (d)(2), references to an amount realized include amounts obtained in whole or partial satisfaction of loans, amounts

obtained by virtue of charging off or marking to market covered property, and other amounts similarly related to property, whether or not disposed of.

(3) *Treatment of FFA received in exchange for property.* FFA included in the amount realized for property under this paragraph (d) is not includible in income under paragraph (a)(1) of this section. The amount realized is treated in the same manner as if realized from a person other than Agency or a Controlled Entity. For example, gain attributable to FFA received with respect to a capital asset retains its character as capital gain. Similarly, FFA received with respect to property that has been charged off for income tax purposes is treated as a recovery to the extent of the amount previously charged off. Any FFA provided in excess of the amount realized under this paragraph (d) is includible in income under paragraph (a)(1) of this section.

(4) *Adjustment to FFA*—(i) *In general.* If an Institution pays or transfers money or property to Agency or a Controlled Entity, the amount of money and fair market value of the property is an adjustment to its FFA to the extent the amount paid and transferred exceeds the amount of money and fair market value of property Agency or a Controlled Entity provides in exchange.

(ii) *Deposit insurance.* This paragraph (d)(4) does not apply to amounts paid to Agency with respect to deposit insurance.

(iii) *Treatment of an interest held by Agency or a Controlled Entity*—(A) *In general.* For purposes of this paragraph (d), an interest described in § 1.597–3(b) is not treated as property when transferred by the issuer to Agency or a Controlled Entity nor when acquired from Agency or a Controlled Entity by the issuer.

(B) *Dispositions to persons other than issuer.* On the date Agency or a Controlled Entity transfers an interest described in § 1.597–3(b) to a holder other than the issuer, Agency or a Controlled Entity, the issuer is treated for purposes of this paragraph (d)(4) as having transferred to Agency an amount of money equal to the sum of the amount of money and the fair market value of property that was paid by the new holder as consideration for the interest.

(iv) *Consolidated groups.* For purposes of this paragraph (d), an 9Institution will be treated as having made any transfer to Agency or a Controlled Entity that was made by any other member of its consolidated group. The consolidated group must make appropriate investment basis adjustments to the extent the member transferring money or other property is not the member that received FFA.

(5) *Manner of making adjustments to FFA*—(i) *Reduction of FFA and deferred FFA.* An Institution adjusts its FFA under paragraph (d)(4) of this section by reducing in the following order and in an aggregate amount not greater than the adjustment—

(A) The amount of any FFA that is otherwise includible in income for the taxable year (before application of paragraph (c) of this section); and

(B) The balance (but not below zero) in the deferred FFA account, if any, maintained under paragraph (c)(4) of this section.

(ii) *Deduction of excess amounts.* If the amount of the adjustment exceeds the sum of the amounts described in paragraph (d)(5) (i) of this section, the Institution may deduct the excess to the extent the deduction does not exceed the amount of FFA included in income for prior taxable years reduced by the amount of deductions allowable under this paragraph (d)(5)(ii) in prior taxable years.

(iii) *Additional adjustments.* Any adjustment to FFA in excess of the sum of the amounts described in paragraphs (d)(5)(i) and (ii) of this section is treated—

(A) By an Institution other than a New Entity or Acquiring, as a deduction of the amount in excess of FFA received that is required to be transferred to Agency under section 11(g) of the Federal Deposit Insurance Act (12 U.S.C. 1821(g)); or

(B) By a New Entity or Acquiring, as an adjustment to the purchase price paid in the Taxable Transfer (see § 1.338(b)–3T).

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Timing of inclusion of FFA in income. (i) Institution M, a calendar year taxpayer without Continuing Equity because it is in Agency receivership, is not a member of a consolidated group and has not been acquired in a Taxable Transfer. On January 1, 1997, M has assets with a total adjusted basis of $100 million and total liabilities of $120 million. M's deductions do not exceed its gross income (determined without regard to FFA) for 1997. Agency provides $30 million of FFA to M in 1997. The amount of this FFA that M must include in income in 1997 is limited by § 1.597–2(c)(2) to $20 million, the amount by which M's liabilities ($120 million) exceed the total adjusted basis of its assets ($100 million) at the beginning of the taxable year. Pursuant to § 1.597–2(c)(4)(i), M must establish a deferred FFA account for the remaining $10 million.

(ii) If Agency instead lends M the $30 million, M's indebtedness to Agency is disregarded and the results are the same as in paragraph (i) of this *Example 1.* Section 597(c); §§ 1.597–1(b) (defining FFA) and 1.597–3(b).

Example 2. Transfer of property to Agency. (i) Institution M, a calendar year taxpayer without Continuing Equity because it is in Agency receivership, is not a member of a consolidated group and has not been acquired in a Taxable Transfer. At the beginning of 1998, M's remaining equity is $0 and M has a deferred FFA account of $10 million. Agency does not provide any FFA to M in 1998. During the year, M transfers property not covered by a Loss Guarantee to Agency and does not receive any consideration. The property has an adjusted basis of $5 million and a fair market value of $1 million at the time of the transfer. M has no other taxable income or loss in 1998.

(ii) Under § 1.597–2(d)(1), M is treated as selling the property for $1 million, its fair market value, thus recognizing a $4 million loss ($5 million–$1 million). In addition, because M did not receive any consideration from Agency, under § 1.597–2(d)(4) M has an adjustment to FFA of $1 million, the amount by which the fair market value of the transferred property ($1 million) exceeds the consideration M received from Agency ($0). Because no FFA is provided to M in 1998, this adjustment reduces the balance of M's deferred FFA account to $9 million ($10 million–$1 million). Section 1.597–2(d)(5)(i)(B). Because M's $4 million loss causes M's deductions to exceed its gross income by $4 million in 1998 and M has no remaining equity, under § 1.597–2(c)(4)(iii)(A) M must include $4 million of deferred FFA in income, and must decrease the remaining $9 million balance of its deferred FFA account by the same amount, leaving a balance of $5 million.

Example 3. Loss Guarantee. Institution Q, a calendar year taxpayer, sells an asset covered by a Loss Guarantee to an unrelated third party for $4,000. Q's adjusted basis in the asset at the time of sale and the asset's guaranteed value are both $10,000. Pursuant to the Loss Guarantee, Agency pays Q $6,000 ($10,000–$4,000). Q's amount realized from the sale of the asset is $10,000 ($4,000 from the third party and $6,000 from Agency). Section 1.597–2(d)(2). Q realizes no gain or loss on the sale ($10,000–$10,000 = $0), and therefore includes none of the $6,000 of FFA it receives pursuant to the Loss Guarantee in income. Section 1.597–2(d)(3).

§ 1.597–3 Other rules.

(a) *Ownership of assets.* For all income tax purposes, an Institution is treated as the owner of all assets covered by a Loss Guarantee, yield maintenance agreement, or cost to carry or cost of funds reimbursement agreement, regardless of whether Agency (or a Controlled Entity) otherwise would be treated as the owner under general principles of income taxation.

(b) *Debt and equity interests received by Agency.* Debt instruments, stock, warrants, or other rights to acquire stock of an Institution (or any of its affiliates) that Agency or a Controlled Entity

receives in connection with a transaction in which FFA is provided are not treated as debt, stock or other equity interests of or in the issuer for any purpose of the Internal Revenue Code while held by Agency or a Controlled Entity. On the date Agency or a Controlled Entity transfers an interest described in this paragraph (b) to a holder other than Agency or a Controlled Entity, the interest is treated as having been newly issued by the issuer to the holder with an issue price equal to the sum of the amount of money and the fair market value of property paid by the new holder in exchange for the interest.

(c) *Agency Obligations*—(1) *In general.* Except as otherwise provided in this paragraph (c), the original issue discount rules of sections 1271 et seq. apply to Agency Obligations.

(2) *Issue price of Agency Obligations provided as Net Worth Assistance.* The issue price of an Agency Obligation that is provided as Net Worth Assistance and that bears interest at either a single fixed rate or a qualified floating rate (and provides for no contingent payments) is the lesser of the sum of the present values of all payments due under the obligation, discounted at a rate equal to the applicable Federal rate (within the meaning of section 1274(d) (1) and (3)) in effect for the date of issuance, or the stated principal amount of the obligation. The issue price of an Agency Obligation that bears a qualified floating rate of interest (within the meaning of § 1.1275–5(b)) is determined by treating the obligation as bearing a fixed rate of interest equal to the rate in effect on the date of issuance under the obligation.

(3) *Adjustments to principal amount.* Except as provided in § 1.597–5(d)(2)(iv), this paragraph (c)(3) applies if Agency modifies or exchanges an Agency Obligation provided as Net Worth Assistance (or a successor obligation). The issue price of the modified or new Agency Obligation is determined under paragraphs (c) (1) and (2) of this section. If the issue price is greater than the adjusted issue price of the existing Agency Obligation, the difference is treated as FFA. If the issue price is less than the adjusted issue price of the existing Agency Obligation, the difference is treated as an adjustment to FFA under § 1.597–2(d)(4).

(d) *Successors.* To the extent necessary to effectuate the purposes of the regulations under section 597, an entity's treatment under the regulations applies to its successor. A successor includes a transferee in a transaction to which section 381(a) applies or a Bridge Bank to which another Bridge Bank transfers deposit liabilities.

(e) *Loss disallowance.* For purposes of § 1.1502–20, FFA and the amount described in § 1.597–4(g)(3) are treated as an extraordinary gain disposition within the meaning of § 1.1502–20(c)(2)(i) and a Taxable Transfer is treated as an applicable asset acquisition under section 1060(c) within the meaning of § 1.1502–20(c)(2)(i)(A)(*4*).

(f) *Losses and deductions with respect to covered assets.* Prior to the disposition of an asset covered by a Loss Guarantee, the asset cannot be charged off, marked to a market value, depreciated, amortized, or otherwise treated in a manner that supposes an actual or possible diminution of value below the greater of the asset's highest guaranteed value or the highest price at which the asset can be put.

(g) *Anti-abuse rule.* The regulations under section 597 must be applied in a manner consistent with the purposes of section 597. Accordingly, if, in structuring or engaging in any transaction, a principal purpose is to achieve a tax result that is inconsistent with the purposes of section 597 and the regulations thereunder, the Commissioner can make appropriate adjustments to income, deductions and other items that would be consistent with those purposes.

§ 1.597–4 Bridge Banks and Agency Control.

(a) *Scope.* This section provides rules that apply to a Bridge Bank or other *Institution* under Agency Control and to transactions in which an Institution transfers deposit liabilities (whether or not the Institution also transfers assets) to a Bridge Bank.

(b) *Status as taxpayer.* A Bridge Bank or other Institution under Agency Control is a corporation within the meaning of section 7701(a)(3) for all purposes of the Internal Revenue Code and is subject to all Internal Revenue Code provisions that generally apply to corporations, including those relating to methods of accounting and to requirements for filing returns, even if Agency owns stock of the Institution.

(c) *No section 382 ownership change.* The imposition of Agency Control, the cancellation of Institution stock by Agency, a transaction in which an Institution transfers deposit liabilities to a Bridge Bank, and an election under paragraph (g) of this section are disregarded in determining whether an ownership change has occurred within the meaning of section 382(g).

(d) *Transfers to Bridge Banks*—(1) *In general.* Except as otherwise provided in paragraph (g) of this section, the rules of this paragraph (d) apply to transfers to Bridge Banks. In general, a Bridge Bank and its associated Residual Entity are together treated as the successor entity to the transferring Institution. If an Institution transfers deposit liabilities to a Bridge Bank (whether or not it also transfers assets), the Institution recognizes no gain or loss on the transfer and the Bridge Bank succeeds to the transferring Institution's basis in any transferred assets. The associated Residual Entity retains its basis in any assets it continues to hold. Immediately after the transfer, the Bridge Bank succeeds to and takes into account the transferring Institution's items described in section 381(c) (subject to the conditions and limitations specified in section 381(c)), taxpayer identification number (''TIN''), deferred FFA account, and account receivable for future FFA as described in paragraph (g)(4)(ii) of this section. The Bridge Bank also succeeds to and continues the transferring Institution's taxable year.

(2) *Transfers to a Bridge Bank from multiple Institutions.* If two or more Institutions transfer deposit liabilities to the same Bridge Bank, the rules in paragraph (d)(1) of this section are modified to the extent provided in this paragraph (d)(2). The Bridge Bank succeeds to the TIN and continues the taxable year of the Institution that transfers the largest amount of deposits. The taxable years of the other transferring Institutions close at the time of the transfer. If all the transferor Institutions are members of the same consolidated group, the Bridge Bank's carryback of losses to the Institution that transfers the largest amount of deposits is not limited by section 381(b)(3). The limitations of section 381(b)(3) do apply to the Bridge Bank's carrybacks of losses to all other transferor Institutions. If the transferor Institutions are not all members of the same consolidated group, the limitations of section 381(b)(3) apply with respect to all transferor Institutions. See paragraph (g)(6)(ii) of this section for additional rules that apply if two or more Institutions that are not members of the same consolidated group transfer deposit liabilities to the same Bridge Bank.

(e) *Treatment of Bridge Bank and Residual Entity as a single entity.* A Bridge Bank and its associated Residual Entity or Entities are treated as a single entity for income tax purposes and must file a single combined income tax return. The Bridge Bank is responsible for filing all income tax returns and statements for this single entity and is

the agent of each associated Residual Entity to the same extent as if the Bridge Bank were the common parent of a consolidated group including the Residual Entity. The term Institution includes a Residual Entity that files a combined return with its associated Bridge Bank.

(f) *Rules applicable to members of consolidated groups*—(1) *Status as members.* Unless an election is made under paragraph (g) of this section, Agency Control of an Institution does not terminate the Institution's membership in a consolidated group. Stock of a subsidiary that is canceled by Agency is treated as held by the members of the consolidated group that held the stock prior to its cancellation. If an Institution is a member of a consolidated group immediately before it transfers deposit liabilities to a Bridge Bank, the Bridge Bank succeeds to the Institution's status as the common parent or, unless an election is made under paragraph (g) of this section, as a subsidiary of the group. If a Bridge Bank succeeds to an Institution's status as a subsidiary, its stock is treated as held by the shareholders of the transferring Institution, and the stock basis or excess loss account of the Institution carries over to the Bridge Bank. A Bridge Bank is treated as owning stock owned by its associated Residual Entities, including for purposes of determining membership in an affiliated group.

(2) *No 30-day election to be excluded from consolidated group.* Neither an Institution nor any of its Consolidated Subsidiaries may be excluded from a consolidated group for a taxable year under § 1.1502–76(b)(5)(ii), as contained in 26 CFR part 1 edition revised April 1, 1994, if the Institution is under Agency Control at any time during the year.

(3) *Coordination with consolidated return regulations.* The provisions of the regulations under section 597 take precedence over conflicting provisions in the regulations under section 1502.

(g) *Elective disaffiliation*—(1) *In general.* A consolidated group of which an Institution is a subsidiary may elect irrevocably not to include the Institution in its affiliated group if the Institution is placed in Agency receivership (whether or not assets or deposit liabilities of the Institution are transferred to a Bridge Bank). See paragraph (g)(6) of this section for circumstances under which a consolidated group is deemed to make this election.

(2) *Consequences of election.* If the election under this paragraph (g) is made with respect to an Institution, the following consequences occur immediately before the subsidiary Institution to which the election applies is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately before the consolidated group is deemed to make the election) and in the following order—

(i) All adjustments of the Institution and its Consolidated Subsidiaries under section 481 are accelerated;

(ii) Deferred intercompany gains and losses with respect to the Institution and its Consolidated Subsidiaries are taken into account and the Institution and its Consolidated Subsidiaries take into account any other items required under the regulations under section 1502 for members that become nonmembers within the meaning of § 1.1502–32(d)(4);

(iii) The taxable year of the Institution and its Consolidated Subsidiaries closes and the Institution includes the amount described in paragraph (g)(3) of this section in income as ordinary income as its last item for that taxable year;

(iv) The members of the consolidated group owning the common stock of the Institution include in income any excess loss account with respect to the Institution's stock under § 1.1502–19 and any other items required under the regulations under section 1502 for members that own stock of corporations that become nonmembers within the meaning of § 1.1502–32(d)(4); and

(v) If the Institution's liabilities exceed the aggregate fair market value of its assets on the date the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, on the date the consolidated group is deemed to make the election), the members of the consolidated group treat their stock in the Institution as worthless. (See §§ 1.337(d)-1 and 1.1502–20 for potential limitations on the group's worthless stock deduction.) In all other cases, the consolidated group will be treated as owning stock of a nonmember corporation until such stock is disposed of or becomes worthless under rules otherwise applicable.

(3) *Toll charge.* The amount described in this paragraph (g)(3) is the excess of the Institution's liabilities over the adjusted bases of its assets immediately before the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately before the consolidated group is deemed to make the election). In computing this amount, the adjusted bases of an Institution's assets are reduced by the amount of the Institution's reserves for bad debts under section 585 or 593, other than supplemental reserves under section 593. For purposes of this paragraph (g)(3), an Institution is treated as a single entity that includes the assets and liabilities of its Consolidated Subsidiaries, with appropriate adjustments to prevent duplication. The amount described in this paragraph (g)(3) for alternative minimum tax purposes is determined using alternative minimum tax basis, deductions, and all other items required to be taken into account. In computing the increase in the group's taxable income or alternative minimum taxable income, sections 56(d)(1), 382 and 383 and §§ 1.1502–15, 1.1502–21 and 1.1502–22 do not limit the use of the attributes of the Institution and its Consolidated Subsidiaries to the extent, if any, that the inclusion of the amount described in this paragraph (g)(3) in income would result in the group having taxable income or alternative minimum taxable income (determined without regard to this sentence) for the taxable year. The preceding sentence does not apply to any limitation under section 382 or 383 or §§ 1.1502–15, 1.1502–21, or 1.1502–22 that arose in connection with or prior to a corporation becoming a Consolidated Subsidiary of the Institution.

(4) *Treatment of Institutions after disaffiliation*—(i) *In general.* If the election under this paragraph (g) is made with respect to an Institution, immediately after the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately after the consolidated group is deemed to make the election), the Institution and each of its Consolidated Subsidiaries are treated for income tax purposes as new corporations that are not members of the electing group's affiliated group. Each new corporation retains the TIN of the corresponding disaffiliated corporation and is treated as having received the assets and liabilities of the corresponding disaffiliated corporation in a transaction to which section 351 applies (and in which no gain was recognized under section 357(c) or otherwise). Thus, the new corporation has no net operating or capital loss carryforwards. An election under this paragraph (g) does not terminate the single entity treatment of a Bridge Bank and its Residual Entities provided in paragraph (e) of this section.

(ii) *FFA.* A new Institution is treated as having a non- interest bearing, nontransferable account receivable for future FFA with a basis equal to the amount described in paragraph (g)(3) of this section. If a disaffiliated Institution has a deferred FFA account at the time

of its disaffiliation, the corresponding new Institution succeeds to and takes into account that deferred FFA account.

(iii) *Filing of consolidated returns.* If a disaffiliated Institution has Consolidated Subsidiaries at the time of its disaffiliation, the corresponding new Institution is required to file a consolidated income tax return with the subsidiaries in accordance with the regulations under section 1502.

(iv) *Status as Institution.* If an Institution is disaffiliated under this paragraph (g), the resulting new corporation is treated as an Institution for purposes of the regulations under section 597 regardless of whether it is a bank or domestic building and loan association within the meaning of section 597.

(v) *Loss carrybacks.* To the extent a carryback of losses would result in a refund being paid to a fiduciary under section 6402(i), an Institution or Consolidated Subsidiary with respect to which an election under this paragraph (g) (other than under paragraph (g)(6)(ii) of this section) applies is allowed to carry back losses as if the Institution or Consolidated Subsidiary had continued to be a member of the consolidated group that made the election.

(5) *Affirmative election*—(i) *Original Institution*—(A) *Manner of making election.* Except as otherwise provided in paragraph (g)(6) of this section, a consolidated group makes the election provided by this paragraph (g) by sending a written statement by certified mail to the affected Institution on or before the later of 120 days after its placement in Agency receivership or May 31, 1996. The statement must contain the following legend at the top of the page: ''THIS IS AN ELECTION UNDER § 1.597–4(g) TO EXCLUDE THE BELOW-REFERENCED INSTITUTION AND CONSOLIDATED SUBSIDIARIES FROM THE AFFILIATED GROUP,'' and must include the names and taxpayer identification numbers of the common parent and of the Institution and Consolidated Subsidiaries to which the election applies, and the date on which the Institution was placed in Agency receivership. The consolidated group must send a similar statement to all subsidiary Institutions placed in Agency receivership during the consistency period described in paragraph (g)(5)(ii) of this section. (Failure to satisfy the requirement in the preceding sentence, however, does not invalidate the election with respect to any subsidiary Institution placed in Agency receivership during the consistency period described in paragraph (g)(5)(ii) of this section.) The consolidated group must include a copy of any election statement and accompanying certified mail receipt as part of its first income tax return filed after the due date under this paragraph (g)(5) for such statement. A statement must be attached to this return indicating that the individual who signed the election was authorized to do so on behalf of the consolidated group. Agency cannot make this election under the authority of section 6402(i) or otherwise.

(B) *Consistency limitation on affirmative elections.* A consolidated group may make an affirmative election under this paragraph (g)(5) with respect to a subsidiary Institution placed in Agency receivership only if the group made, or is deemed to have made, the election under this paragraph (g) with respect to every subsidiary Institution of the group placed in Agency receivership on or after May 10, 1989 and within five years preceding the date the subject Institution was placed in Agency receivership.

(ii) *Effect on Institutions placed in receivership simultaneously or subsequently.* An election under this paragraph (g), other than under paragraph (g)(6)(ii) of this section, applies to the Institution with respect to which the election is made or deemed made (the original Institution) and each subsidiary Institution of the group placed in Agency receivership or deconsolidated in contemplation of Agency Control or the receipt of FFA simultaneously with the original Institution or within five years thereafter.

(6) *Deemed Election*—(i) *Deconsolidations in contemplation.* If one or more members of a consolidated group deconsolidate (within the meaning of § 1.1502–19(c)(1)(ii)(B)) a subsidiary Institution in contemplation of Agency Control or the receipt of FFA, the consolidated group is deemed to make the election described in this paragraph (g) with respect to the Institution on the date the deconsolidation occurs. A subsidiary Institution is conclusively presumed to have been deconsolidated in contemplation of Agency Control or the receipt of FFA if either event occurs within six months after the deconsolidation.

(ii) *Transfers to a Bridge Bank from multiple groups.* On the day an Institution's transfer of deposit liabilities to a Bridge Bank results in the Bridge Bank holding deposit liabilities from both a subsidiary Institution and an Institution not included in the subsidiary Institution's consolidated group, each consolidated group of which a transferring Institution or the Bridge Bank is a subsidiary is deemed to make the election described in this paragraph (g) with respect to its subsidiary Institution. If deposit liabilities of another Institution that is a subsidiary member of any consolidated group subsequently are transferred to the Bridge Bank, the consolidated group of which the Institution is a subsidiary is deemed to make the election described in this paragraph (g) with respect to that Institution at the time of the subsequent transfer.

(h) *Examples.* The following examples illustrate the provisions of this section:

Facts. Corporation X, the common parent of a consolidated group, owns all the stock (with a basis of $4 million) of Institution M, an insolvent Institution with no Consolidated Subsidiaries. At the close of business on April 30, 1996, M has $4 million of deposit liabilities, $1 million of other liabilities, and assets with an adjusted basis of $4 million and a fair market value of $3 million.

Example 1. Effect of receivership on consolidation. On May 1, 1996, Agency places M in receivership and begins liquidating M. X does not make an election under § 1.597–4(g). M remains a member of the X consolidated group after May 1, 1996. Section 1.597–4(f)(1).

Example 2. Effect of Bridge Bank on consolidation—(i) *Additional facts.* On May 1, 1996, Agency places M in receivership and causes M to transfer all of its assets and deposit liabilities to Bridge Bank MB.

(ii) *Consequences without an election to disaffiliate.* M recognizes no gain or loss from the transfer and MB succeeds to M's basis in the transferred assets, M's items described in section 381(c) (subject to the conditions and limitations specified in section 381(c)) and TIN. Section 1.597–4(d)(1). (If M had a deferred FFA account, MB would also succeed to that account. Section 1.597–4(d)(1).) MB continues M's taxable year and succeeds to M's status as a member of the X consolidated group after May 1, 1996. Section 1.597–4 (d)(1) and (f). MB and M are treated as a single entity for income tax purposes. Section 1.597–4(e).

(iii) *Consequences with an election to disaffiliate.* If, on July 1, 1996, X makes an election under § 1.597–4(g) with respect to M, the following consequences are treated as occurring immediately before M was placed in Agency receivership. M must include $1 million ($5 million of liabilities—$4 million of adjusted basis) in income as of May 1, 1996. Section 1.597–4(g) (2) and (3). M is then treated as a new corporation that is not a member of the X consolidated group and that has assets (including a $1 million account receivable for future FFA) with a basis of $5 million and $5 million of liabilities received from disaffiliated corporation M in a section 351 transaction. New corporation M retains the TIN of disaffiliated corporation M. Section 1.597–4(g)(4). Immediately after the disaffiliation, new corporation M is treated as transferring its assets and deposit liabilities to Bridge Bank MB. New corporation M recognizes no gain or loss from the transfer and MB succeeds to M's TIN and taxable year.

Section 1.597–4(d)(1). Bridge Bank MB is treated as a single entity that includes M and has $5 million of liabilities, an account receivable for future FFA with a basis of $1 million, and other assets with a basis of $4 million. Section 1.597–4(d)(1).

§ 1.597–5 Taxable Transfers.

(a) *Taxable Transfers*—(1) *Defined.* The term *Taxable Transfer* means—

(i) A transaction in which an entity transfers to a transferee other than a Bridge Bank—

(A) Any deposit liability (whether or not the Institution also transfers assets), if FFA is provided in connection with the transaction; or

(B) Any asset for which Agency or a Controlled Entity has any financial obligation (e.g., pursuant to a Loss Guarantee or Agency Obligation); or

(ii) A deemed transfer of assets described in paragraph (b) of this section.

(2) *Scope.* This section provides rules governing Taxable Transfers. Rules applicable to both actual and deemed asset acquisitions are provided in paragraphs (c) and (d) of this section. Special rules applicable only to deemed asset acquisitions are provided in paragraph (e) of this section.

(b) *Deemed asset acquisitions upon stock purchase*—(1) *In general.* In a deemed transfer of assets under this paragraph (b), an Institution (including a Bridge Bank or a Residual Entity) or a Consolidated Subsidiary of the Institution (the Old Entity) is treated as selling all of its assets in a single transaction and is treated as a new corporation (the New Entity) that purchases all of the Old Entity's assets at the close of the day immediately preceding the occurrence of an event described in paragraph (b)(2) of this section. However, such an event results in a deemed transfer of assets under this paragraph (b) only if it occurs—

(i) In connection with a transaction in which FFA is provided;

(ii) While the Old Entity is a Bridge Bank;

(iii) While the Old Entity has a positive balance in a deferred FFA account (see § 1.597–2(c)(4)(v) regarding the optional accelerated recapture of deferred FFA); or

(iv) With respect to a Consolidated Subsidiary, while the Institution of which it is a Consolidated Subsidiary is under Agency Control.

(2) *Events.* A deemed transfer of assets under this paragraph (b) results if the Old Entity—

(i) Becomes a non-member within the meaning of § 1.1502–32(d)(4) of its consolidated group (other than pursuant to an election under § 1.597–4(g));

(ii) Becomes a member of an affiliated group of which it was not previously a member (other than pursuant to an election under § 1.597–4(g)); or

(iii) Issues stock such that the stock that was outstanding before the imposition of Agency Control or the occurrence of any transaction in connection with the provision of FFA represents 50 percent or less of the vote or value of its outstanding stock (disregarding stock described in section 1504(a)(4) and stock owned by Agency or a Controlled Entity).

(3) *Bridge Banks and Residual Entities.* If a Bridge Bank is treated as selling all of its assets to a New Entity under this paragraph (b), each associated Residual Entity is treated as simultaneously selling its assets to a New Entity in a Taxable Transfer described in this paragraph (b).

(c) *Treatment of transferor*—(1) *FFA in connection with a Taxable Transfer.* A transferor in a Taxable Transfer is treated as having directly received immediately before a Taxable Transfer any Net Worth Assistance that Agency provides to the New Entity or Acquiring in connection with the transfer. (See § 1.597–2 (a) and (c) for rules regarding the inclusion of FFA in income and § 1.597–2(a)(1) for related rules regarding FFA provided to shareholders.) The Net Worth Assistance is treated as an asset of the transferor that is sold to the New Entity or Acquiring in the Taxable Transfer.

(2) *Amount realized in a Taxable Transfer.* In a Taxable Transfer described in paragraph (a)(1)(i) of this section, the amount realized is determined under section 1001(b) by reference to the consideration paid for the assets. In a Taxable Transfer described in paragraph (a)(1)(ii) of this section, the amount realized is the sum of the grossed-up basis of the stock acquired in connection with the Taxable Transfer (excluding stock acquired from the Old or New Entity), plus the amount of liabilities assumed or taken subject to in the deemed transfer, plus other relevant items. The grossed-up basis of the acquired stock equals the acquirors' basis in the acquired stock divided by the percentage of the Old Entity's stock (by value) attributable to the acquired stock.

(3) *Allocation of amount realized*—(i) *In general.* The amount realized under paragraph (c)(2) of this section is allocated among the assets transferred in the Taxable Transfer in the same manner as amounts are allocated among assets under § 1.338(b)–2T (b), (c)(1) and (2).

(ii) *Modifications to general rule.* This paragraph (c)(3)(ii) modifies certain of the allocation rules of paragraph (c)(3)(i) of this section. Agency Obligations and assets covered by Loss Guarantees in the hands of the New Entity or Acquiring are treated as Class II assets. Stock of a Consolidated Subsidiary is treated as a Class II asset to the extent the fair market value of the Consolidated Subsidiary's Class I and Class II assets exceeds the amount of its liabilities. The fair market value of an Agency Obligation is deemed to equal its adjusted issue price immediately before the Taxable Transfer. The fair market value of an asset covered by a Loss Guarantee immediately after the Taxable Transfer is deemed to be not less than the greater of the asset's highest guaranteed value or the highest price at which the asset can be put.

(d) *Treatment of a New Entity and Acquiring*—(1) *Purchase price.* The purchase price for assets acquired in a Taxable Transfer described in paragraph (a)(1)(i) of this section is the cost of the assets acquired. See § 1.1060–1T(c)(1). The purchase price for assets acquired in a Taxable Transfer described in paragraph (a)(1)(ii) of this section is the sum of the grossed-up basis of the stock acquired in connection with the Taxable Transfer (excluding stock acquired from the Old or New Entity), plus the amount of liabilities assumed or taken subject to in the deemed transfer, plus other relevant items. The grossed-up basis of the acquired stock equals the acquirors' basis in the acquired stock divided by the percentage of the Old Entity's stock (by value) attributable to the acquired stock. FFA provided in connection with a Taxable Transfer is not included in the New Entity's or Acquiring's purchase price for the acquired assets. Any Net Worth Assistance so provided is treated as an asset of the transferor sold to the New Entity or Acquiring in the Taxable Transfer.

(2) *Allocation of basis*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2), the purchase price determined under paragraph (d)(1) of this section is allocated among the assets transferred in the Taxable Transfer in the same manner as amounts are allocated among assets under § 1.338(b)–2T(b), (c) (1) and (2).

(ii) *Modifications to general rule.* The allocation rules contained in paragraph (c)(3)(ii) of this section apply to the allocation of basis among assets acquired in a Taxable Transfer. No basis is allocable to Agency's agreement to provide Loss Guarantees, yield maintenance payments, cost to carry or cost of funds reimbursement payments, or expense reimbursement or indemnity payments. A New Entity's basis in assets it receives from its shareholders is

determined under general principles of income taxation and is not governed by this paragraph (d).

(iii) *Allowance and recapture of additional basis in certain cases.* If the fair market value of the Class I and Class II assets acquired in a Taxable Transfer is greater than the New Entity's or Acquiring's purchase price for the acquired assets, the basis of the Class I and Class II assets equals their fair market value. The amount by which the fair market value of the Class I and Class II assets exceeds the purchase price is included ratably as ordinary income by the New Entity or Acquiring over a period of six taxable years beginning in the year of the Taxable Transfer. The New Entity or Acquiring must include as ordinary income the entire amount remaining to be recaptured under the preceding sentence in the taxable year in which an event occurs that would accelerate inclusion of an adjustment under section 481.

(iv) *Certain post-transfer adjustments*—(A) *Agency Obligations.* If an adjustment to the principal amount of an Agency Obligation or cash payment to reflect a more accurate determination of the condition of the Institution at the time of the Taxable Transfer is made before the earlier of the date the New Entity or Acquiring files its first post-transfer income tax return or the due date of that return (including extensions), the New Entity or Acquiring must adjust its basis in its acquired assets to reflect the adjustment. In making adjustments to the New Entity's or Acquiring's basis in its acquired assets, paragraph (c)(3)(ii) of this section is applied by treating an adjustment to the principal amount of an Agency Obligation pursuant to the first sentence of this paragraph (d)(2)(iv)(A) as occurring immediately before the Taxable Transfer. (See § 1.597–3(c)(3) for rules regarding other adjustments to the principal amount of an Agency Obligation.)

(B) *Assets covered by a Loss Guarantee.* If, immediately after a Taxable Transfer, an asset is not covered by a Loss Guarantee but the New Entity or Acquiring has the right to designate specific assets that will be covered by a Loss Guarantee, the New Entity or Acquiring must treat any asset so designated as having been subject to the Loss Guarantee at the time of the Taxable Transfer. The New Entity or Acquiring must adjust its basis in the covered assets and in its other acquired assets to reflect the designation in the manner provided by paragraph (d)(2) of this section. The New Entity or Acquiring must make appropriate adjustments in subsequent taxable years if the designation is made after the New Entity or Acquiring files its first post-transfer income tax return or the due date of that return (including extensions) has passed.

(e) *Special rules applicable to Taxable Transfers that are deemed asset acquisitions*—(1) *Taxpayer identification numbers.* Except as provided in paragraph (e)(3) of this section, a New Entity succeeds to the TIN of the transferor in a deemed sale under paragraph (b) of this section.

(2) *Consolidated Subsidiaries*—(i) *In general.* A Consolidated Subsidiary that is treated as selling its assets in a Taxable Transfer under paragraph (b) of this section is treated as engaging immediately thereafter in a complete liquidation to which section 332 applies. The consolidated group of which the Consolidated Subsidiary is a member does not take into account gain or loss on the sale, exchange, or cancellation of stock of the Consolidated Subsidiary in connection with the Taxable Transfer.

(ii) *Certain minority shareholders.* Shareholders of the Consolidated Subsidiary that are not members of the consolidated group that includes the Institution do not recognize gain or loss with respect to shares of Consolidated Subsidiary stock retained by the shareholder. The shareholder's basis for that stock is not affected by the Taxable Transfer.

(3) *Bridge Banks and Residual Entities*—(i) *In general.* A Bridge Bank or Residual Entity's sale of assets to a New Entity under paragraph (b) of this section is treated as made by a single entity under § 1.597–4(e). The New Entity deemed to acquire the assets of a Residual Entity under paragraph (b) of this section is not treated as a single entity with the Bridge Bank (or with the New Entity acquiring the Bridge Bank's assets) and must obtain a new TIN.

(ii) *Treatment of consolidated groups.* At the time of a Taxable Transfer described in paragraph (a)(1)(ii) of this section, treatment of a Bridge Bank as a subsidiary member of a consolidated group under § 1.597–4(f)(1) ceases. However, the New Entity deemed to acquire the assets of a Residual Entity is a member of the selling consolidated group after the deemed sale. The group's basis or excess loss account in the stock of the New Entity that is deemed to acquire the assets of the Residual Entity is the group's basis or excess loss account in the stock of the Bridge Bank immediately before the deemed sale, as adjusted for the results of the sale.

(4) *Certain returns.* If an Old Entity without Continuing Equity is not a subsidiary of a consolidated group at the time of the Taxable Transfer, the controlling Agency must file all income tax returns for the Old Entity for periods ending on or prior to the date of the deemed sale described in paragraph (b) of this section that are not filed as of that date.

(5) *Basis limited to fair market value.* If all of the stock of the corporation is not acquired on the date of the Taxable Transfer, the Commissioner may make appropriate adjustments under paragraphs (c) and (d) of this section to the extent using a grossed-up basis of the stock of a corporation results in an aggregate amount realized for, or basis in, the assets other than the aggregate fair market value of the assets.

(f) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Branch sale resulting in Taxable Transfer. (i) Institution M is a calendar year taxpayer in Agency receivership. M is not a member of a consolidated group. On January 1, 1997, M has $200 million of liabilities (including deposit liabilities) and assets with an adjusted basis of $100 million. M has no income or loss for 1997 and, except as described below, receives no FFA. On September 30, 1997, Agency causes M to transfer six branches (with assets having an adjusted basis of $1 million) together with $120 million of deposit liabilities to N. In connection with the transfer, Agency provides $121 million in cash to N.

(ii) The transaction is a Taxable Transfer in which M receives $121 million of Net Worth Assistance. Section 1.597–5(a)(1). (M is treated as directly receiving the $121 million of Net Worth Assistance immediately before the Taxable Transfer. Section 1.597–5(c)(1).) M transfers branches having a basis of $1 million and is treated as transferring $121 million in cash (the Net Worth Assistance) to N in exchange for N's assumption of $120 million of liabilities. Thus, M realizes a loss of $2 million on the transfer. The amount of the FFA M must include in its income in 1997 is limited by § 1.597–2(c) to $102 million, which is the sum of the $100 million excess of M's liabilities ($200 million) over the total adjusted basis of its assets ($100 million) at the beginning of 1997, plus the $2 million excess for the taxable year, which results from the Taxable Transfer, of M's deductions (other than carryovers) over its gross income other than FFA. M must establish a deferred FFA account for the remaining $19 million of FFA. Section 1.597–2(c)(4).

(iii) N, as Acquiring, must allocate its $120 million purchase price for the assets acquired from M among those assets. Cash is a Class I asset. The branch assets are in Classes III and IV. N's adjusted basis in the cash is its amount, i.e., $121 million. Section 1.597–5(d)(2). Because this amount exceeds N's purchase price for all of the acquired assets by $1 million, N allocates no basis to the other acquired assets and, under § 1.597–5(d)(2), must recapture the $1 million excess at an annual rate of $166,667 in the six consecutive taxable years beginning with

1997 (subject to acceleration for certain events).

Example 2. Stock issuance by Bridge Bank causing Taxable Transfer. (i) On April 1, 1996, Institution P is placed in receivership and caused to transfer assets and liabilities to Bridge Bank PB. On August 31, 1996, the assets of PB consist of $20 million in cash, loans outstanding with an adjusted basis of $50 million and a fair market value of $40 million, and other non-financial assets (primarily branch assets and equipment) with an adjusted basis of $5 million. PB has deposit liabilities of $95 million and other liabilities of $5 million. P, the Residual Entity, holds real estate with an adjusted basis of $10 million and claims in litigation having a zero basis. P retains no deposit liabilities and has no other liabilities (except its liability to Agency for having caused its deposit liabilities to be satisfied).

(ii) On September 1, 1996, Agency causes PB to issue 100 percent of its common stock for $2 million cash to X. On the same day, Agency issues a $25 million note to PB. The note bears a fixed rate of interest in excess of the applicable federal rate in effect for September 1, 1996. Agency provides Loss Guarantees guaranteeing PB a value of $50 million for PB's loans outstanding.

(iii) The stock issuance is a Taxable Transfer in which PB is treated as selling all of its assets to a new corporation, New PB. Section 1.597–5(b)(1). PB is treated as directly receiving $25 million of Net Worth Assistance (the issue price of the Agency Obligation) immediately before the Taxable Transfer. Section 1.597–3(c)(2); § 1.597-5(c)(1). The amount of FFA PB must include in income is determined under § 1.597–2(a) and (c). PB in turn is deemed to transfer the note to New PB in the Taxable Transfer, together with $20 million of cash, all its loans outstanding (with a basis of $50 million) and its other non-financial assets (with a basis of $5 million). The amount realized by PB from the sale is $100 million, the amount of PB's liabilities deemed to be assumed by New PB. This amount realized equals PB's basis in its assets and thus, PB realizes no gain or loss on the transfer to New PB.

(iv) Residual Entity P also is treated as selling all its assets (consisting of real estate and claims in litigation) for $0 (the amount of consideration received by P) to a new corporation (New P) in a Taxable Transfer. Section 1.597–5(b)(3). (P's only liability is to Agency and a liability to Agency is not treated as a debt under § 1.597–3(b).) Thus, P realizes a $10 million loss on the transfer to New P. The combined return filed by PB and P for 1996 will reflect a total loss on the Taxable Transfer of $10 million ($0 for PB and $10 million for P). Section 1.597–5(e)(3). That return also will reflect FFA income from the Net Worth Assistance, determined under § 1.597–2 (a) and (c).

(v) New PB is treated as having acquired the assets it acquired from PB for $100 million, the amount of liabilities assumed. In allocating basis among these assets, New PB treats the Agency note and the loans outstanding (which are covered by Loss Guarantees) as Class II assets. For the purpose of allocating basis, the fair market value of the Agency note is deemed to equal its adjusted issue price immediately before the transfer, $25 million. The fair market value of the loans is deemed not to be less than the guaranteed value of $50 million.

(vi) New P is treated as having acquired its assets for no consideration. Thus its basis in its assets immediately after the transfer is zero. New PB and New P are not treated as a single entity. Section 1.597–5(e)(3).

Example 3. Taxable Transfer of previously disaffiliated Institution. (i) Corporation X, the common parent of a consolidated group, owns all the stock of Institution M, an insolvent Institution with no Consolidated Subsidiaries. On April 30, 1996, M has $4 million of deposit liabilities, $1 million of other liabilities, and assets with an adjusted basis of $4 million and a fair market value of $3 million. On May 1, 1996, Agency places M in receivership. X elects under § 1.597–4(g) to disaffiliate M. Accordingly, as of May 1, 1996, new corporation M is not a member of the X consolidated group. On May 1, 1996, Agency causes M to transfer all of its assets and liabilities to Bridge Bank MB. Under § 1.597–4(e), MB and M are thereafter treated as a single entity which has $5 million of liabilities, an account receivable for future FFA with a basis of $1 million, and other assets with a basis of $4 million. Section 1.597–4(g)(4).

(ii) During May 1996, MB earns $25,000 of interest income and accrues $20,000 of interest expense on depositor accounts and there is no net change in deposits other than the additional $20,000 of interest expense accrued on depositor accounts. MB pays $5,000 of wage expenses and has no other items of income or expense.

(iii) On June 1, 1996, Agency causes MB to issue 100 percent of its stock to corporation Y. In connection with the stock issuance, Agency provides an Agency Obligation for $2 million and no other FFA.

(iv) The stock issuance results in a Taxable Transfer. Section 1.597–5(b). MB is treated as receiving the Agency Obligation immediately prior to the Taxable Transfer. Section 1.597–5(c)(1). MB has $1 million of basis in its account receivable for FFA. This receivable is treated as satisfied, offsetting $1 million of the $2 million of FFA provided by Agency in connection with the Taxable Transfer. The status of the remaining $1 million of FFA as includible income is determined as of the end of the taxable year under § 1.597–2(c). However, under § 1.597–2(b), MB obtains a $2 million basis in the Agency Obligation received as FFA.

(v) Under § 1.597–5(c)(2), in the Taxable Transfer, Old Entity MB is treated as selling, to New Entity MB, all of Old Entity MB's assets, having a basis of $6,020,000 (the original $4 million of asset basis as of April 30, 1996, plus $20,000 net cash from May 1996 activities, plus $2 million in the Agency Obligation received as FFA), for $5,020,000, the amount of Old Entity MB's liabilities assumed by New Entity MB pursuant to the Taxable Transfer. Therefore, Old Entity MB recognizes, in the aggregate, a loss of $1 million from the Taxable Transfer.

(vi) Because this $1 million loss causes Old Entity MB's deductions to exceed its gross income (determined without regard to FFA) by $1 million, Old Entity MB must include in its income the $1 million of FFA not offset by the FFA receivable. Section 1.597–2(c). (As of May 1, 1996, Old Entity MB's liabilities ($5,000,000) did not exceed MB's $5 million adjusted basis of its assets. For the taxable year, MB's deductions of $1,025,000 ($1,000,000 loss from the Taxable Transfer, $20,000 interest expense and $5,000 of wage expense) exceeded its gross income (disregarding FFA) of $25,000 (interest income) by $1,000,000. Thus, under § 1.597–2(c), MB includes in income the entire $1,000,000 of FFA not offset by the FFA receivable.)

(vii) Therefore, Old Entity MB's taxable income for the taxable year ending on the date of the Taxable Transfer is $0.

(viii) Residual Entity M is also deemed to engage in a deemed sale of its assets to New Entity M under § 1.597–5(b)(3), but there are no tax consequences as M has no assets or liabilities at the time of the deemed sale.

(ix) Under § 1.597–5(d)(1), New Entity MB is treated as purchasing Old Entity MB's assets for $5,020,000, the amount of New Entity MB's liabilities. Of this, $2,000,000 is allocated to the $2 million Agency Obligation, and $3,020,000 is allocated to the other assets New Entity MB is treated as purchasing in the Taxable Transfer.

Example 4. Loss Sharing. Institution N acquires assets and assumes liabilities of another Institution in a Taxable Transfer. Among the assets transferred are three parcels of real estate. In the hands of the transferring Institution, these assets had book values of $100,000 each. In connection with the Taxable Transfer, Agency agrees to reimburse Institution N for 80 percent of any loss (based on the original book value) realized on the disposition or charge-off of the three properties. This arrangement constitutes a Loss Guarantee. Thus, in allocating basis, Institution N treats the three parcels as Class II assets. By virtue of the arrangement with the Agency, Institution N is assured that the parcels will not be worth less to it than $80,000 each, because even if the properties are worthless, Agency will reimburse 80 percent of the loss. Although Institution could obtain payments under the Loss Guarantee if the properties are worth more, it is not guaranteed that it will realize more than $80,000. Accordingly, $80,000 is the highest guaranteed value of the three parcels. Institution N will allocate basis to the Class II assets up to their fair market value. For this purpose, the fair market value of the three parcels is not less than $80,000 each. Section 1.597–5(d)(2)(ii); § 1.597–5(c)(3)(ii).

§ 1.597–6 Limitation on collection of income tax.

(a) *Limitation on collection where tax is borne by Agency.* If an Institution without Continuing Equity (or any of its Consolidated Subsidiaries) is liable for income tax that is attributable to the inclusion in income of FFA or gain from a Taxable Transfer, the tax will not be collected if it would be borne by Agency. The final determination of whether the tax would be borne by

Agency is within the sole discretion of the Commissioner. In determining whether tax would be borne by Agency, the Commissioner will disregard indemnity, tax-sharing, or similar obligations of Agency, an Institution, or its Consolidated Subsidiaries. Collection of the several income tax liability under § 1.1502–6 from members of an Institution's consolidated group other than the Institution or its Consolidated Subsidiaries is not affected by this section. Income tax will continue to be subject to collection except as specifically limited in this section. This section does not apply to taxes other than income taxes.

(b) *Amount of tax attributable to FFA or gain on a Taxable Transfer.* For purposes of paragraph (a) of this section, the amount of income tax in a taxable year attributable to the inclusion of FFA or gain from a Taxable Transfer in the income of an Institution (or a Consolidated Subsidiary) is the excess of the actual income tax liability of the Institution (or the consolidated group in which the Institution is a member); over the income tax liability of the Institution (or the consolidated group in which the Institution is a member) determined without regard to FFA or gain or loss on the Taxable Transfer.

(c) *Reporting of uncollected tax.* A taxpayer must specify on the front page of Form 1120 (U.S. Corporate Income Tax Return), to the left of the space provided for ''Total Tax,'' the amount of income tax for the taxable year that is potentially not subject to collection under this section. If an Institution is a subsidiary member of a consolidated group, the amount specified as not subject to collection is zero.

(d) *Assessments of tax to offset refunds.* Income tax that is not collected under this section will be assessed and, thus, used to offset any claim for refund made by or on behalf of the Institution, the Consolidated Subsidiary or any other corporation with several liability for the tax.

(e) *Collection of taxes from Acquiring or a New Entity*—(1) *Acquiring.* No income tax liability (including the several liability for taxes under § 1.1502–6) of a transferor in a Taxable Transfer will be collected from Acquiring.

(2) *New Entity.* Income tax liability (including the several liability for taxes under § 1.1502–6) of a transferor in a Taxable Transfer will be collected from a New Entity only if stock that was outstanding in the Old Entity remains outstanding as stock in the New Entity or is reacquired or exchanged for consideration.

(f) *Effect on section 7507.* This section supersedes the application of section 7507, and the regulations thereunder, for the assessment and collection of income tax attributable to FFA.

§ 1.597–7 Effective date.

(a) *FIRREA effective date.* Section 597, as amended by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, is generally effective for any FFA received or accrued by an Institution on or after May 10, 1989, and for any transaction in connection with which such FFA is provided, unless the FFA is provided in connection with an acquisition occurring prior to May 10, 1989. See § 1.597–8 for rules regarding FFA received or accrued on or after May 10, 1989, that relates to an acquisition that occurred before May 10, 1989.

(b) *Effective date of regulations.* Except as otherwise provided in this section, §§ 1.597–1 through 1.597–6 apply to taxable years ending on or after April 22, 1992. However, the provisions of §§ 1.597–1 through 1.597–6 do not apply to FFA received or accrued for taxable years ending on or after April 22, 1992, in connection with an Agency assisted acquisition within the meaning of Notice 89–102 (1989–2 C.B. 436; see § 601.601(d)(2)) (which does not include a transfer to a Bridge Bank), that occurs before April 22, 1992. Taxpayers not subject to §§ 1.597–1 through 1.597–6 must comply with an interpretation of the statute that is reasonable in light of the legislative history and applicable administrative pronouncements. For this purpose, the rules contained in Notice 89–102 apply to the extent provided in the Notice.

(c) *Elective application to prior years and transactions*—(1) *In general.* Except as limited in this paragraph (c), an election is available to apply §§ 1.597–1 through 1.597–6 to taxable years prior to the general effective date of these regulations. A consolidated group may elect to apply §§ 1.597–1 through 1.597–6 for all members of the group in all taxable years to which section 597, as amended by FIRREA, applies. The common parent makes the election for the group. An entity that is not a member of a consolidated group may elect to apply §§ 1.597–1 through 1.597–6 to all taxable years to which section 597, as amended by FIRREA, applies for which it is not a member of a consolidated group. The election is irrevocable.

(2) *Election unavailable in certain cases*—(i) *Statute of limitations closed.* The election cannot be made if the period for assessment and collection of tax has expired under the rules of section 6501 for any taxable year in which §§ 1.597–1 through 1.597–6 would affect the determination of the electing entity's or group's income, deductions, gain, loss, basis, or other items.

(ii) *No section 338 election under Notice 89–102.* The election cannot be made with respect to an Institution if, under Notice 89–102, it was a Target with respect to which a qualified stock purchase was made, a timely election under section 338 was not made, and on April 22, 1992, a timely election under section 338 could not be made.

(iii) *Inconsistent treatment of Institution that would be New Entity.* If, under § 1.597–5(b), an Institution would become a New Entity before April 22, 1992, the election cannot be made with respect to that Institution unless elections are made by all relevant persons such that §§ 1.597–1 through 1.597–6 apply both before and after the deemed sale under § 1.597–5. However, this requirement does not apply if, under §§ 1.597–1 through 1.597–6, the Institution would not have Continuing Equity prior to the deemed sale.

(3) *Expense reimbursements.* Notice 89–102, 1989–2 C.B. 436, provides that reimbursements paid or accrued pursuant to an expense reimbursement or indemnity arrangement are not included in income but the taxpayer may not deduct, or otherwise take into account, the item of cost or expense to which the reimbursement or indemnity payment relates. With respect to an Agency assisted acquisition within the meaning of Notice 89–102 that occurs before April 22, 1992, a taxpayer that elects to apply these regulations retroactively under this paragraph (c) may continue to account for these items under the rules of Notice 89–102.

(4) *Procedural rules*—(i) *Manner of making election.* An Institution or consolidated group makes the election provided by this paragraph (c) by attaching a written statement to, and including it as a part of, the taxpayer's or consolidated group's first annual income tax return filed on or after March 15, 1996. The statement must contain the following legend at the top of the page: ''THIS IS AN ELECTION UNDER § 1.597–7(c),'' and must contain the name, address and employer identification number of the taxpayer or common parent making the election. The statement must include a declaration that ''TAXPAYER AGREES TO EXTEND THE STATUTE OF LIMITATIONS ON ASSESSMENT FOR THREE YEARS FROM THE DATE OF THE FILING OF THIS ELECTION UNDER § 1.597–7(c), IF THE

LIMITATIONS PERIOD WOULD EXPIRE EARLIER WITHOUT SUCH EXTENSION, FOR ANY ITEMS AFFECTED IN ANY TAXABLE YEAR BY THE FILING OF THIS ELECTION,'' and a declaration that either ''AMENDED RETURNS WILL BE FILED FOR ALL TAXABLE YEARS AFFECTED BY THE FILING OF THIS ELECTION WITHIN 180 DAYS OF MAKING THIS STATEMENT, UNLESS SUCH REQUIREMENT IS WAIVED IN WRITING BY THE DISTRICT DIRECTOR OR HIS DELEGATE'' or ''ALL RETURNS PREVIOUSLY FILED ARE CONSISTENT WITH THE PROVISIONS OF §§ 1.597–1 THROUGH 1.597–6,'' and be signed by an individual who is authorized to make the election under this paragraph (c) on behalf of the taxpayer. An election with respect to a consolidated group must be made by the common parent of the group, not Agency, and applies to all members of the group.

(ii) *Effect of elective disaffiliation.* To make the affirmative election described in § 1.597–4(g)(5) for an Institution placed in Agency receivership in a taxable year ending before April 22, 1992, the consolidated group must send the affected Institution the statement described in § 1.597–4(g)(5) on or before May 31, 1996. Notwithstanding the requirements of paragraph (c)(4)(i) of this section, a consolidated group sending such a statement is deemed to make the election described in, and to agree to the conditions contained in, this paragraph (c). The consolidated group must nevertheless attach the statement described in paragraph (c)(4)(i) of this section to its first annual income tax return filed on or after March 15, 1996.

(d) *Reliance on prior guidance*—(1) *Notice 89–102.* Taxpayers may rely on Notice 89–102, 1989–2 C.B. 436, to the extent they acted in reliance on that Notice prior to April 22, 1992. Such reliance must be reasonable and transactions with respect to which taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history.

(2) *Notice FI–46–89*—(i) *In general.* Notice FI–46–89 was published in the Federal Register on April 23, 1992 (57 FR 14804). Taxpayers may rely on the provisions of §§ 1.597–1 through 1.597–6 of that notice to the extent they acted in reliance on those provisions prior to December 21, 1995. Such reliance must be reasonable and transactions with respect to which taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history, as well as the overriding policies of notice FI–46–89.

(ii) *Taxable Transfers.* Any taxpayer described in this paragraph (d) that, under notice FI–46–89, would be a New Entity or Acquiring with respect to a Taxable Transfer on or after April 22, 1992, and before December 21, 1995, may apply the rules of that notice with respect to such transaction.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

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

Section 301.7507–1 also issued under 26 U.S.C. 597.

Section 301.7507–9 also issued under 26 U.S.C. 597. * * *

Par. 4. Section 301.7507–1 is amended by adding paragraph (b)(4) to read as follows:

§ 301.7507–1 Banks and trust companies covered.

* * * * *

(b) * * *

(4) The term *ceased to do business* means the bank no longer accepts deposits or makes loans and discounts, and is winding up its affairs and is in the process of liquidating its assets to pay depositors. A bank will not be considered to have ceased to do business on account of a transaction in which the bank—

(i) Transfers assets and liabilities to a Bridge Bank in a transfer described in § 1.597–4 of this chapter;

(ii) Transfers assets and liabilities to any person in a transaction to which section 381(a) applies or in which the transferee receives property with a transferred basis;

(iii) Transfers assets or liabilities to any person in a transaction in which Federal Financial Assistance (as defined in section 597) is provided to any party to the transaction, unless all the Federal Financial Assistance is deposit insurance under § 301.7507–9(d); or

(iv) Transfers assets or liabilities to any person in a transaction similar to any transaction described in paragraphs (b)(4) (i) through (iii) of this section. This paragraph (b)(4) applies to taxable years ending on or after April 22, 1992.

Par. 5. Section 301.7507–9 is amended by adding a sentence to the end of paragraph (d) to read as follows:

§ 301.7507–9 Termination of immunity.

* * * * *

(d) * * * For taxable years ending on or after April 22, 1992, deposit insurance does not include Federal Financial Assistance (as defined in section 597) and other payments described in section 597(a) prior to its amendment by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and, therefore, such payments must be taken into account to determine whether a bank's assets are sufficient to meet claims of depositors.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.597–2	1545–1300
1.597–4	1545–1300
1.597–6	1545–1300
1.597–7	1545–1300
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 4, 1995.

Cynthia G. Beerbower,
Assistant Secretary of the Treasury

[FR Doc. 95–30827 Filed 12–20–95; 8:45 am]
BILLING CODE 4830–01–U

26 CFR Parts 1, 31, 35a, 301, and 602

[TD 8637]

RIN 1545–AT76

Backup Withholding, Statement Mailing Requirements, and Due Diligence

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document provides final rules on backup withholding under sections 3406(a)(1) (A), (C), and (D) of the Internal Revenue Code of 1986 (Code) when a payee fails to provide a taxpayer identification number in the required manner to a person required to make an information return, when a payee is subject to notified payee

underreporting, or when a payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting.

This document also provides final rules on the manner for providing a statement to a payee under sections 6042(c), 6044(e), 6049(c), and 6050N(b) of the Code.

This document also contains temporary regulations on the effective date of §§ 35a.9999–1 through 35a.9999–5, Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

DATES: These regulations are effective December 21, 1995. These regulations are applicable to transactions occurring after December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of Assistant Chief Counsel (Income Tax and Accounting) with respect to domestic transactions, 202–622–4910 (not a toll-free number); and Teresa Burridge Hughes of the Office of Assistant Chief Counsel (International) with respect to international transactions, 202–622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–0112. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper is approximately 1 hour, depending on individual circumstances.

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

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On October 4, 1983, the Federal Register published Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR part 35a) under sections 3406 and 6676(b) of the Internal Revenue Code of 1954 (26 CFR part 35a.9999–1; TD 7916 (48 FR 45362), as amended on November 25, 1983, by TD 7922 (48 FR 53111), on November 23, 1987, by TD 8163 (52 FR 44861), and on April 11, 1989, by TD 8248 (54 FR 14341). Additional temporary regulations were published in the Federal Register on November 25, 1983 (26 CFR part 35a.9999–2; TD 7922 (48 FR 53106), as amended on December 20, 1983, by TD 7929 (48 FR 56342), on March 13, 1984, by TD 7922 (49 FR 9417), on November 23, 1987, by TD 8163, and on April 11, 1989, by TD 8248 (54 FR 14341)), on December 20, 1983 (26 CFR part 35a.9999–3; TD 7929 (48 FR 56332), as amended on January 3, 1984, by TD 7933 (49 FR 63), on August 22, 1984, by TD 7966 (49 FR 33236), on November 23, 1987, by TD 8163 (52 FR 44861), and on April 11, 1989, by TD 8248 (54 FR 14341)), on February 28, 1984 (26 CFR part 35a.9999–3A; TD 7946 (49 FR 7227)), on August 22, 1984 (26 CFR part 35a.9999–4T, TD 7966 (49 FR 33237), as amended on August 29, 1984, by TD 7972 (49 FR 34340); and 26 CFR part 35a.9999–5, TD 7967 (49 FR 33240), as amended on September 19, 1984, by TD 7973 (49 FR 36645), on August 20, 1985, by TD 8046 (50 FR 33526), on April 3, 1986, by TD 8046 (51 FR 11447), on December 19, 1986, by TD 8110 (51 FR 45453), and on May 19, 1988, by TD 8202 (53 FR 17927)), on April 23, 1987 (26 CFR part 35a.3406–2; TD 8137 (52 FR 13430)), and on November 23, 1987 (26 CFR part 35a.3406–1; TD 8163 (52 FR 44861), as amended on April 11, 1989, by TD 8248 (54 FR 14341)). Those regulations were published primarily to provide guidance under the Interest and Dividend Tax Compliance Act of 1983.

Proposed regulations on backup withholding, the statement mailing requirements, and due diligence were published in the Federal Register on September 27, 1990, 55 FR 39427. Those regulations were proposed under regulations file number IA–224–82 and RIN 1545–AE20, which numbers were closed in error. These final regulations are issued under regulations file number IA–31–95 and RIN 1545–AT76.

A public hearing on the proposed regulations was held on March 4, 1991. The public submitted written comments on the proposed regulations. After consideration of those comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. Overview

The proposed regulations contain rules on the requirement to backup withhold, which section 3406 imposes in four situations. First, backup withholding under section 3406(a)(1)(A) applies if a payee fails to provide a taxpayer identification number (TIN) in the required manner (the A trigger or certification). Second, backup withholding under section 3406(a)(1)(B) applies if the Service or a broker notifies a payor that a payee provided an incorrect TIN (the B trigger). Third, backup withholding under section 3406(a)(1)(C) applies if the Service or a broker notifies a payor that a payee is subject to notified payee underreporting, i.e., the payee has failed to report and pay tax on reportable interest and dividends (the C trigger). Fourth, backup withholding under section 3406(a)(1)(D) applies if a payee fails to certify, when required, that the payee is not subject to backup withholding under section 3406(a)(1)(C) (the D trigger).

Because the IRS published final regulations on the B trigger as a separate project (TD 8409) in 1992, the final regulations in this document address only the other three triggers, sections 3406(a)(1) (A), (C), and (D). The final regulations on these triggers considerably shorten as well as simplify the proposed regulations. In addition, the final regulations contain several modifications to the proposed regulations relating to grantor trusts, S corporations, reportable payments, and certain foreign provisions.

II. Changes Regarding Grantor Trusts, S Corporations, Reportable Payments, and Certain Foreign Provisions

A. *Grantor trusts—proposed § 31.3406(a)–2.* The proposed regulations provide that a grantor trust with ten or fewer grantors is not a payor under section 3406 and, as a result, has no obligation to withhold under section 3406 on reportable payments flowing through the trust and includible in the gross income of its grantors. However, a grantor trust with eleven or more grantors is a payor and must withhold

under section 3406 on reportable payments to its grantors who are subject to such withholding.

Recently, the IRS issued proposed regulations under section 671 on the methods of reporting by grantor trusts. These proposed regulations provide two regimes for reporting, one for a grantor trust that is owned (or treated as owned) by one grantor and another for a grantor trust that is owned by two or more grantors. To avoid confusion and thereby promote simplification, the final backup withholding regulations are conformed to these regimes. Accordingly, under these final regulations a grantor trust with two or more grantors is considered a payor and must withhold on payments to its grantors who are subject to backup withholding. For purposes of determining the number of grantors, a husband and wife filing a joint return are considered one grantor. See § 31.3406(a)–2(b)(4).

B. *S corporations—proposed § 31.3406(a)–2(c)(3).* Under an exception in the proposed regulations defining payors, a partnership making a payment of a distributive share to a partner is not considered a payor. The exception does not include S corporations. Because the tax treatment of both entities is similar, the final regulations provide that an S corporation making a similar distribution is not a payor under section 3406. See § 31.3406(a)–2(c)(3).

C. *Transferred short-term obligations—proposed § 31.3406(b)(2)–2.* The proposed regulations provide that a subsequent holder of a short-term obligation with original issue discount may establish the purchase price at which the subsequent holder purchased the obligation. That purchase price is then treated as the original issue price for purposes of computing the amount of original issue discount subject to backup withholding. To reduce the paperwork of issuers and payors of these obligations, the final regulations provide that a payor may disregard the subsequent holder's purchase price if the payor's computer or recordkeeping system is not able to accept that price without substantial manual intervention. See § 31.3406(b)(2)–2(c)(1)(ii).

D. *Foreign provisions.* The proposed regulations contained several provisions on international transactions that are not included in the final regulations. For those international provisions relating to section 3406, the temporary regulations under § 35a.9999 remain in effect.

III. The C Trigger (Payee Underreporting)

A. *Identifying the account subject to the C trigger—proposed § 31.3406(c)–1(b)(3) (i) and (iv).* The proposed regulations provide that a payor must withhold under section 3406(a)(1)(C) on reportable interest or dividend payments to all existing accounts of a payee that the payor can identify exercising reasonable care. Commentators suggested several modifications to or clarifications of the reasonable care standard. For example, some commentators suggested that the procedures for locating and identifying an account of a payee subject to the C trigger should more closely resemble the procedures for identifying an account subject to the B trigger. In response to this comment, the final regulations modify the procedures for identifying accounts subject to the C trigger, and thus require a payor to identify those accounts by identifying accounts with the same TIN as the one provided in the notice from the IRS to the payor that advises the payor to commence withholding on accounts of a payee.

Commentators also informed the IRS that some computer systems use a universal account number that retrieves all accounts of a payee with that payor. In light of this information, the final regulations require payors with such systems to identify all accounts that can be so retrieved.

Some commentators also addressed the requirement under the proposed regulations that a payor search for accounts of a payee on the computer or other recordkeeping system for the region, division, or branch that serves the geographic area in which the payee's mailing address is located. These commentators questioned whether payors must search every such computer or record system. The final regulations clarify that a payor need not search a computer or other recordkeeping system if it is highly unlikely that the system contains an account of the payee that should be identified as one subject to the C trigger. See § 31.3406(c)–1(c)(3)(ii).

B. *Newly opened accounts—proposed § 31.3406(c)–1(b)(3)(ii).* Under the proposed regulations, if a payee subject to the C trigger has one account with a payor and subsequently opens another account, the payor may not rely on the subsequent Form W–9 on which the payee certifies that the payee is not subject to the C trigger, but only if the payor discovers while processing the Form W–9 or administering the account that the Form W–9 is false because the IRS previously notified the payor to withhold on the payee under the C trigger. Commentators argued that this discovery standard was unclear and potentially burdensome. As a result, the final regulations clarify when a payor may not rely on a Form W–9 provided by the payee.

Under the final regulations, a payor has knowledge that a payee opening a new account with the payor is subject to withholding under section 3406(a)(1)(C), and thus must commence backup withholding on reportable interest and dividend payments to the new account, only if (1) the employee or individual agent of the payor receiving the Form W–9 knows at the time the payee opens the account that the payee's statement under section 3406(a)(1)(D) is not true; (2) at the time the payor processes the Form W–9 or in administering the account to which it relates, the payor discovers that the payee is currently subject to withholding under section 3406(a)(1)(C) on a pre-existing account with the payor; (3) the payor uses a single Form W–9 for multiple accounts of the payee; or (4) the payor uses a universal identifier to associate all of the payee's accounts with the payor and other accounts under that universal identifier have been identified as subject to withholding under section 3406(a)(1)(C). See § 31.3406(c)–1(c)(3)(iii).

C. *Including certain dates in the notice that the payor must send to a payee—proposed § 31.3406(c)–1(c)(2) (ii) and (iii).* A commentator objected to the proposed rule requiring a payor to include the following dates in the notice informing a payee that backup withholding for the C trigger has begun or will begin: (1) the last date before the payor must commence backup withholding, and (2) the date the payor received the notice from the IRS. The significant date for the payee is the date backup withholding begins on the payee's account. Therefore, to ease payors' administrative costs, the final regulations require the payor to include only the date the payor started (or plans to start) backup withholding in the notice to the payee. See § 31.3406(c)–1(d)(2)(iii).

D. *Monitoring accounts subject to withholding—proposed § 31.3406(c)–1(e).* Commentators asked the IRS to address how long a payor must monitor an account identified as one subject to the C trigger, if that account later becomes dormant. The final regulations provide that a payor is not required to backup withhold on dormant accounts. In this connection, backup withholding terminates no later than the close of the third calendar year ending after the later

of (1) the date that the payor pays the last reportable payment to that account, or (2) the date that the payor received a notice from the IRS to impose the C trigger on that account. See § 31.3406(c)–1(e)(3).

IV. Special Rules for Acquiring Accounts (Including a Readily Tradable Instrument) or Selling a Readily Tradable Instrument

A. *By electronic transmission—proposed § 31.3406(d)–3.* A payee can acquire by electronic transmission an account or an instrument that earns reportable interest or dividends. Under the proposed regulations the payor, at its option, may permit a payee to furnish the certifications relating to the A and D triggers within 30 days after the establishment or acquisition of the account or the instrument (30-day period) by electronic transmission, provided that the payee furnishes the payee's TIN at the time of the establishment or the acquisition. However, if the payee makes any withdrawal within the 30-day period and before the payor receives the payee's certifications, the payor must withhold to the extent of any reportable interest or dividends paid to the payee during the 30-day period and at the time of withdrawal.

The proposed regulations provide comparable rules for the sale of a readily tradable instrument by electronic transmission. In this context, the payee is permitted to withdraw (or reinvest) up to 69 percent of the gross proceeds from the sale during the relevant 30-day period.

Commentators requested that backup withholding be applied in the same manner whether the electronic transmission involves the establishment or acquisition of an account or a readily tradable instrument or the sale of a readily tradable instrument. In response to this comment, the final regulations provide that backup withholding applies if the payee withdraws more than 69 percent of the reportable interest or dividends paid to the payee during the relevant 30-day period and at the time of withdrawal, but only if the payor has not received the payee's certifications relating to the A and D triggers at the time of the withdrawal. See § 31.3406(d)–3(a).

B. *By mail—proposed § 31.3406(d)–3(a)(1).* The proposed regulations provide that a payee may provide the certifications relating to the A and D triggers within 30 days after a payee establishes or acquires a readily tradable instrument by mail before January 1, 1985, provided the payee furnishes the payee's TIN upon the establishment or acquisition. The proposed regulations do not provide a similar rule for the sale of a readily tradable instrument by mail.

To simplify the procedures for entering into investments which do not occur in person, the final regulations provide a 30-day rule for the establishment or acquisition of an account or readily tradable instrument by mail and extend the 30-day rule to the sale of a readily tradable instrument by mail. Under the final regulations, if the payee furnishes the payee's TIN before the transaction, backup withholding applies during the 30-day period only if the payee withdraws more than 69 percent of the reportable payment and if the payor has not received the payee's certifications relating to the A or D triggers, whichever applies, at the time of the withdrawal. See § 31.3406(d)–3(a).

V. Section 3406 Confidentiality Issues—Proposed § 31.3406(f)–1(a)

Section 3406(f) provides that a payor may not use information obtained under section 3406 except for meeting a requirement of that section. Commentators requested clarification on what actions a payor or broker may take, consistent with section 3406(f), in response to a payee's failure to provide the payee's TIN under section 3406(a)(1)(A). The final regulations provide that a payor who closes an account at or before the end of a calendar year in which the payee opens the account without providing the payee's TIN or documentation of foreign status, as required, during that year will not, in the absence of evidence to the contrary, be deemed in violation of section 3406(f).

Another commentator inquired whether prohibiting a payee from withdrawing funds from the payee's account is a violation of section 3406(f). The final regulations clarify that refusing to allow a payee to withdraw funds from the payee's account solely because the payee has not furnished a TIN violates section 3406(f). See § 31.3406(f)–1(b)(1).

VI. Exemptions From Backup Withholding.

A. *Interaction of information reporting and backup withholding exemptions—proposed § 31.3406(g)–1(a).* Several commentators questioned the interaction between the rules exempting payees from information reporting and those exempting payees from backup withholding. The class of recipients exempt from information reporting is larger than the class exempt from backup withholding. The final regulations clarify that the list of the payees that are specifically exempt from backup withholding is not exclusive and that other payees that are exempt from information reporting also are exempt from backup withholding. See § 31.3406(g)–1(a)(2).

B. *Interest on certain life-insurance contracts—proposed § 31.3406(g)–1(a)(4).* Commentators requested that the temporary exemption from backup withholding for interest payments made before January 1, 1992, on ''advance premiums'', ''prepaid premiums'', or ''premium deposit funds'', on certain insurance policies be made permanent. The final regulations provide an extension through December 31, 1996.

C. *Payments reportable under section 6047—proposed § 31.3406(g)–2(c)(1) and (2).* Commentators noted that, contrary to the position set forth in the proposed regulations, backup withholding does not apply to designated distributions paid after December 31, 1984. The final regulations clarify that backup withholding does not apply to those payments. See § 31.3406(g)–2(d).

D. *Awaiting-TIN certificate—proposed § 31.3406(g)–3.* Commentators requested simplification of the backup withholding rules applicable to accounts for which a payor has received an awaiting-TIN certification. One suggestion was that backup withholding should not apply during the period (up to 60 days) that the payee is waiting for the payee's TIN if no more than 69 percent of the reportable payment is withdrawn during the 60-day period. The final regulations adopt this suggestion. Therefore, backup withholding is deferred during the 60-day period unless the payee makes a withdrawal (of more than $500 in one transaction) during that time or has failed to provide the certification relating to the D trigger. If the payee makes a withdrawal of more than $500 in one transaction during the 60-day period, backup withholding applies to the extent of any reportable interest or dividends made to the account during the 60-day period and at the time of withdrawal unless the payee reserves 31 percent of all reportable payments made to the account during that period. Payors may elect, however, to impose withholding during the 60-day period. See § 31.3406(g)–3(a)(2) and (3).

Commentators requested clarification of the interaction of the awaiting-TIN rules for post-1983 accounts or instruments and the obligation of the payee to provide the certification relating to the D trigger that the payee is not subject to backup withholding due to the C trigger. The final regulations clarify that in spite of the

awaiting-TIN certification, backup withholding applies under section 3406(a)(1)(D) during the 60-day period if the payee has not provided this certification to the payor. See § 31.3406(g)–3(a)(1).

A commentator asked whether the 60-day period refers to calendar or business days. Accordingly, the final regulations clarify that the term ''day'' means a calendar day. See §§ 31.3406(g)–3 and 31.3406(h)–1(e).

VII. Other Changes

A. *Identifying the person listed on a joint account as the one subject to withholding—proposed § 31.3406(h)–2(a).* Under the proposed regulations, a payor of a reportable payment to a joint account may treat the first person listed on the account (or on the instrument) as the payee subject to information reporting and backup withholding. The final regulations provide that the relevant payee is the one whose name and TIN combination the payor uses for information reporting purposes, whether or not that account or instrument registration lists that payee first. See § 31.3406(h)–2(a)(1).

B. *Backup withholding on payments made in property—proposed § 31.3406(h)–2(b).* Under the proposed regulations, a payor making a reportable payment in property subject to backup withholding must withhold on an amount equal to the fair market value of the property. The obligation to withhold occurs at the time the property is paid to the payee. Consequently, the payor must find an alternative source, such as another account of the payee, from which the payor can satisfy its backup withholding liability. Otherwise, the payor must continue to look for accounts of the payee to satisfy the payor's backup withholding liability. A commentator suggested that the final regulations add an ending date after which a payor no longer has to search for alternative sources from which to satisfy a backup withholding obligation arising from a payment in property. According to this commentator, the obligation should extinguish after a reasonable period of time. In response to this comment, the final regulations provide that a payor's obligation to backup withhold on property terminates on the earlier of the date sufficient cash is deposited to the account to fully satisfy the obligation or the close of the fourth calendar year after the obligation arose. See § 31.3406(h)–2(b)(2)(ii).

C. *Gross-up of payments by middlemen—proposed § 31.3406(h)–2(d).* Under the proposed regulations, a middleman is required to remit the full amount due a payee unless one of the requirements for imposing backup withholding exists at the time of payment. Thus, the middleman is required to remit the full amount even though an upstream payor erroneously withheld on that payment to the middleman. In that event, the middleman may recover the difference between the amount received and the amount paid to the payee, *i.e.*, 31 percent, by seeking a refund from the upstream payor or by taking an equivalent credit against the next required deposit of employment taxes. One commentator noted that the middleman payor incurs a loss in the time value of money measured from the time it pays the full amount due to the payee to the time the payor receives a refund or credit. Because of this, the commentator suggested that the regulations allow the middleman to remit only the net amount due its payee. This suggestion presents several problems. First, it requires a new reconciliation process to correlate the backup withholding reflected on the upstream payor's Form 945 with the backup withholding shown as withheld tax on the payee's income tax return. Second, the suggestion produces an anomalous result, namely, withholding occurs even though none of the statutory conditions requiring withholding exist. For these reasons the final regulations do not adopt this suggestion.

D. *Refund of amount erroneously subject to backup withholding—proposed § 31.6413(a)–3.* Under the proposed regulations, a payor must refund an amount previously withheld under the C trigger if the IRS instructs the payor to do so. This provision is also set forth in § 35a.9999–3 Q/A–38 of the Temporary Employment Tax Regulations issued under the Interest and Dividend Tax Compliance Act of 1983, as amended by TD 8248 (54 FR 18713) on May 2, 1989. One commentator suggested eliminating this refund provision. This rule was needed initially to allow refunds in certain cases where payees had interest or dividend income subject to backup withholding under the C trigger but had no income tax liability on this income. The IRS has subsequently enhanced its C withholding program to eliminate C notices to payors in such cases. Thus, the final regulations adopt the suggestion and delete the proposed rule. See § 31.6413(a)–3.

E. *Effective date.* The final regulations are effective for reportable payments made and transactions occurring after December 31, 1996, and, optionally, for reportable payments made and transactions occurring on or after December 21, 1995. See § 31.3406(i)–1.

F. *Coordination with the temporary regulations—§§ 35a.9999–1 through 35a.9999–5.* The temporary regulations issued under 26 CFR Part 35a are not effective for noninternational transactions occurring on and after the effective date of the final regulations. The temporary regulations, however, remain effective for the due diligence safe harbor and for international transactions, including transactions involving a foreign payee, a foreign payor, or a payment from sources without the United States.

G. *Statement mailing requirement—proposed §§ 1.6042–5, 1.6044–6, 1.6049–6, and 1.6050N–1.* These final regulations set forth rules on the manner in which a payor who is required to file an information return for dividends and corporate earnings and profits, patronage dividends, interest, and royalties under sections 6042(c), 6044(e), 6049(c), and 6050N(b), respectively, must provide a copy of that information return to the payee, i.e., payee statement mailing.

The proposed regulations limit the permissible nontax enclosures includible in a statement mailing. Several commentators requested that the inclusion of additional nontax enclosures be permitted. This suggestion was not adopted because the relevant legislative history indicates that Congress wanted to substantially restrict the nontax enclosures in a statement mailing.

H. *Correct identifying number for estates—proposed § 301.6109–1.* The final regulations clarify that the taxpayer identification number to be used to identify estates of decedents is the employer identification number (rather than a social security number).

Special Analyses

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

Drafting Information

The principal author of these regulations is Renay France of the Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

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

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

The amendments to 26 CFR parts 1, 31, 35a, 301, and 602 read as follows:

PART 1—INCOME TAXES

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

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

Section 1.6049–6 also issued under 6049(a), (b), and (d). * * *

Par. 2. Section 1.6042–4 is revised as follows:

§ 1.6042–4 Statements to recipients of dividend payments.

(a) *Requirement.* A person required to make an information return under section 6042(a)(1) and § 1.6042–2 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for dividend payments.

(b) *Form of the statement.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement that contains provisions that are substantially similar to those of the official Form 1099 for the respective calendar year. For further guidance on how to prepare an acceptable substitute statement, see Rev. Proc. 95–30 (1995–27 I.R.B. 9) (or its successor), republished as ''Rules and Specifications for Private Printing of Substitute Forms 1096, 1098, 1099 Series, 5498, and W–2G.'' See § 601.601(d)(2) of this chapter.

(c) *Aggregation of payments.* A payor may aggregate on one Form 1099 all payments made to a recipient with respect to each separate account during a calendar year.

(d) *Manner of providing statements to recipients*—(1) *In general.* The Form 1099, or acceptable substitute statement, must be provided to the recipient either in person or by first-class mail to the recipient's last known address in a statement mailing.

(2) *Statement mailing requirement.* The mailing required under section 6042(c) of a Form 1099 to a payee-recipient must qualify as a statement mailing. A statement mailing must contain the required Form 1099 or acceptable substitute statement (written statement) and must comply with enclosure and envelope restrictions.

(i) *Enclosure restrictions.* To qualify as a statement mailing, the mailing cannot contain any enclosures except those listed in this paragraph (d)(2)(i). Moreover, no promotional or advertising material is permitted in the mailing of the written statement. Even a *de minimis* amount of promotional or advertising material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on nontax enclosures described in paragraph (d)(2)(i) (A) through (D) of this section does not violate the written statement requirement. The written statement required under section 6042(c) and paragraph (a) of this section may be perforated to a check or to a statement of the recipient-payee's specific account with the payor described in paragraph (d)(2)(i) (A) or (C) of this section. The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: ''Important Tax Return Document Attached.'' The enclosures permitted in a mailing are limited to—

(A) A check with respect to the account reported on the written statement;

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a dividend has not been declared payable);

(C) A statement of the taxpayer-recipient's specific account with the payor if payments on such account are reflected on the written statement;

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement;

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W–2 and W–2G; and

(F) Any document concerning the solicitation of the Form W–9 or Form W–8.

(ii) *Envelope and delivery restrictions*—(A) *Envelope restrictions.* The outside of the envelope in which the written statement is mailed and each nontax enclosure enclosed in the envelope must contain, in a bold and conspicuous type, the legend: ''Important Tax Return Document Enclosed.'' For purposes of this paragraph (d)(2)(ii), a nontax enclosure is any item listed in paragraphs (d)(2)(i)(A) through (C) of this section. However, a payor is not required to include the legend on the outside of an envelope containing only the enclosures in paragraph (d)(2)(i)(D) through (F) of this section.

(B) *Delivery restrictions.* The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in paragraph (d)(2)(i) of this section by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (i.e., the Form 1099 or its acceptable substitute) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph (d), the payor is considered to have failed to mail the statement required under section 6042(c) and will be subject to the penalty under section 6722.

(e) *Time for furnishing statements*—(1) *In general.* Each statement required by section 6042(c) and this section to be furnished to any person for a calendar year must be furnished to such person after November 30 of the year and on or before January 31 (February 10 in the case of a nominee filing under § 1.6042–2(a)(1)(iii)) of the following year, but no statement may be furnished before the final dividend for the calendar year has been paid. However, the statement may be furnished at any time after April 30 if it is furnished with the final dividend for the calendar year.

(2) *Extensions of time.* For good cause upon written application of the person required to furnish statements under

this section, the Director, Martinsburg Computing Center, may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must be addressed to the Director, Martinsburg Computing Center, and must contain a full recital of the reasons for requesting the extension to aid the Director in determining the period of the extension, if any, that will be granted. Such a request in the form of a letter to the Director, Martinsburg Computing Center, signed by the applicant will suffice as an application. The application must be filed on or before the date prescribed in paragraph (e)(1) of this section.

(3) *Last day for furnishing statement.* For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see section 7503 and § 301.7503–1 of this chapter (Regulations on Procedure and Administration). (f) *Penalty.* For provisions relating to the penalty for the failure to furnish a statement under this section, see section 6722.

(g) *Effective date.* This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

Par. 3. Section 1.6044–5 is revised as follows:

§ 1.6044–5 Statements to recipients of patronage dividends.

(a) *Requirement.* A person required to make an information return under section 6044(a)(1) and § 1.6044–2 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for patronage dividends paid.

(b) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of an acceptable substitute statement permitted by this section. Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute to a recipient under this section. However, each Form 1099 or acceptable substitute statement required by this section must be furnished on or before January 31 of the following year, but no statement may be furnished before the final payment has been made for the calendar year.

(c) *Penalty.* For provisions relating to the penalty for the failure to furnish a statement under this section, see section 6722.

(d) *Effective date.* This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

Par. 4. Section 1.6049–6 is amended by:

1. Revising the section heading.

2. Removing the language ''section 3451'' and adding ''section 3406'' in each of the following locations:

a. Paragraph (a), second sentence.

b. Paragraph (a), third sentence.

c. Paragraph (a), fourth sentence.

3. Removing the language ''section 3451'' and adding ''section 3406'' in each of the following locations:

a. Paragraph (b)(1)(ii).

b. Paragraph (b)(2)(ii).

4. Adding paragraph (e).

5. Removing the authority citation at the end of the section.

The revision and additions read as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) *Statements to recipients*—(1) *Requirement.* A person required to make an information return under section 6049(a) and § 1.6049–4 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for interest or original issue discount paid or accrued.

(2) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (e)(1) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of an acceptable substitute statement permitted by this paragraph (e). Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute to a recipient under paragraph (e)(1) of this section. However, with respect to original issue discount, the Form 1099 or acceptable substitute statement required by paragraph (e)(1) of this section must show the aggregate amount of original issue discount includible in the gross income by the recipient for the calendar year with respect to the obligation (determined by applying the rules of § 1.6049–4(b)(2)), and the amount, serial number, or other identifying number of each obligation with respect to which a return is being made. With respect to interest or original issue discount, the Form 1099 or acceptable substitute statement required by paragraph (e)(1) of this section must be furnished to the recipient on or before January 31 of the year following the calendar year for which the return under section 6049(a)(1) was required to be made.

(3) *Penalty.* For provisions relating to the penalty for the failure to furnish a statement under this section, see section 6722.

(4) *Effective date.* This paragraph (e) is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

Par. 5. Section 1.6050N–1 is added to read as follows:

§ 1.6050N–1 Statements to recipients of royalties.

(a) *Requirement.* A person required to make an information return under section 6050N(a) must furnish a statement to each recipient whose name is required to be shown on the related information return for royalties paid.

(b) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042–4 (relating to statements with respect to dividends) apply comparably in determining the form of the acceptable substitute statement permitted by this section. Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute statement to a recipient under this section.

(c) *Penalty.* For provisions relating to the penalty for failure to furnish a

statement under this section, see section 6722.

(d) *Effective date.* This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84–70 (1984–2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

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

Par. 6. The authority for Part 31 is amended by removing the entry for § 31.3406(d)–5 and by adding an entry in numerical order to read as follows:

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

Sections 31.3406(a)–1 through 31.3406(i)–1 also issued under 26 U.S.C. 3406(i).

Par. 7. Section 31.3406–0 is revised to read as follows:

§ 31.3406–0 Outline of the backup withholding regulations.

This section lists paragraphs contained in §§ 31.3406(a)–1 through 31.3406(i)–1.

§ 31.3406(a)–1 Backup withholding requirement on reportable payments.

(a) Overview.
(b) Conditions that invoke the backup withholding requirement.
(1) Conditions applicable to all reportable payments.
(2) Conditions applicable only to reportable interest or dividend payments.
(c) Exceptions.
(d) Cross references.

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

(a) In general.
(b) Middlemen treated as payors.
(c) Persons not treated as payors.

§ 31.3406(a)–3 Scope and extent of accounts subject to backup withholding.

§ 31.3406(a)–4 Time when payments are considered to be paid and subject to backup withholding.

(a) Timing.
(1) In general.
(2) Special rules for dividends.
(b) Amounts reportable under section 6045.
(1) In general.
(2) Special rule for interest accrued on bonds.
(c) Middlemen.
(1) In general.
(2) Special rule for common trust funds.
(3) Special rule for certain grantor trusts.

§ 31.3406(b)(2)–1 Reportable interest payment.

(a) Interest subject to backup withholding.
(1) In general.
(2) Special rule for tax-exempt interest.
(b) Amount subject to backup withholding.
(1) In general.
(2) Special rule to adjust for premature withdrawal penalty.

§ 31.3406(b)(2)–2 Original issue discount.

(a) Original issue discount subject to backup withholding.
(b) Amount subject to backup withholding and time when backup withholding is imposed with respect to short-term obligations.
(c) Transferred short-term obligations.
(1) Subsequent holder may establish purchase price.
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(3) Transferred obligation.
(d) Amount subject to backup withholding and time when backup withholding is imposed with respect to long-term obligations.
(1) No cash payments prior to maturity.
(2) Registered long-term obligations with cash payments prior to maturity.
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(e) Bearer long-term obligations.
(1) Payments prior to maturity.
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§ 31.3406(b)(2)–3 Window transactions.

(a) Requirement to backup withhold.
(b) Window transaction defined.
(c) Manner of furnishing taxpayer identification number in the case of a window transaction.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) Dividends subject to backup withholding.
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(c) Amount subject to backup withholding.
(1) In general.
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§ 31.3406(b)(2)–5 Reportable patronage dividend payment.

(a) Patronage dividends subject to backup withholding.
(b) Amount subject to backup withholding.
(1) Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.
(2) Notified payee underreporting or payee certification failure.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) Section 6041 and 6041A(a) payments subject to backup withholding.
(b) Amount subject to backup withholding.
(1) In general.
(2) Net commissions.
(3) Payments aggregating $600 or more for the calendar year.

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) Transactions subject to backup withholding.
(b) Amount subject to backup withholding.
(1) In general.
(2) Forward contracts, including foreign currency contracts, and regulated futures contracts.
(3) Security sales made through a margin account.
(4) Security short sales.
(5) Fractional shares.

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) Payments subject to backup withholding.
(b) Amount subject to backup withholding.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) Royalty payments subject to backup withholding.
(b) Amount subject to backup withholding.

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) In general.
(b) Manner of making the election.
(c) How to annualize.
(1) In general.
(2) Special aggregation rule for reportable interest and dividends.
(d) Exception for window transactions and original issue discount.

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) Overview.
(b) Definitions.
(1) Notified payee underreporting.
(2) Payee underreporting.
(c) Notice to payors regarding backup withholding due to notified payee underreporting.
(1) In general.
(2) Additional requirements for payors that are also brokers.
(3) Payor identification of accounts of the payee subject to backup withholding due to notified payee underreporting.
(d) Notice from payors of backup withholding due to notified payee underreporting.
(1) In general.
(2) Procedures.
(e) Period during which backup withholding is required.
(1) In general.
(2) Stop withholding.
(3) Dormant accounts.
(f) Notice to payees from the Internal Revenue Service.
(1) Notice period.
(2) Payee subject to backup withholding.
(3) Disclosure of names of payors and brokers.
(4) Backup withholding certification.
(g) Determination by the Internal Revenue Service that backup withholding should not start or should be stopped.
(1) In general.
(2) Date notice to stop backup withholding will be provided.

(d) Adjustment of prior withholding by middleman.
(e) Conversion of amounts paid in foreign currency into United States dollars.
(1) Convertible foreign currency.
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(f) Coordination with other sections.
(g) Tax liabilities and penalties.
(h) To whom payor is liable for amount withheld.

§ 31.3406(h)–3 Certificates.

(a) Prescribed form to furnish information under penalties of perjury.
(1) In general.
(2) Use of a single or multiple Forms W–9 for accounts of the same payee.
(b) Prescribed form to furnish a noncertified taxpayer identification number.
(c) Forms prepared by payors or brokers.
(1) Substitute forms; in general.
(2) Form for exempt recipient.
(d) Special rule for brokers.
(e) Reasonable reliance on certificate.
(1) In general.
(2) Circumstances establishing reasonable reliance.
(f) Who may sign certificate.
(1) In general.
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(g) Retention of certificates.
(1) Accounts or instruments that are not pre-1984 accounts and brokerage relationships that are post-1983 brokerage accounts.
(2) Accounts or instruments that are pre-1984 accounts and brokerage relationships that are not post-1983 brokerage accounts.
(h) Cross references.

§ 31.3406(i)–1 Effective date.

Par. 8. Sections 31.3406(a)–1 through 31.3406(a)–4, 31.3406(b)(2)–1 through 31.3406(b)(2)–5, 31.3406(b)(3)–1 through 31.3406(b)(3)–4, 31.3406(b)(4)–1, 31.3406(c)–1, 31.3406(d)–1 through 31.3406(d)–4, 31.3406(e)–1, 31.3406(f)–1, 31.3406(g)–1 through 31.3406(g)–3, 31.3406(h)–1 through 31.3406(h)–3, and 31.3406(i)–1 are added to read as follows:

§ 31.3406(a)–1 Backup withholding requirement on reportable payments.

(a) *Overview.* Under section 3406, a payor must deduct and withhold 31 percent of a reportable payment if a condition for withholding exists. *Reportable payments* mean interest and dividend payments (as defined in section 3406(b)(2)) and other reportable payments (as defined in section 3406(b)(3)). The conditions described in paragraph (b)(1) of this section apply to all reportable payments, including reportable interest and dividend payments. The conditions described in paragraph (b)(2) of this section apply only to reportable interest and dividend payments.

(b) *Conditions that invoke the backup withholding requirement*—(1) *Conditions applicable to all reportable payments.* A payor of a reportable payment must deduct and withhold under section 3406 if—

(i) The payee of the reportable payment does not furnish the payee's taxpayer identification number to the payor, as required in section 3406(a)(1)(A) and § 31.3406(d)–1; or

(ii) The Internal Revenue Service or a broker notifies the payor that the taxpayer identification number furnished by its payee for a reportable payment is incorrect, as described in section 3406(a)(1)(B) and § 31.3406(d)–5.

(2) *Conditions applicable only to reportable interest or dividend payments.* A payor of a reportable interest or dividend payment must deduct and withhold under section 3406 if—

(i) The Internal Revenue Service or a broker notifies the payor that its payee has underreported interest or dividend income, as described in section 3406(a)(1)(C) and § 31.3406(c)–1; or

(ii) The payee fails to certify to the payor or broker that the payee is not subject to withholding due to notified payee underreporting, as described in section 3406(a)(1)(D) and § 31.3406(d)–2.

(c) *Exceptions.* The requirement to withhold does not apply to certain minimal payments as described in § 31.3406(b)(4)–1 or to payments exempt from withholding under §§ 31.3406(g)–1 through 31.3406(g)–3.

(d) *Cross references.* For the definition of *payor,* see § 31.3406(a)–2. For the definition of *taxpayer identification number,* see § 31.3406(h)–1(b).

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

(a) *In general. Payor* means any person who is required to make an information return with respect to any reportable payment (as described in section 3406(b)) under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N, including any middleman as described in paragraph (b) of this section.

(b) *Middlemen treated as payors.* A person who receives or collects a reportable payment on behalf of or for the account of a payee is a middleman and is treated as the payor of the payment. These persons include, but are not limited to—

(1) A custodian of a payee's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(2) A nominee, including the joint owner of an account or instrument, except if the joint owners are husband and wife or if the payment is actually owned by another person whose name is also shown on the information return filed with respect to the payment;

(3) A broker holding a security (including stock) for a customer in street name;

(4) A grantor trust established after December 31, 1995, all of which is owned by two or more grantors, and for this purpose spouses filing a joint return are considered to be one grantor;

(5) A common trust fund; and

(6) A partnership or an S corporation that makes a reportable payment.

(c) *Persons not treated as payors.* The following persons are not treated as payors for purposes of section 3406 if the person does not have a reporting obligation under the section on information reporting to which the payment relates:

(1) An agent of the payor who is acting on behalf of the payor in making the payment and who has not entered into an agreement with the payor (for further guidance see Rev. Proc. 84–33 (1984–1 C.B. 502), and § 601.601(d)(2) of this chapter), such as a bank that acts as a paying agent in making a payment of dividends on behalf of a corporation (although payments made by the agent are considered to be payments made by the payor, and thus are subject to withholding, reporting, and the depositing requirements pertaining to section 3406 as if they were made by the payor itself, and failure by the agent so to withhold, report, or deposit is considered to be failure by the payor);

(2) A trust (other than a grantor trust as described in paragraph (b)(4) of this section) that files a Form 1041 and furnishes each beneficiary a Form K–1 containing information required to be shown on an information return, including amounts withheld under section 3406; or

(3) A partnership making a payment of a distributive share or an S corporation making a similar distribution.

§ 31.3406(a)–3 Scope and extent of accounts subject to backup withholding.

A payor who is required to withhold under § 31.3406(a)–1 must withhold—

(a) On the accounts subject to withholding under § 31.3406(a)–1 (b)(1)(i) or (b)(2)(ii); and

(b) On the accounts subject to withholding under § 31.3406(a)–1(b)(1)(ii) or (b)(2)(i), as described under § 31.3406(d)–5 (relating to notification of incorrect TIN) or § 31.3406(c)–1 (relating to notified payee underreporting), respectively.

§ 31.3406(a)–4

Time when payments are considered to be paid and subject to backup withholding.

(a) *Timing*—(1) *In general.* If backup withholding is required under section 3406 on a reportable payment (as defined in section 3406(b)), the payor must withhold at the time it makes the payment to the payee or to the payee's account that is subject to withholding. Amounts are considered paid when they are credited to the account of, or made available to, the payee. Amounts are not considered paid solely because they are posted (e.g., an informational notation on the payee's passbook) if they are not actually credited to the payee's account or made available to the payee. See paragraph (c) of this section for the timing of withholding by a middleman.

(2) *Special rules for dividends.* For purposes of section 3406 and this section—

(i) *Record date earlier than payment date.* In the case of stock for which the record date is earlier than the payment date, the dividends are considered paid on the payment date.

(ii) *Dividends paid in corporate reorganizations.* In the case of a corporate reorganization, if a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends that have been paid with respect to the stock in the new corporation will be provided to the payee, the dividend is considered paid on the date the payee actually exchanges the stock and receives the dividend.

(b) *Amounts reportable under section 6045*—(1) *In general.* Notwithstanding paragraph (a) of this section, in the case of a transaction reportable under section 6045 (except in the case of forward contracts (including foreign currency contracts), regulated futures contracts, and security short sales), the obligation to withhold under section 3406 arises on the date the sale is entered on the books of the broker or the date the exchange occurs as provided in § 1.6045–1(f)(3) of this chapter. A broker (in its capacity as payor) is not required, however, to satisfy its withholding liability until payment is made. See § 31.3406(b)(3)–2(b)(2) for special rules applicable to forward contracts (including foreign currency contracts), regulated futures contracts, and security short sales.

(2) *Special rule for interest accrued on bonds.* For purposes of determining the time that interest is considered paid and subject to withholding under section 3406 when bonds are sold between interest payment dates, the portion of the sales price representing interest accrued to the date of sale is considered a portion of a reportable payment of gross proceeds under section 6045 (provided that the accrued interest is not tax-exempt as described in section 103(a), relating to certain governmental obligations), and is not considered to be a payment of interest for purposes of section 6049.

(c) *Middlemen*—(1) *In general.* Any middleman (as defined in § 31.3406(a)–2(b)) must withhold under section 3406 at the time the reportable payment is received by or credited to the middleman. If the middleman makes or credits the reportable payment to the payee prior to the middleman's receipt of the corresponding payment, the middleman may withhold at the time the reportable payment is made or credited to the payee.

(2) *Special rule for common trust funds.* A common trust fund (as defined in section 584) must withhold either—

(i) At the time the reportable payment is received by or credited to the common trust fund as provided in paragraph (c)(1) of this section;

(ii) On the date on which the assets of the common trust fund are valued; or

(iii) At the time the common trust fund pays or credits the reportable payment to a participant of the common trust fund.

(3) *Special rule for certain grantor trusts.* For grantor trusts described in § 31.3406(a)–2(b)(4), reportable payments made to the trust are treated as paid by the trust to each grantor, in an amount equal to the distribution made by the trust to each grantor, on the date that the reportable payment is paid to the trust (except for gross proceeds reportable under section 6045). Paragraph (b)(2) of this section applies to a grantor trust making a payment of gross proceeds under section 6045 subject to withholding under section 3406. For purposes of this paragraph (c)(3) a husband and wife filing a joint return are considered to be one grantor.

§ 31.3406(b)(2)–1 Reportable interest payment.

(a) *Interest subject to backup withholding*—(1) *In general.* A payment of a kind, and to a payee, that is required to be reported under section 6049 (relating to returns regarding interest and original issue discount) is a reportable payment for purposes of section 3406, subject to the special rules of § 31.3406(b)(2)–2 (relating to original issue discount) and § 31.3406(b)(2)–3 (relating to window transactions). See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(2) *Special rule for tax-exempt interest.* When an issuer is required to make an information return under § 1.6049–4(d)(8) of this chapter because a payee provided a signed written statement on the envelope or shell incorrectly claiming that the interest was exempt from taxation under section 103(a) (as described in § 1.6049–5(b)(1)(ii) of this chapter), the issuer is not required to impose withholding under section 3406.

(b) *Amount subject to backup withholding*—(1) *In general.* The amount of interest subject to withholding under section 3406 is the amount subject to reporting under section 6049.

(2) *Special rule to adjust for premature withdrawal penalty.* Solely for purposes of computing the amount subject to withholding under section 3406, the payor may elect not to withhold from the portion of any interest payment that is not received by the payee because a penalty is in fact imposed for premature withdrawal of funds deposited in a time savings account, certificate of deposit, or similar class of deposit.

§ 31.3406(b)(2)–2 Original issue discount.

(a) *Original issue discount subject to backup withholding.* The amount of original issue discount, treated as interest, subject to withholding under section 3406 is the amount subject to reporting under section 6049, but is limited to the amount of cash paid. In addition, if an original issue discount obligation, subject to reporting under section 6045, is sold prior to maturity and with respect to the seller a condition exists for imposing withholding under section 3406 on the gross proceeds, then withholding under § 31.3406(b)(3)–2 applies to the gross proceeds of the sale reportable under section 6045, and not to the amount of any original issue discount includible in the gross income of the seller for the calendar year of the sale. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding and time when backup withholding is imposed with respect to short-term obligations.* In the case of an obligation with a fixed maturity date not exceeding one year from the date of issue (a short-term obligation), withholding under section 3406 applies to any payment of original issue discount on the obligation includible in the gross income of the holder to the extent of the cash amount of the payment. See § 1.1273–1 of this chapter to determine the amount of original

issue discount on a short-term obligation. See § 1.446–2(e)(1) of this chapter to determine the amount of a payment treated as original issue discount.

(c) *Transferred short-term obligations*—(1) *Subsequent holder may establish purchase price*—(i) *In general.* At maturity of a short-term obligation, a subsequent holder (i.e., any person who purchased or otherwise obtained the obligation after the obligation was issued to the original holder) may establish the price of the obligation. The price established by the subsequent holder must then be treated as the original issue price for purposes of computing the amount of the original issue discount subject to withholding under section 3406. The price of a short-term obligation may be established by confirmation receipt or other record of a similar type or, if the obligation is redeemed by or through the person from whom the obligation was purchased or otherwise obtained, by the records of the person from whom or through whom the obligation was purchased or otherwise obtained. The subsequent holder is not required to certify under penalties of perjury that the price determined under this paragraph (c)(1)(i) is correct.

(ii) *Exception.* A payor may elect to disregard the price at which the subsequent holder purchased or otherwise obtained the obligation if the payor's computer or recordkeeping system on which the details of the obligation are stored is not able to accept that price without significant manual intervention.

(2) *Subsequent holder unable (or not permitted) to establish purchase price.* If a subsequent holder fails (or is unable, pursuant to paragraph (c)(1)(ii) of this section) to establish the purchase price of the obligation, then the person redeeming the obligation must determine the amount subject to withholding under section 3406 as though the obligation had been purchased by the holder on the date of issue. If the person redeeming the obligation is the issuer of the obligation, then the issuer must determine the amount subject to withholding from its records. If a person other than the issuer of the obligation redeems the obligation and the obligation is listed in Internal Revenue Service Publication 1212, List of Original Issue Discount Obligations, that person must determine the amount subject to withholding by using the issue price indicated in Publication 1212.

(3) *Transferred obligation.* If a short-term obligation is transferred, no part of the purchase price is considered a reportable interest payment under section 6049. Withholding under section 3406 applies, however, to the gross proceeds of the sale of the obligation if the transfer is subject to reporting under section 6045 and a condition exists for imposing withholding. For the rules regarding withholding for amounts subject to reporting under section 6045, see § 31.3406(b)(3)-2.

(d) *Amount subject to backup withholding and time when backup withholding is imposed with respect to long-term obligation*—(1) *No cash payments prior to maturity.* In the case of an obligation with a fixed maturity date that is more than one year from the date of issue (a long-term obligation) and with no cash payments prior to maturity, withholding under section 3406 applies at the maturity of the obligation to the amount of original issue discount includible in the gross income of the holder for the calendar year in which the obligation matures. The amount required to be withheld must not exceed the amount of the cash payment.

(2) *Registered long-term obligations with cash payments prior to maturity.* In the case of a long-term obligation in registered form that provides for cash payments prior to maturity, withholding under section 3406 applies at the time cash payments are made to the sum of the amounts of qualified stated interest and original issue discount includible in the gross income of the holder for the calendar year in which the cash payments are made. The amount required to be withheld at the time of any cash payment, however, must not exceed the amount of the cash payment. If more than one cash payment is made during a calendar year, the tax that is required to be withheld with respect to original issue discount must be allocated among all the expected cash payments in the ratio that each cash payment bears to the total of the expected cash payments.

(3) *Transferred registered long-term obligations with payments prior to maturity.* In the case of a long-term obligation that is transferred after its issuance from the original holder, the amount subject to withholding under section 3406 with respect to a subsequent holder is the amount of original issue discount includible in the gross income of all holders during the calendar year (without regard to any amount paid by a subsequent holder at the time of transfer). If the person redeeming the obligation at maturity is the issuer of the obligation, the issuer must determine the amount subject to withholding through its records by treating the holder as if he were the original holder. If a person redeeming the obligation at maturity is a person other than the issuer of the obligation, and the obligation is listed in Internal Revenue Service Publication 1212, List of Original Issue Discount Obligations, the person must determine the amount subject to withholding by using the issue price indicated in Publication 1212.

(e) *Bearer long-term obligations.* In the case of a bearer long-term obligation with cash payments prior to maturity—

(1) *Payments prior to maturity.* Withholding under section 3406 applies prior to maturity only to the payment of qualified stated interest (and not to any amount of original issue discount) includible in the gross income of the holder for the calendar year.

(2) *Payments at maturity.* At maturity of the obligation, withholding applies to the sum of any qualified stated interest payment made at maturity and the total amount of original issue discount includible in the gross income of the holder during the calendar year of maturity. The amount required to be withheld at the time of the cash payment, however, must not exceed the amount of the cash payment.

§ 31.3406(b)(2)–3 Window transactions.

(a) *Requirement to backup withhold.* Withholding under section 3406 applies to a window transaction (as defined in paragraph (b) of this section) only if the payee does not furnish a taxpayer identification number to the payor in the manner required in paragraph (c) of this section or furnishes an obviously incorrect number as described in § 31.3406(h)–1(b)(2). Withholding does not apply to a window transaction even though the Internal Revenue Service notifies the payor of the payee's incorrect taxpayer identification number under section 3406(a)(1)(B) or of notified payee underreporting under section 3406(a)(1)(C). The payee in a window transaction is not required to certify under penalties of perjury that the payee is not subject to withholding due to notified payee underreporting (as described in § 31.3406(d)–2(b)(2)).

(b) *Window transaction defined—Window transaction* means a payment of interest with respect to any of the following obligations:

(1) An interest coupon in bearer form that is subject to taxation (i.e., other than exempt interest described in § 1.6049–5(b)(1)(ii) of this chapter);

(2) A United States savings bond; or

(3) A discount obligation having a maturity at issue of one year or less, including commercial paper and bankers' acceptances that are in

definitive form (i.e., evidenced by a paper document other than a confirmation receipt) but not including short-term government obligations (as defined in section 1271(a)(3)(B)).

(c) *Manner of furnishing taxpayer identification number in the case of a window transaction.* A payee must furnish the payee's taxpayer identification number to the payor with respect to a window transaction either orally or in writing at the time that the window transaction occurs. See § 31.3406(g)–3(c)(1)(i), which provides that a payee may not claim the payee is awaiting receipt of a taxpayer identification number with respect to a window transaction. The payee is not required to certify, under penalties of perjury, that the taxpayer identification number provided is correct.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) *Dividends subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6042 (relating to returns regarding payments of dividends and corporate earnings and profits) is a reportable payment for purposes of section 3406. See paragraph (b) of this section for certain dividends not subject to withholding under section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Dividends not subject to backup withholding.* Except as provided in § 31.3406(b)(3)–2 (relating to transactions reportable under section 6045), withholding under section 3406 does not apply to—

(1) Any amount treated as a taxable dividend by reason of section 302 (relating to redemptions of stock), section 304 (relating to redemptions through the use of related corporations), section 306 (relating to disposition of certain stock), section 356 (relating to receipt of additional consideration in connection with certain reorganizations), or section 1081(e)(2) (relating to certain distributions pursuant to an order of the Securities and Exchange Commission);

(2) Any exempt-interest dividend, as defined in section 852(b)(5)(A), paid by a regulated investment company; or

(3) Any amount paid or treated as paid during a year by a regulated investment company, provided that the payor reasonably estimates, as provided in paragraph (c)(2) of this section, that 95 percent or more of all dividends paid or treated as paid during the year are exempt-interest dividends.

(c) *Amount subject to backup withholding*—(1) *In general.* The amount of a dividend subject to withholding under section 3406 is the amount subject to reporting under section 6042, including any dividend that is reinvested pursuant to a plan under which a shareholder may elect to receive stock as a dividend instead of property. Except as otherwise provided in this paragraph (c), withholding applies to the entire amount of the distribution.

(2) *Reasonable estimate of amount of dividend subject to backup withholding.* Pursuant to section 6042(b)(3) and § 1.6042–3(c) of this chapter, if the payor is unable to determine the portion of a distribution that is a dividend, the entire amount of the distribution must be treated as a dividend for information reporting under section 6042. Hence, withholding applies to the entire amount of the distribution. If a payor is able reasonably to estimate under section 6042 and § 1.6042–3(c) of this chapter the portion of a distribution that is not a dividend, however, the payor must not withhold on that portion (which is not considered a dividend). A payor making a payment, all or a portion of which may not be a dividend, may use previous experience to estimate the portion of a distribution that is not a dividend. The payor's estimate is considered reasonable if—

(i) The estimate does not exceed the proportion of the distributions made by the payor during the most recent calendar year for which a Form 1099 was required to be filed that was not reported by the payor as a dividend; and

(ii) The payor has no reasonable basis to expect that the proportion of the distribution that is not a dividend will be substantially different for the current year.

(3) *Reinvested dividends.* In the case of a dividend paid pursuant to a dividend reinvestment plan, withholding under section 3406 applies, pursuant to § 31.3406(a)–4(a), at the time and to the amount made available to the shareholder or credited to the shareholder's account. At the discretion of the payor, withholding under section 3406 need not be applied to any excess of the fair market value of the shares of stock received by the shareholder or credited to the shareholder's account over the purchase price of the shares (including shares acquired by the shareholder at a discount in connection with the dividend distribution) or to any fee that is paid by the payor in the nature of a broker's fee for purchase of the stock or service charge for maintenance of the shareholder's account. The payor must, however, treat any excess amounts and fees on a consistent basis for each calendar year.

§ 31.3406(b)(2)–5 Reportable patronage dividend payment.

(a) *Patronage dividends subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6044 (relating to returns regarding patronage dividends) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding*—(1) *Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.* For purposes of sections 3406(a)(1) (A) and (B), the amount of a payment described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to reporting under section 6044, but only to the extent the payment is made in money. For purposes of this paragraph (b), *money* includes cash or a qualified check (as defined in section 1388(c)(4)).

(2) *Notified payee underreporting or payee certification failure.* For purposes of sections 3406(a)(1) (C) and (D), the amount of a payment described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to withholding under paragraph (b)(1) of this section, but only if 50 percent or more of that reportable amount is paid in money. Thus, a payor is required to withhold according to this paragraph (b)(2) on a payment if—

(i) There has been a notified payee underreporting described in section 3406(a)(1)(C) and § 31.3406(c)–1 or there has been a payee certification failure described in section 3406(a)(1)(D) and § 31.3406(d)–2;

(ii) The payor makes a reportable payment subject to reporting under section 6044 to the payee; and

(iii) Fifty percent or more of the payment is in cash or by qualified check.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) *Section 6041 and 6041A(a) payments subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6041 (relating to information reporting of rents, commissions, nonemployee compensation, etc.) or a payment that is required to be reported under section 6041A(a) (relating to information reporting of payments to nonemployees for services) is a reportable payment for purposes of section 3406. See paragraph

(b) of this section for an exception concerning payments aggregating less than $600. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding*—(1) *In general.* The amount of a payment described in paragraph (a) of this section subject to withholding under section 3406 is the amount subject to reporting under section 6041 or section 6041A(a).

(2) *Net commissions.* Withholding under section 3406 does not apply to net commissions paid to unincorporated special agents with respect to insurance policies that are subject to reporting under section 6041, provided that no cash is actually paid by the payor to the special agent.

(3) *Payments aggregating $600 or more for the calendar year*—(i) *In general.* A payment is a reportable payment under paragraph (a) of this section only if the aggregate amount of the current payment and all previous payments to the payee during the calendar year aggregate $600 or more. The amount subject to withholding is the entire amount of the payment that causes the total amount paid to the payee to equal $600 or more and the amount of any subsequent payments made to the payee during the calendar year. This paragraph (b)(3)(i) does not apply to gambling winnings (as provided in § 31.3406(g)–2(e)(1)).

(ii) *Exceptions*—(A) *The $600 aggregation rule.* The $600 aggregation rule of paragraph (b)(3)(i) of this section does not apply if the payor was required to make an information return under section 6041 or 6041A(a) for the preceding calendar year with respect to payments to the payee, or the payor was required to withhold under section 3406 during the preceding calendar year with respect to payments to the payee that were reportable under section 6041 or 6041A(a).

(B) *Determination of whether payments aggregate $600 or more.* In determining whether payments to a payee aggregate $600 or more during a calendar year for purposes of withholding under section 3406, the payor must aggregate only payments of the same kind made to the same payee. For this purpose, payments are of the same kind if they are of the same type, regardless of whether they are reportable under the same section. However, a payor with different paying departments making reportable payments of the same kind is not required to aggregate payments made by all those departments unless it is the payor's customary method to aggregate those payments. A payor may, in its discretion, aggregate—

(*1*) Payments not of the same kind to the same payee, reportable under either section 6041 or 6041A(a); and

(*2*) Payments reportable under section 6041 with payments reportable under section 6041A(a).

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) *Transactions subject to backup withholding.* A payment of a kind, and to a payee, that any broker (as defined in section 6045(c) and § 1.6045–1(a)(1) of this chapter) or any barter exchange (as defined in section 6045(c) and § 1.6045–1(a)(4) of this chapter) is required to report under section 6045 is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding*—(1) *In general.* The amount subject to withholding under section 3406 is the amount subject to reporting under section 6045. The amount subject to withholding with respect to broker reporting is the amount of gross proceeds (as determined under § 1.6045–1(d)(5) of this chapter). The amount subject to withholding with respect to barter exchanges is the amount received by any member or client (as determined under § 1.6045–1(f)(4) of this chapter).

(2) *Forward contracts, including foreign currency contracts, and regulated futures contracts*—(i) *In general.* If a customer is subject to withholding under section 3406 with respect to a forward contract (subject to information reporting under § 1.6045–1(c)(5) of this chapter), including a foreign currency contract (as defined in section 1256(g)(2)), or a regulated futures contract (as defined in section 1256(g)(1)), or with respect to an account through which those contracts are disposed of or acquired, the broker must withhold on both of the following amounts:

(A) All cash or property withdrawn from the account by the customer during the relevant year; and

(B) The amount of cash in the account available for withdrawal by the customer at the relevant year-end (including both gross proceeds and variation margin).

(ii) *Rules concerning withdrawals.* A withdrawal includes the use of money (including both gross proceeds and variation margin) or property in the account to purchase any property other than property acquired in connection with the closing of a contract. For this purpose, the acceptance of a warehouse receipt or other taking of delivery to close a contract is in connection with the closing of a contract only if the property acquired is disposed of by the close of the seventh trading day following the trading day that the customer takes delivery under the contract. In addition, making delivery to close a contract is in connection with the closing of a contract only if the broker is able to determine that the property used to close the contract was acquired no earlier than the seventh trading day prior to the trading day on which delivery is made. Withdrawals do not include repayments of debt incurred in connection with making or taking delivery that meets the requirements of this paragraph (b)(2). Withdrawals also do not include payments of commissions, fees, transfers of cash from the account to another futures account that is subject to this paragraph (b)(2) or cash withdrawals traceable to dispositions of property other than futures (not including profit on the contract separately reportable under § 1.6045–1(c)(5)(i)(*b*) of this chapter).

(iii) *Special rule for forward contracts, including foreign currency contracts, and regulated futures contracts.* The determination of whether the customer is subject to withholding under section 3406 with respect to an account containing forward contracts, including foreign currency contracts, or regulated futures contracts must be made at the time of the cash or property withdrawals or the relevant year-end, whichever is applicable.

(3) *Security sales made through a margin account.* The amount described in paragraph (a) of this section that is subject to withholding under section 3406 in the case of a security sale made through a margin account (as defined in 12 CFR part 220 (Regulation T)) is the gross proceeds (as defined in § 1.6045–1(d)(5) of this chapter) of the sale. The amount required to be withheld with respect to the sale, however, is limited to the amount of cash available for withdrawal by the customer immediately after the settlement of the sale. For this purpose, the amount available for withdrawal by the customer does not include amounts required to satisfy margin maintenance under Regulation T, rules and regulations of the National Association of Securities Dealers and national securities exchanges, and generally applicable self-imposed rules of the margin account carrier.

(4) *Security short sales*—(i) *Amount subject to backup withholding.* The amount subject to withholding under

section 3406 with respect to a short sale of securities is the gross proceeds (as defined in § 1.6045–1(d)(5) of this chapter) of the short sale. At the option of the broker, however, the amount subject to withholding may be the gain upon the closing of the short sale (if any); consequently, the obligation to withhold under section 3406 would be deferred until the closing transaction. A broker may use this alternative method of determining the amount subject to withholding under section 3406 with respect to a short sale only if at the time the short sale is initiated, the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records. If, due to events unforeseen at the time the short sale was initiated, the broker is unable to determine the basis of the property used to close the short sale, the property must be assumed for this purpose to have a basis of zero.

(ii) *Time of backup withholding.* The determination of whether a short seller is subject to withholding under section 3406 must be made on the date of the initiation or closing, as the case may be, or on the date that the initiation or closing, as the case may be, is entered on the broker's books and records.

(5) *Fractional shares.* A broker is not required to withhold under section 3406 with respect to a sale of a fractional share of stock resulting in less than $20 of gross proceeds (as described in § 5f.6045–1(c)(3)(ix) of this chapter).

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) *Payments subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6050A (relating to information reporting by certain fishing boat operators) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding.* The amount described in paragraph (a) of this section subject to withholding under section 3406 is the amount subject to reporting under section 6050A, but only to the extent the amount is paid in money and represents a share of the proceeds of the catch.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) *Royalty payments subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6050N (relating to information reporting of payments of royalties) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding.* In general, the amount described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to reporting under section 6050N. However, if the reportable payment is for an oil or gas interest, the amount subject to withholding is the net amount the payee receives (i.e., the gross proceeds less production-related taxes such as state severance taxes).

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) *In general.* A payor of reportable interest or dividends (as described in section 3406(b)(2)) or of royalties (as described in section 3406(b)(3)(E)) may elect not to withhold from a payment that does not exceed $10 and that on an annualized basis does not exceed $10 (see paragraph (c) of this section). A broker or barter exchange may elect not to withhold on gross proceeds of $10 or less without regard to the annualization requirement. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Manner of making the election.* The election not to withhold from payments that do not exceed $10 can be made only for payments described in paragraph (a) of this section. The election may be made on a payment-by-payment basis.

(c) *How to annualize*—(1) *In general.* To annualize a reportable interest payment, dividend payment, or royalty payment, a payor must calculate what the amount of the payment would be if it were paid for a 1-year period (instead of the period for which it actually is paid). The annualized amount is determined by dividing the amount of the payment by the number of days in the period for which it is being paid and then multiplying that result by the number of days in the year. If the annualized amount is $10 or less, the payor may elect not to withhold on that payment regardless of whether more than $10 may be or has been paid to the payee in other reportable payments during the calendar year. Conversely, if the annualized amount is more than $10, withholding applies even if $10 or less is actually paid to the payee during the calendar year. For purposes of computing the annualized amount, the payor may assume that February always consists of 28 days and that the year always consists of 360 days. For amounts that are deposited with a payor in a new account or certificate between the dates on which the payor customarily pays or credits interest, the payor may assume that the period for which the interest is paid is the payor's customary period for paying or crediting interest.

(2) *Special aggregation rule for reportable interest and dividends.* If a payor maintains records that reflect multiple holdings of one payee and the payor makes an aggregate payment of reportable interest or dividends (as defined in section 3406(b)(2)) with respect to those multiple holdings (such as a dividend check that reflects payment on all stock owned by the payee), the payor must annualize the aggregate payment.

(d) *Exception for window transactions and original issue discount.* A payor is not required to annualize payments made in window transactions (as defined in § 31.3406(b)(2)–3(b)) or payments of original issue discount. With respect to a window transaction, however, the payor is required to aggregate all payments made in the same transaction (e.g., payments made with respect to coupons or obligations presented for payment at the same time as described in § 1.6049–4(e)(4) of this chapter).

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) *Overview.* Withholding under section 3406(a)(1)(C) applies to any reportable interest or dividend payment (as defined in section 3406(b)(2)) made with respect to an account of a payee if the Internal Revenue Service or a broker notifies a payor under paragraph (c) (1) or (2) of this section that the payee is subject to withholding due to notified payee underreporting (as defined in paragraph (b)(1) of this section), and the payor is required under paragraph (c)(3) of this section to identify that account. After receiving the notice and identifying accounts, the payor must notify the payee, in accordance with paragraph (d) of this section, that withholding due to notified payee underreporting has started. Paragraph (e) of this section describes the period for which withholding due to notified payee underreporting is required. Paragraph (f) of this section provides rules concerning notices that the Internal Revenue Service will send to a payee before notifying a payor that the payee is subject to withholding due to notified payee underreporting. Paragraph (g) of this section provides rules that a payee can use to prevent withholding due to notified payee underreporting from starting or to stop it once it has started. Paragraph (h) of

this section provides special rules for joint accounts of payees who have filed a joint return. See section 6682 for the penalties that may apply to a payee subject to withholding under section 3406(a)(1)(C).

(b) *Definitions*—(1) *Notified payee underreporting. Notified payee underreporting* means that the Internal Revenue Service has—

(i) Determined that there was a payee underreporting (as defined in paragraph (b)(2) of this section);

(ii) Mailed at least four notices under paragraph (f)(1) of this section to the payee (over a period of at least 120 days) with respect to the underreporting; and

(iii) Assessed any deficiency attributable to the underreporting in the case of any payee who has filed a return.

(2) *Payee underreporting*—(i) *In general. Payee underreporting* means that the Internal Revenue Service has determined, for a taxable year, that—

(A) A payee failed to include in the payee's return of tax under chapter 1 of the Internal Revenue Code for that year any portion of a reportable interest or dividend payment required to be shown on that tax return; or

(B) A payee may be required to file a return for that year and to include a reportable interest or dividend payment in the return, but failed to file the return.

(ii) *Payments included in making payee underreporting determination.* The determination of whether there is payee underreporting is made by treating as reportable interest or dividend payments, all payments of dividends reported under section 6042, all patronage dividends reported under section 6044, and all interest and original issue discount reported under section 6049, regardless of whether withholding due to notified payee underreporting applies to those payments.

(c) *Notice to payors regarding backup withholding due to notified payee underreporting*—(1) *In general.* If the Internal Revenue Service or a broker notifies a payor that a payee is subject to withholding due to notified payee underreporting, the payor must—

(i) Identify any accounts of the payee under the rules of paragraph (c)(3) of this section; and

(ii) Notify the payee and withhold under section 3406 on reportable interest or dividend payments made with respect to any identified account under the rules of paragraphs (d) and (e) of this section.

(2) *Additional requirements for payors that are also brokers*—(i) *In general.* A broker must notify the payor of a readily tradable instrument that the payee of the instrument is subject to withholding due to notified payee underreporting if—

(A) The broker (in its capacity as a payor) receives a notice from the Internal Revenue Service under paragraph (c)(1) of this section that a payee is subject to withholding due to notified payee underreporting and the broker is required to identify an account of the payee under paragraph (c)(3) of this section;

(B) The payee subsequently acquires the instrument from the broker through the same account; and

(C) The acquisition of the instrument occurs after the close of the 30th business day after the date that the broker receives the notice (or on any earlier date that the broker may begin applying this paragraph (c)(2) after receipt of the notice described in paragraph (c)(1) of this section).

(ii) *Transfer out of street name.* For purposes of this paragraph (c)(2), an acquisition includes a transfer of an instrument out of street name into the name of the registered owner (i.e., the payee).

(iii) *Method of providing notice.* A broker must provide the notice required under this paragraph (c)(2) to the payor of the instrument with the transfer instructions for the acquisition. See § 31.3406(d)–4(a)(2).

(iv) *Termination of obligation to provide information.* The obligation of a broker to provide notice to payors under this paragraph (c)(2) terminates simultaneously with the termination of the broker's obligation to withhold (in its capacity as payor) due to notified payee underreporting on reportable interest or dividends made with respect to the account.

(3) *Payor identification of accounts of the payee subject to backup withholding due to notified payee underreporting*—(i) *In general*—(A) *Notice from the Internal Revenue Service.* If a payor receives a notice from the Internal Revenue Service under paragraph (c)(1) of this section, the payor must identify, exercising reasonable care, all accounts using the same taxpayer identification number for information reporting purposes as the one provided in the notice. The notice may provide, however, that the payor need only identify the account or accounts corresponding to any account number or designation and related taxpayer identification number used for information reporting purposes as that listed on the notice.

(B) *Notice from a broker.* If a payor receives a notice from a broker under paragraphs (c) (1) and (2) of this section, the payor is not required to identify any account other than the account identified in the notice.

(ii) *Exercise of reasonable care.* If an account identified pursuant to paragraph (c)(3)(i)(A) of this section contains a customer identifier that can be used to retrieve systemically any other accounts that use the same taxpayer identification number for information reporting purposes, the payor must identify all accounts that can be so retrieved. Otherwise, a payor is considered to exercise reasonable care in identifying accounts subject to withholding under section 3406(a)(1)(C) if the payor searches any computer or other recordkeeping system for the region, division, or branch that serves the geographic area in which the payee's mailing address is located and that was established (or is maintained) to reflect reportable interest or dividend payments.

(iii) *Newly opened accounts.* (A) In general, a new account is not subject to withholding under section 3406(a)(1)(C) if the payee provides to the payor a Form W–9 (or other acceptable substitute) on which the payor may reasonably rely (within the meaning of § 31.3406(h)–3(e)(2) without regard to § 31.3406(h)–3(e)(2)(v)), unless the payor has actual knowledge (within the meaning of paragraph (c)(3)(iii)(B) of this section) that the statements made on the form are not true.

(B) For purposes of paragraph (c)(3)(iii)(A) of this section, a payor is considered to have actual knowledge that a payee's statement that the payee is not subject to withholding under section 3406(a)(1)(C) is not true if—

(*1*) The employee or individual agent of the payor who receives the payee's certification knows that the statement is not true;

(*2*) In conducting the investigation, if any, required by paragraph (c)(3)(iii)(C) of this section, the payor identifies any other accounts of the payee that are already subject to withholding under section 3406(a)(1)(C); or

(*3*) In the course of processing the certification or in administering an account to which a certification relates, the payor discovers that the payor was previously notified by the Internal Revenue Service that the payee is subject to withholding under section 3406(a)(1)(C) and no notice was received to stop withholding pursuant to section 3406(c)(3) prior to the time of the discovery.

(C) Except as provided in this paragraph (c)(3)(iii)(C), a payor is not required to investigate whether the statements made on the Form W–9 described in paragraph (c)(3)(iii)(A) of this section are true. If, however, in

opening a new account, the payor relies on the same Form W–9 (or appropriate substitute) that it relied on previously in opening another account, the payor must investigate whether any such existing account is subject to withholding under section 3406(a)(1)(C). Similarly, if the payor utilizes a universal account system described in the first sentence of paragraph (c)(3)(ii) of this section, and in opening a new account the payor searches its records to determine whether the new account should be identified under an existing identifier (because the payee has existing accounts with the payor), the payor must investigate whether any existing accounts identified with the same identifier are subject to withholding under section 3406(a)(1)(C).

(d) *Notice from payors of backup withholding due to notified payee underreporting*—(1) *In general.* If a payor receives notice from the Internal Revenue Service or a broker under paragraph (c)(1) of this section and is required to identify an account under paragraph (c)(3) of this section as an account of the payee, the payor must notify the payee in accordance with paragraph (d)(2) of this section that withholding due to notified payee underreporting has started.

(2) *Procedures.* The payor must send the notice required by paragraph (d)(1) of this section to the payee no later than 15 days after the date that the payor makes the first payment subject to withholding due to notified payee underreporting. The payor must send the notice by first-class mail to the payee at the payee's last known address. The notice to the payee required by paragraph (d)(1) of this section must state—

(i) That the Internal Revenue Service has given notice that the payee has underreported reportable interest or dividends;

(ii) That, as a result of the underreporting, the payor is required under section 3406(a)(1)(C) of the Internal Revenue Code to withhold 31 percent of reportable interest or dividend payments made to the payee;

(iii) The date that the payor started (or plans to start) withholding due to notified payee underreporting under section 3406(a)(1)(C);

(iv) The account number or numbers that are subject to withholding due to notified payee underreporting;

(v) That the payee must obtain a determination from the Internal Revenue Service in order to stop the withholding due to notified payee underreporting; and

(vi) That while the payee is subject to withholding due to notified payee underreporting, the payee may not certify to a payor making reportable interest or dividend payments (or to a broker acquiring a readily tradable instrument for the payee) that the payee is not subject to withholding due to notified underreporting.

(e) *Period during which backup withholding is required*—(1) *In general.* If a payor receives notice from the Internal Revenue Service or a broker under paragraph (c)(1) of this section, the payor must impose withholding under section 3406(a)(1)(C) on all reportable interest or dividend payments with respect to any account of the payee required to be identified under paragraph (c)(3) of this section made after the close of the 30th business day after the day on which the payor receives that notice and before the stop date (as described in paragraph (e)(2) of this section). A payor may choose to start withholding under this paragraph (e)(1) at any time during the 30-business-day period described in the preceding sentence.

(2) *Stop withholding*—(i) *When no underreporting exists or undue hardship exists*—(A) *Stop date.* In the case of a determination under paragraph (g)(3) (i) or (iii) of this section that no underreporting exists or that an undue hardship exists, the stop date is the day that is 30 days after the earlier of—

(*1*) The date on which the payor receives written notification from the Internal Revenue Service under paragraph (g) of this section that withholding is to stop; or

(*2*) The date on which the payor receives a copy of the written certification provided to the payee by the Internal Revenue Service under paragraph (g) of this section that withholding is to stop.

(B) *Acceleration of stop date.* A payor may choose to stop withholding at any time during the 30-day period described in paragraph (e)(2)(i)(A) of this section.

(ii) *When underreporting is corrected or bona fide dispute exists.* In the case of a determination under paragraph (g)(3) (ii) or (iv) of this section that the underreporting has been corrected or that a bona fide dispute exists, the stop date occurs on the first day of January (immediately following a period of at least twelve months ending on October 15 of any calendar year in which the determination has been made) or if later, the stop date determined under paragraph (e)(2)(i) of this section.

(3) *Dormant accounts.* The requirement that a payor withhold under this paragraph (e) on reportable interest or dividend payments made with respect to an account terminates no later than the close of the third calendar year ending after the later of—

(i) The date that the most recent reportable interest or dividend payment was made with respect to that account; or

(ii) The date that the payor received notice under paragraph (c)(1) of this section.

(f) *Notice to payees from the Internal Revenue Service*—(1) *Notice period.* After the Internal Revenue Service determines under paragraph (b)(2) of this section that payee underreporting exists, the Internal Revenue Service will mail to the payee at least four notices over a period of at least 120 days (the notice period) before payors will be notified under paragraph (c)(1) of this section that the payee is subject to withholding due to notified payee underreporting. The notices may be accompanied by, or incorporated in, other notices provided to the payee by the Internal Revenue Service.

(2) *Payee subject to backup withholding.* After the Internal Revenue Service provides the notices described in paragraph (f)(1) of this section, the Internal Revenue Service will send notices to payors under paragraph (c)(1) of this section unless—

(i) A payee obtains a determination under paragraph (g) of this section; or

(ii) In the case of a payee who has filed a tax return, the Internal Revenue Service has not assessed the deficiency attributable to the underreporting.

(3) *Disclosure of names of payors and brokers.* Pursuant to section 3406(c)(5) the Internal Revenue Service may require a payee subject to withholding due to notified payee underreporting to disclose the names of all the payee's payors of reportable interest or dividend payments and the names of all of the brokers with whom the payee has accounts which may involve reportable interest or dividend payments. To the extent required in the request from the Internal Revenue Service, the payee must also provide the payee's account numbers and other information necessary to identify the payee's accounts.

(4) *Backup withholding certification.* After a payee receives a final notice from the Internal Revenue Service under paragraph (f)(1) of this section, the payee is not permitted to certify to any payor or broker, under penalties of perjury, that the payee is not subject to withholding under section 3406(a)(1)(C), until the payee receives the certification from the Internal Revenue Service under paragraph (g) of this section advising the payee that the payee is no longer subject to

withholding under section 3406(a)(1)(C). A final notice will contain the information described in this paragraph (f)(4). See sections 6682 and 7205(b) for civil and criminal penalties for making a false certification.

(g) *Determination by the Internal Revenue Service that backup withholding should not start or should be stopped*—(1) *In general.* A payee may prevent withholding due to notified payee underreporting from starting, or stop the withholding once it has started, by requesting and receiving a determination from the Internal Revenue Service under one or more of the provisions of paragraph (g)(3) of this section. Following its review of a request for a determination under paragraph (g)(3) of this section, the Internal Revenue Service will either make the determination or provide the payee with a written report informing the payee that the request for determination is being denied and the reasons for the denial. If a determination is made during the notice period (as defined in paragraph (f)(1) of this section), the payee is not subject to withholding due to notified payee underreporting with respect to any taxable year for which a determination was made. If a determination is made after the notice period, the Internal Revenue Service will, at the time prescribed in paragraph (g)(2) of this section, provide written certification to a payee that withholding is to stop, and will notify payors who were contacted pursuant to paragraph (c)(1) of this section to stop withholding. A broker who (in its capacity as payor) under this paragraph (g)(1) receives a notice from the Internal Revenue Service or a copy of the certification provided to a payee by the Internal Revenue Service is not required to provide a corresponding notice to any payors whom the broker has previously notified under paragraph (c)(2) of this section.

(2) *Date notice to stop backup withholding will be provided*—(i) *Underreporting corrected or bona fide dispute.* If the Internal Revenue Service makes a determination under paragraph (g)(3) (ii) or (iv) of this section during the 12-month period ending on October 15 of any calendar year (as described in paragraph (e)(2)(ii) of this section), the Internal Revenue Service will provide the certification and the notices described in paragraph (g)(1) of this section no later than December 1 of that calendar year.

(ii) *No underreporting or undue hardship.* If the Internal Revenue Service makes a determination under paragraph (g)(3)(i) or (iii) of this section, the Internal Revenue Service will provide the notices described in paragraph (g)(1) of this section no later than the 45th day after the day on which the Internal Revenue Service makes its determination.

(3) *Grounds for determination.* The Internal Revenue Service will make a determination that withholding due to notified payee underreporting should not start or should stop once it has started if the payee—

(i) Shows that there was no payee underreporting (as provided in paragraph (g)(4) of this section) for each taxable year with respect to which the Internal Revenue Service determined under paragraph (b)(2) of this section that there was payee underreporting;

(ii) Corrects any payee underreporting (as provided in paragraph (g)(5) of this section) for each taxable year with respect to which the Internal Revenue Service determined under paragraph (b)(2) of this section that there was payee underreporting;

(iii) Shows that withholding will cause or is causing an undue hardship (as defined in paragraph (g)(6) of this section) and that it is unlikely that the payee will underreport interest or dividend payments again; or

(iv) Shows that a bona fide dispute exists regarding whether any underreporting has occurred (as provided in paragraph (g)(7) of this section) for each taxable year with respect to which the Internal Revenue Service determined under paragraph (b)(2) of this section that there was payee underreporting.

(4) *No underreporting.* A payee may show that no underreporting of reportable interest or dividends payments exists by presenting—

(i) Receipts or other satisfactory documentation to the Internal Revenue Service showing that all taxes relating to the payments were reported; or

(ii) Evidence showing that the payee did not have to file a return for the taxable year in question (e.g., because the payee did not make enough income) or that the underreporting determination was based upon a factual, clerical, or other error.

(5) *Correcting any payee underreporting*—(i) *Before issuance of a statutory notice of deficiency.* Before a statutory notice of deficiency is issued to a payee pursuant to section 6212, the payee may correct underreporting—

(A) By filing a return if one was not previously filed and including the unreported interest and dividends thereon;

(B) By filing an amended return in the event a return was filed and including the unreported interest and dividends thereon; or

(C) By consenting to the additional assessment according to applicable notices and forms sent to the payee by the Internal Revenue Service with respect to the underreporting, and paying taxes, penalties, and interest due with respect to any underreported interest or dividend payments.

(ii) *After issuance of a statutory notice of deficiency.* After a statutory notice of deficiency is issued to a payee—

(A) The payee may correct underreporting at any time, by filing a return if one was not previously filed and paying the entire deficiency and any other taxes including penalties and interest attributable to any payee underreporting of interest or dividend payments; or

(B) The payee may correct underreporting after the mailing of the statutory notice of deficiency but before the expiration of the 90-day or 150-day period described in section 6213(a) or, if a petition is filed with the United States Tax Court, before the decision of the Tax Court is final, by making a remittance to the Internal Revenue Service of the amounts described in paragraph (g)(5)(ii)(A) of this section. The payee must specifically designate in writing that the remittance is a deposit in the nature of a cash bond.

(iii) *Special rules.* For purposes of paragraph (g)(5)(ii) of this section, the payee will not be deemed to have corrected the payee underreporting under paragraph (g)(5)(ii)(B) of this section after the remittance is returned to the payee in the manner described in any applicable administrative procedure. For further guidance on a deposit in the nature of a cash bond, see subparagraph 2 of section 4.01 of Rev. Proc. 84–58 (1984–2 C.B. 501). (See § 601.601(d)(2) of this chapter.) Once the remittance is returned to the payee, the rules of this section will apply. If the Internal Revenue Service previously contacted payors of the payee to start withholding with respect to the notified payee underreporting, however, the Internal Revenue Service will recontact those payors to start withholding under paragraph (c)(1) of this section with respect to the payee underreporting without regard to paragraph (f) of this section.

(6) *Undue hardship*—(i) *In general.* A determination of undue hardship will be based on the overall impact to the payee of having reportable interest or dividend payments withheld at a 31 percent rate under section 3406. In addition, a determination of undue hardship will be made only if the Internal Revenue Service concludes that it is unlikely that any payee underreporting will occur again.

(ii) *Factors.* Factors that will be considered in determining whether withholding causes undue hardship include, but are not limited to, the following—

(A) Whether estimated tax payments, and other credits for current tax liabilities, or amounts withheld on employee wages or pensions, in addition to withholding under section 3406, would cause significant overwithholding;

(B) The payee's health, including the payee's ability to pay foreseeable medical expenses;

(C) The extent of the payee's reliance on interest and dividend payments to meet necessary living expenses and the existence, if any, of other sources of income;

(D) Whether other income of the payee is limited or fixed

(e.g., social security, pension, and unearned income);

(E) The payee's ability to sell or liquidate stocks, bonds, bank accounts, trust accounts, or other assets, and the consequences of doing so;

(F) Whether the payee reported and timely paid the most recent year's tax liability, including interest and dividend income; and

(G) Whether the payee has filed a bankruptcy petition with the United States Bankruptcy Court.

(7) *Bona fide dispute.* The Internal Revenue Service may make a determination under this paragraph (g)(7) if there is a dispute between the payee and the Internal Revenue Service on a question of fact or law that is material to a determination under paragraph (g)(3)(i) of this section and, based upon all the facts and circumstances, the Internal Revenue Service finds that the dispute is asserted in good faith by the payee and there is a reasonable basis for the payee's position.

(h) *Payees filing a joint return*—(1) *In general.* For purposes of this section, if payee underreporting is found to exist with respect to a joint return, then the provisions of this section apply to both payees (i.e., the husband and wife). As a result, both payees are subject to withholding on accounts in their individual names as well as accounts in their joint names. Either or both payees may satisfy the criteria for a determination that no payee underreporting exists, that the underreporting has been corrected, or that a bona fide dispute exists (as provided in paragraph (g)(3) (i), (ii), or (iv) of this section). Both payees, however, must satisfy the criteria for a determination that withholding will cause or is causing undue hardship (as provided in paragraph (g)(3)(iii) of this section).

(2) *Exceptions*—(i) *Innocent spouse.* A spouse who files a joint return may obtain a determination that withholding should stop or not start with respect to payments made to his or her individual accounts, if the spouse shows that—

(A) He or she did not underreport income because he or she is a spouse described in section 6013(e), i.e, innocent spouse; or

(B) There is a bona fide dispute regarding whether he or she is an innocent spouse and hence did not underreport income.

(ii) *Divorced or legally separated payee.* A payee who, at the time of the request for a determination under paragraph (g) of this section, is divorced or separated under State law may obtain a determination that undue hardship exists (or would exist) under paragraph (g)(3)(iii) of this section with respect to reportable interest or dividend payments made to his or her individual accounts if the divorced or legally separated payee satisfies the criteria for a determination under paragraph (g)(6) of this section.

(i) *Reserved.*

(j) *Penalties.* For the application of penalties related to this section, see sections 6682 and 7205(b).

§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.

(a) *Requirement to backup withhold.* Withholding under section 3406(a)(1)(A) applies to a reportable payment (as defined in section 3406(b)) if the payee does not furnish the payee's taxpayer identification number to the payor in the manner required by this section. The period for which withholding is required is described in § 31.3406(e)–1(b). See § 31.3406(d)–3(a) and (b) for special rules when an account is established directly with, or an instrument is acquired directly from, the payor by electronic transmission or by mail, or an instrument is sold through a broker by electronic transmission or by mail. See § 31.3406(d)–4 for special rules applicable to readily tradable instruments acquired through a broker. See § 31.3406(h)–3(e) for the rules on when a payor may rely on a Form W–9. See also § 31.3406(g)–3 for rules regarding a payee awaiting receipt of a taxpayer identification number. See the applicable information reporting sections and section 6109 and the regulations thereunder to determine whose taxpayer identification number should be provided.

(b) *Reportable interest or dividend account*—(1) *Manner required for furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.* A payee must furnish the payee's taxpayer identification number to the payor with respect to any obligation, deposit, certificate, share, membership, contract, investment, account, or other relationship or instrument established or acquired on or before December 31, 1983 (a pre-1984 account) and with respect to which the payor makes a reportable interest or dividend payment (as defined in section 3406(b)(2)). The manner of determining whether an account or an instrument is a pre-1984 account is described in paragraph (b)(2) of this section. The payee of a pre-1984 account may furnish the payee's taxpayer identification number to the payor orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct.

(2) *Determination of pre-1984 account or instrument*—(i) *In general.* An account that is in existence before January 1, 1984, will be considered a pre-1984 account, regardless of whether additional deposits are made to the account on or after January 1, 1984. An account established as an expansion of a credit union prime account in existence prior to January 1, 1984, constitutes a pre-1984 account. If funds taken from one account in existence prior to January 1, 1984, are used to create a new account on or after that date, however, the new account does not constitute a pre-1984 account except as provided in the preceding sentence. An instrument acquired prior to January 1, 1984, is a pre-1984 account. Regardless of when an instrument was acquired, if it is negotiated in a window transaction as defined in § 31.3406(b)(2)–3(b), it is treated as an instrument acquired after December 31, 1983. An obligation in bearer form and subject to reporting under section 6045, whenever acquired, is not a pre-1984 account. Any instrument, whenever acquired, that is held in a brokerage account is considered a pre-1984 account if the brokerage account is not a post-1983 brokerage account (as described in paragraph (c)(1)(ii) of this section). If shares of a corporation are held before January 1, 1984 (or considered held before that date by operation of this paragraph (b)(2)), and additional shares are acquired by the holder, irrespective of whether the shares are received by reason of a stock dividend, investing new cash, or otherwise, the new shares, in the discretion of the payor, may be considered a pre-1984 account. In the

case of a qualified employee trust that distributes instruments in kind, any instrument distributed from the trust is considered a pre-1984 account with respect to employees who were participants in the trust before 1984. Similarly, when a payor offers participants in a plan the opportunity to purchase stock of the payor after a specified time, using the money that the payee invested during that period of time, the stock so purchased after December 31, 1983, is considered a pre-1984 account with respect to participants in the plan who either owned shares or invested money in the plan before January 1, 1984.

(ii) *Account or instrument automatically acquired on the maturity or termination of an account.* When an account is opened, or an instrument is acquired, automatically on the maturity or termination of an account that was in existence or an instrument that was held before January 1, 1984 (or considered to have been in existence or held before that date by operation of this paragraph (b)(2)(ii)), without the participation of the payee, the new account or instrument, in the discretion of the payor, may be considered a pre-1984 account. For purposes of the preceding sentence, a payee is not considered to have participated in the acquisition of the new account or instrument solely because the payee failed to exercise a right to withdraw funds at the maturity or termination of the old account or instrument.

(iii) *Insurance policies.* In the case of insurance policies in effect on December 31, 1983, the election of a dividend accumulation option pursuant to which interest is paid (as defined in § 1.6049–5(a)(4) of this chapter), or the creation of an account in which proceeds of a policy are held for the policy beneficiary, may, in the payor's discretion, be treated as a pre-1984 account.

(iv) *Acquisitions of accounts and instruments*—(A) *Pre-1984 or post-1983 status known.* If a payor acquires accounts or instruments of another payor (including through a tax-free reorganization under section 368), the acquiring payor must treat the persons specified in this paragraph (b)(2)(iv)(A) as having the same requirement to furnish a taxpayer identification number in the manner required under this paragraph (b) to the acquiring payor for information reporting, withholding, and related tax provisions as existed with respect to the payor whose accounts or instruments were acquired. Persons specified in this paragraph (b)(2)(iv)(A) are persons who held accounts or instruments in the other payor immediately before the acquisition and who receive an account or instrument in the acquiring payor immediately after the acquisition.

(B) *Pre-1984 or post-1983 status unknown.* If the acquiring payor, as described in paragraph (b)(2)(iv)(A) of this section, is unable to identify from the business records of the other payor whether any or all of the accounts or instruments of the persons specified in paragraph (b)(2)(iv)(A) of this section are pre-1984 (or post-1983) accounts or instruments, then the acquiring payor may treat these unidentified accounts or instruments as pre-1984 accounts or instruments.

(C) *Cross reference.* See § 31.3406(g)–2(g) for the limited exception from withholding under section 3406(a)(1)(A) on accounts or instruments described in paragraphs (b)(2)(iv) (A) and (B) of this section for which the payor does not have a taxpayer identification number.

(3) *Manner required for furnishing a taxpayer identification number with respect to an account or instrument that is not a pre-1984 account.* A payee who receives reportable interest or dividend payments (as defined in section 3406(b)(2)) from a payor must certify under penalties of perjury that the taxpayer identification number the payee furnishes to the payor is the payee's correct taxpayer identification number. The payee must make the certification only with respect to an account or instrument that is not a pre-1984 account (as described in paragraph (b)(2) of this section). See § 31.3406(h)–3 for a description of the certificate on which the certification must be made. See § 31.3406(d)–2 for the requirement that the payee must certify under penalties of perjury that the payee is not subject to withholding due to notified payee underreporting. See § 31.3406(d)–3(a) with respect to an account established directly with, or an instrument acquired directly from, the payor by electronic transmission or by mail. See § 31.3406(d)–4 for the rules applicable to readily tradable instruments acquired through a broker.

(4) *Special rule with respect to the acquisition of a readily tradable instrument in a transaction between certain parties acting without the assistance of a broker.* If a payee, at any time, acquires a readily tradable instrument without the assistance of a broker, and no party to the acquisition is a broker or an agent of the payor, the payee must furnish the payee's taxpayer identification number to the payor prior to the time reportable payments are made on the instrument. The payee is not required to certify under penalties of perjury that the number is correct. See § 31.3406(d)–2 for the rule that a payee is not subject to withholding due to notified payee underreporting with respect to a readily tradable instrument acquired in the manner described in this paragraph (b)(4). A broker is considered to provide assistance in the acquisition of an instrument if the person effecting the acquisition would be required to make an information return under section 6045 if such person were to sell the instrument. See § 31.3406(d)–4 for rules relating to an acquisition of a readily tradable instrument when a broker is involved.

(c) *Brokerage account*—(1) *Manner required for furnishing a taxpayer identification number with respect to a brokerage relationship that is not a post-1983 brokerage account*—(i) *In general.* With respect to any instrument, investment, or deposit made through a brokerage account that is not a post-1983 brokerage account, a payee must furnish the payee's taxpayer identification number to the broker either orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct. See paragraph (b)(2)(i) of this section for the rule that any instrument, whenever acquired, that is held in a brokerage account that is not a post-1983 brokerage account, is considered held in an account that is not a post-1983 brokerage account. For example, in 1983 a payee established and acquired a readily tradable instrument from a brokerage account; no activity took place through that account until the payee purchased a readily tradable instrument in 1995. That readily tradable instrument is not held in a post-1983 brokerage account; therefore, the payee need not certify under penalties of perjury that the payee's taxpayer identification number is correct.

(ii) *Definition of a brokerage account that is not a post-1983 brokerage account.* A brokerage account that was established by a payee before January 1, 1984, through which during 1983 the broker either bought or sold securities for the payee or held securities on behalf of the payee as a nominee (i.e., in street name), is an account that is not a post-1983 brokerage account.

(2) *Manner required for furnishing a taxpayer identification number with respect to a post-1983 brokerage account*—(i) *In general.* With respect to a post-1983 brokerage account, the payee must furnish the payee's taxpayer identification number to the broker and certify under penalties of perjury that the taxpayer identification number furnished is correct, except as provided in § 31.3406(d)–3(b).

(ii) *Definition of a post-1983 brokerage account.* A brokerage account established after December 31, 1983 (or before January 1, 1984, through which during 1983 the broker neither bought nor sold securities nor held securities on behalf of the payee as a nominee (i.e., in street name)), is a post-1983 brokerage account.

(d) *Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.—Manner required for furnishing a taxpayer identification number.* For accounts, contracts, or relationships subject to information reporting under section 6041 (relating to information reporting at source on rents, royalties, salaries, etc.), section 6041A(a) (relating to information reporting of payments for nonemployee services), section 6050A (relating to information reporting by certain fishing boat operators), or section 6050N (relating to information reporting of payments of royalties), the payee must furnish the payee's taxpayer identification number to the payor either orally or in writing. Except as provided in § 31.3406(d)–5, the payee is not required to certify under penalties of perjury that the taxpayer identification number is correct regardless of when the account, contract, or relationship is established.

§ 31.3406(d)–2 Payee certification failure.

(a) *Requirement to backup withhold.* Withholding under section 3406(a)(1)(D) applies to a reportable interest or dividend payment (as defined in section 3406(b)(2)) if, and only if, the payee fails to certify to the payor, under penalties of perjury, that the payee is not subject to withholding due to notified payee underreporting under section 3406(a)(1)(C). The period for which withholding applies is described in § 31.3406(e)–1(e). See § 31.3406(d)–3(a) for special rules when an account is established directly with, or an instrument is acquired directly from, the payor by electronic transmission or by mail. See § 31.3406(c)–1(c)(3)(iv) for rules with respect to a payor's reliance on a payee certification for a new account following notified payee underreporting. See § 31.3406(d)–4 for special rules relating to the acquisition of a readily tradable instrument through a broker. The certificate on which the certification should be made is described in § 31.3406(h)–3.

(b) *Exceptions.* Withholding under section 3406(a)(1)(D) and paragraph (a) of this section does not apply to reportable interest or dividend payments (as defined in section 3406(b)(2)) made—

(1) With respect to a pre-1984 account (as defined in § 31.3406(d)–1(b)(1));

(2) In a window transaction (as defined in § 31.3406(b)(2)–3(b));

(3) With respect to a readily tradable instrument described in § 31.3406(d)–1(b)(2)(iv) or § 31.3406(d)–4(a)(3); or

(4) During the period and with respect to an account or readily tradable instrument described in § 31.3406(d)–3.

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) *Accounts or readily tradable instruments acquired directly from the payor (including a broker who holds an instrument in street name) by electronic transmission or by mail.* In the case of an account established directly with, or a readily tradable instrument acquired directly from, the payor by means of electronic transmission (i.e., telephone or wire instruction) or by mail, the payor may permit the payee to furnish the certifications required in § 31.3406(d)–1(b)(3) (relating to certification that the payee's taxpayer identification number is correct) and § 31.3406(d)–2 (relating to certification of notified payee underreporting) within 30 days after the establishment or acquisition without subjecting the account to withholding during the 30 days. The preceding sentence applies only if the payee furnishes a taxpayer identification number to the payor at the time of the establishment or acquisition, and the payee does not withdraw more than 69 percent of a reportable interest or dividend payment before the certifications are received within the 30 days. If the payee does not provide the required certifications within 30 days of the establishment or acquisition, the payor must withhold 31 percent of any reportable interest or dividend payments made to the account after its acquisition. For purposes of this section, an account or instrument is considered acquired directly from the payor if the instrument was acquired by the payee without the assistance of a broker or the instrument was acquired directly from a broker who holds the instrument as nominee for the payee (i.e., in street name) and who is considered a payor under § 31.3406(a)–2.

(b) *Sale of an instrument for a customer by electronic transmission or by mail.* The special 30-day rules set forth in paragraph (a) of this section apply comparably with respect to certification of the taxpayer identification number for the sale of an instrument under section 6045 (as described in § 31.3406(b)(3)–2) through a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)) for a customer by electronic transmission or by mail. However, these rules apply only if the payee furnishes the payee's taxpayer identification number before the sale occurs. For purposes of applying those 30-day rules under this paragraph (b), a payee's reinvestment of the gross proceeds of the sale into other instruments constitutes a withdrawal.

(c) *Application to foreign payees.* The rules of paragraphs (a) and (b) of this section also apply to a payee from whom the payor is required to obtain a Form W–8 or a substitute of the form or is to obtain other evidence of foreign status (pursuant to the relevant regulations issued under sections 6049 and 6045), provided the payee represents orally or otherwise, before or at the time of the acquisition or sale of the instrument or the establishment of the account, that the payee is not a United States citizen or resident.

§ 31.3406(d)–4 Special rules for readily tradable instruments acquired through a broker.

(a) *Readily tradable instruments acquired through post-1983 brokerage accounts with a broker who is not a payor*—(1) *In general.* If a readily tradable instrument is acquired through a post-1983 brokerage account (as defined in § 31.3406(d)–1(c)(2)) and the broker is not the payor of the instrument (as defined in § 31.3406(a)–2(b)(3)), the broker must—

(i) Obtain once with respect to each account the certifications described in § 31.3406(d)–2(a) and § 31.3406(d)–1(b)(3) and (c)(2) from the payee (relating to certification regarding payee underreporting and taxpayer identification number, respectively);

(ii) Furnish the payee's taxpayer identification number to the payor; and

(iii) Notify the payor to impose withholding if the payee fails to make either of the required certifications to the broker or if the broker has been notified by the Internal Revenue Service before the acquisition of the instrument that the payee is subject to withholding due to notified payee underreporting under section 3406(a)(1)(C) or that the payee is subject to withholding because the payee's taxpayer identification number is incorrect under section 3406(a)(1)(B) (as described in § 31.3406(d)–5).

(2) *Additional requirements.* The broker must give the information required by paragraphs (a)(1) (ii) and (iii) of this section to the payor with the transfer instructions for the acquisition (including account registration instructions transmitted by a broker in the case of acquisitions of shares in a mutual fund). A notice including the information described in paragraph

(b)(1) of this section fulfills the broker's requirement to give notice to the payor. Once the broker transmits the transfer instructions containing the information required by this section, the broker has no further responsibility to obtain a missing taxpayer identification number or missing certification or to provide additional notices to the payee or payor with respect to the acquisition of the instrument. Upon receiving the notice from a broker, the payor must impose withholding on the account pursuant to § 31.3406(a)–1.

(3) *Transactions entered into through a brokerage account that is not a post-1983 brokerage account.* If a broker acquires readily tradable instruments for a payee through an account (with the broker) that is not a post-1983 brokerage account (as defined in § 31.3406(d)–1(c)(1)), and the broker is not the payor of the instruments, the broker must furnish the payee's taxpayer identification number to the payor. In addition, if the broker has been notified by the Internal Revenue Service that the payee is subject to withholding under section 3406 either because of an incorrect taxpayer identification number or due to notified payee underreporting as described in sections 3406(a)(1) (B) or (C), respectively, the broker must notify the payor of the instrument to impose withholding with respect to that payee and transmit the information in the manner described in this paragraph (a). After a payor receives a notice from a broker pursuant to section 3406(d)(2)(B) and this paragraph (a), the payor must impose withholding on any accounts of the payee paying reportable interest or dividends as defined in section 3406(b)(2) in accordance with § 31.3406(a)–1.

(4) *Payor must notify payee*—(i) *Failure to provide certifications.* If a payor is notified by a broker, as required in paragraph (a)(1) of this section, that a payee is subject to withholding because the payee failed to provide the certifications, as described in § 31.3406(d)–2(a) and § 31.3406(d)–(b)(3) and (c)(2), and the payor has not received the certifications from the payee, then the payor must notify the payee that withholding has started (or will start) no later than 15 days after the payor makes the first payment to the payee that is subject to withholding under section 3406. A notice that contains the information described in paragraph (b)(2) of this section satisfies the payor's requirement to give notice to the payee. If the broker notifies the payor that the payee failed to make a required certification and the payor has received the certification from the payee, the payor may disregard the notice from the broker.

(ii) *Notified payee underreporting and incorrect taxpayer identification number.* The payor must notify the payee under this section if the Internal Revenue Service or a broker notifies the payor to withhold either because of an incorrect taxpayer identification number under section 3406(a)(1)(B) (as described in § 31.3406(d)–5) or due to notified payee underreporting under section 3406(a)(1)(C) (as described in § 31.3406(c)–1). If a payor is notified by the Internal Revenue Service or a broker with respect to a readily tradable instrument, the payor may not ignore the notice even if the payee previously provided the payee's taxpayer identification number under penalties of perjury to the payor and even if the payee certified to the payor that the payee is not subject to backup withholding due to a notified payee underreporting. See § 31.3406(d)–5(c)(1) and (2) and (f)(2) for notice requirements under section 3406(a)(1)(B) due to an incorrect taxpayer identification number. See § 31.3406(c)–1(c)(2) for notice requirements under section 3406(a)(1)(C) due to notified payee underreporting.

(b) *Notices*—(1) *Form of notice by broker to payor.* A broker who is required under paragraphs (a)(1)(iii) and (2) of this section to notify the payor with respect to a readily tradable instrument may notify the payor in connection with the transfer instructions by means of magnetic media, machine readable document, or any other medium, provided that the notice includes the following information—

(i) The payee's name, address, and taxpayer identification number (if provided to the broker); and

(ii) A statement that the payee is subject to withholding under section 3406(a)(1) (A), (B), (C), or (D) of the Internal Revenue Code, whichever section applies; and

(iii) When applicable, a statement that the broker was notified by the Internal Revenue Service that the payee is subject to withholding under sections 3406(a)(1)(B) or (C).

(2) *Form of notice by payor to payee.* A payor who is required to notify a payee that the payee is subject to withholding must provide notice that is substantially similar to the following—

(i) For a notification concerning a failure to provide a taxpayer identification number in the required manner under section 3406(a)(1)(A) or a failure to make the following certification described in section 3406(a)(1)(D):

Recently, you purchased (identify security acquired). Because of the existence of one or more of the following conditions, payments of interest, dividends, and other reportable amounts that are made to you will be subject to withholding of tax at a 31 percent rate: (specify the condition or conditions, described below, that are applicable)

(1) You failed to provide a taxpayer identification number, or failed to provide this number under penalties of perjury, in connection with the purchase of the acquired security. (An individual's taxpayer identification number is his or her social security number.)

(2) You failed to certify, under penalties of perjury, that you are not subject to withholding due to notified payee underreporting as required under section 3406(a)(1)(D) of the Internal Revenue Code.

If condition (1) applies, you may stop withholding by providing your taxpayer identification number on the enclosed Form W–9, signing the form, and returning it to us. If you do not have a taxpayer identification number, but have applied (or will soon apply) for one, you may so indicate on the Form W–9. Withholding may apply during the 60-day period you are waiting for your taxpayer identification number. You must provide us with your taxpayer identification number promptly after you receive it in order to avoid withholding after the end of the 60-day period or to stop withholding if it has already begun. Certain persons, described on the enclosed Form W–9, are exempt from withholding. Follow the instructions on that form if applicable to you.

If condition (2) applies, you may stop withholding by certifying on the enclosed Form W–9 that you are not subject to withholding due to notified payee underreporting, signing the form, and returning it to us.

If more than one condition applies, you must remove all applicable conditions to stop withholding.

Please address any questions concerning this notice to: [Insert payor identifying information].

(Do not address questions to the broker who purchased the securities for you.)

(ii) For the form of the notice concerning imposition of withholding due to an incorrect taxpayer identification number, see § 31.3406(d)–5 (d)(2) and (g)(2).

(iii) For the form of the notice concerning the imposition of withholding due to notified payee underreporting, see § 31.3406(c)–1(d)(2).

(c) *Payor's reliance on information from broker*—(1) *In general.* A payor of an instrument acquired by a payee through a broker may rely on the information that the payor receives from the broker pursuant to paragraphs (a) and (b) of this section.

(2) *Amount subject to backup withholding.* The payor is required to withhold under section 3406 depending

on the payor's customary method of making payment on an instrument or instruments owned by a payee. If it is the practice of a payor to combine in one account all readily tradable instruments of the same issue owned by a payee and if only certain of those instruments are subject to withholding, the payor must withhold on the aggregate payment made with respect to all the instruments in the account. Otherwise, the payor must withhold on the payment made on the instrument or instruments with respect to which the payee is subject to withholding.

§ 31.3406(e)–1 Period during which backup withholding is required.

(a) *In general.* A payor must withhold under section 3406 at a rate of 31 percent on any reportable payment (as defined in section 3406(b)) made to a payee during the period described in this section (irrespective of the number of conditions for imposing withholding under section 3406 that exist with respect to the payee). A payor must continue to withhold under section 3406 until no condition for imposing backup withholding exists with respect to the payee.

(b) *Failure to furnish a taxpayer identification number in the manner required*—(1) *Start withholding.* A payor is required to withhold under section 3406(a)(1)(A) at a rate of 31 percent on any reportable payment (as defined in section 3406(b)) at the time the payor pays the reportable payment (as described in § 31.3406(a)–4) to a payee if—

(i) The payor has not received the payee's taxpayer identification number in the manner required in § 31.3406(d)–1; or

(ii) The payor has received notice from a broker (as required in § 31.3406(d)–4(a)(1)(iii)) with respect to a readily tradable instrument that the payee did not furnish a taxpayer identification number to the broker in the manner required in § 31.3406(d)–1 and the payor has not received the taxpayer identification number from the payee in this manner.

(2) *Stop withholding.* The payor must stop withholding under section 3406(a)(1)(A) within 30 days after the payor receives—

(i) The payee's taxpayer identification number in the manner required under § 31.3406(d)–1; or

(ii) A statement, in such form and containing such information as is required under applicable regulations, that the payee is not a United States person.

(c) *Notification of an incorrect taxpayer identification number.* See § 31.3406(d)–5(e) and (g)(3) for the period for which withholding is required in the case of notification of an incorrect taxpayer identification number.

(d) *Notified payee underreporting.* See § 31.3406(c)–1(e) for the period for which withholding is required in the case of notified payee underreporting.

(e) *Payee certification failure*—(1) *Start withholding.* A payor is required to withhold under section 3406(a)(1)(D) at a rate of 31 percent on any reportable interest or dividend payment (as defined in section 3406(b)(2)) at the time the payor pays such reportable interest or dividend payment (as described in § 31.3406(a)–4) to a payee if—

(i) The payor has not received from the payee the certification required in § 31.3406(d)–2; or

(ii) The payor has received notice from a broker (as required in § 31.3406(d)–4(a)(1)(iii)) with respect to a readily tradable instrument that the payee did not make the required certification and the payor has not received the required certification from the payee.

(2) *Stop withholding.* The payor must stop withholding under section 3406(a)(1)(D) on any reportable interest or dividend payment within 30 days after the payor receives the certification from the payee in the manner required by § 31.3406(d)–2.

(f) *Rule for determining when the payor receives a taxpayer identification number or certificate from a payee.* In determining whether a payee has failed to provide a taxpayer identification number or any certification to a payor (including a Form W–8 or substitute form), a payor is required to process the taxpayer identification number or certification within 30 days after the payor receives the taxpayer identification number or certification from the payee or in certain cases, from a broker. Thus, the payor may take up to 30 days to treat the taxpayer identification number or a certificate as having been received.

§ 31.3406(f)–1 Confidentiality of information.

(a) *Confidentiality and liability for violation.* Pursuant to section 3406(f) no person may use any information obtained under section 3406 for any purpose except for the purpose of complying with the requirements of section 3406 or for purposes permitted under section 6103 (subject to the safeguards of section 6103). See section 7431 for civil damages for violating the confidential use of the information (subject to an exception for good faith).

(b) *Permissible use of information*—(1) *In general.* A payor or broker may transmit information on a Form W–9, Form W–8, or other acceptable form relating to withholding to the department, institution, or firm (or to any employee therein) responsible for withholding or processing of taxpayer identification numbers, certifications described in § 31.3406(h)–3, or other substitute forms. In addition, a broker may notify the payor with respect to a readily tradable instrument of the requirement to withhold and the condition or conditions for imposing withholding (as described in § 31.3406(d)–4) that exist with respect to the payee. A payor or broker may, without violating the Internal Revenue Code, close an account of, refuse to open an account for, issue an instrument to, or redeem an instrument for, a person solely because the person fails to furnish the person's taxpayer identification number or documentation of foreign status in the manner required in § 31.3406(d)–1 and § 31.3406(g)–1, respectively. A payor who closes an account of a payee in the calendar year in which the account was opened and during which no taxpayer identification number or evidence of foreign status was provided for that account will be presumed in the absence of evidence to the contrary to have closed the account without violating section 3406(f) even though the payee is subject to backup withholding under section 3406(a)(1)(A). A payor, except as provided in §§ 31.3406(d)–3 and 31.3406(g)–3, may not prohibit a payee who fails to furnish the payee's taxpayer identification number in the manner required in § 31.3406(d)–1 from withdrawing any funds in the account.

(2) *Window transactions.* In the case of a window transaction (as defined in § 31.3406(b)(2)–3(b)), a payor may, without violating the Internal Revenue Code, refuse to redeem or may refuse to make payment if the payee fails to provide a taxpayer identification number regardless of when the obligation was issued or acquired.

(c) *Specific restrictions on the use of information.* Except as provided in paragraph (b) of this section, a payor or broker is not permitted to—

(1) Close an account (or instrument) of a payee solely because that payee (or the account of a payee) is subject to withholding under section 3406(a)(1)(A), (B), (C), or (D);

(2) Refuse to open an account or to issue an instrument if the person fails to certify, under penalties of perjury, that the person is not subject to withholding under section 3406(a)(1)(C) (relating to notified payee underreporting);

(3) Use information obtained under section 3406 (including a payee's failure or inability to certify that the payee is not subject to withholding due to notified payee underreporting or the fact that the account is subject to withholding), surcharge an account (i.e., charge an account more than the fee charged a similar account that was not subject to withholding under section 3406), or use that information to determine whether to open or close an account, whether to issue or redeem an instrument, or whether to extend credit to the payee.

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

(a) *Exempt recipients*—(1) *In general.* A payor of any reportable payment (as defined in section 3406(b)) must not withhold under section 3406 if the payee is—

(i) An organization exempt from taxation under section 501(a) or an individual retirement account;

(ii) The United States or any wholly owned agency or instrumentality thereof;

(iii) A state, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(iv) A foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing (as defined in regulations under section 892); or

(v) An international organization or any wholly owned agency or instrumentality thereof (as defined in section 7701(a)(18)).

(2) *Nonexclusive list.* Paragraph (a)(1) of this section does not prescribe an exclusive list of payees that are exempt from information reporting and also are exempt from withholding under section 3406.

(b) *Determination of whether a person is described in paragraph (a)(1) of this section.* The determination of whether a person is a payee described in paragraph (a)(1) of this section must be made as provided in the applicable provisions of section 6049 and the regulations issued thereunder. A payor, even if permitted to treat a person as an exempt recipient without requiring a certificate under the provisions of section 6049, may require a payee, otherwise not required to file a certificate regarding its exempt status, to file a certificate and may treat a payee who fails to file the certificate as a person who is not an exempt recipient. See § 31.3406(h)–3 for a description of the Form W–9 or a substitute form prescribed under section 3406 for claiming exempt status.

(c) *Prepaid or advance premium life-insurance contracts.* A payor of a reportable payment (as defined in section 3406(b)(1)) may, but is not required to, withhold under section 3406 on reportable payments made from January 1, 1984, to December 31, 1996, on prepaid or advance premium life-insurance contracts to a payee who is the owner for tax purposes of the prepaid or advance premium life-insurance contract. For purposes of this exception from backup withholding, a prepaid or advance premium life-insurance contract is one entered into on or before June 30, 1984, by the payee and under which the increment in value of the prepaid or advance premium is used for the payment of premiums during the period in which the exception from backup withholding applies.

§ 31.3406(g)–2 Exception for reportable payments for which withholding is otherwise required.

(a) *In general.* A payor of a reportable payment (as defined in section 3406(b)) must not withhold under section 3406 if the payment is subject to withholding under any other provision of the Internal Revenue Code.

(b) *Payment of wages.* A payor who is required to make an information return under section 6041 with respect to a payment of wages (as defined in section 3401) because, e.g., the employee makes a certification under section 3402(n) (relating to employees incurring no income tax liability), must not withhold under section 3406 on those wages.

(c) *Distribution from a pension, annuity, or other plan of deferred compensation.* An amount reportable under section 6047, such as a designated distribution under section 3405, is not a reportable payment subject to withholding under section 3406. See section 3406(b). Designated distributions not subject to withholding under section 3406 include—

(1) Distributions from a pension, annuity, profit-sharing, stock bonus plan, or other plan deferring the receipt of compensation;

(2) Distributions from an individual retirement account or annuity;

(3) Distributions from an owner-employee plan; and

(4) Certain surrenders of life insurance contracts.

(d) *Gambling winnings*—(1) *In general.* A payor of a reportable gambling winning must not withhold under section 3406 if tax is required to be withheld from the gambling winning under section 3402(q) (relating to the extension of withholding to certain gambling winnings). If the reportable gambling winning is not required to be withheld upon under section 3402(q), withholding under section 3406 applies to the gambling winning if, and only if, the payee does not furnish a taxpayer identification number to the payor. Section 31.3406(b)(3)–1(b)(3) does not apply to a reportable gambling winning. The payor of a reportable gambling winning is not required to aggregate all such winnings made to a payee during a calendar year, nor is the payor required to determine whether an information return was required to be made with respect to the payee for the preceding year.

(2) *Definition of a reportable gambling winning and determination of amount subject to backup withholding.* For purposes of withholding under section 3406, a reportable gambling winning is any gambling winning subject to information reporting under section 6041. The amount of a reportable gambling winning is—

(i) The amount paid with respect to the amount of the wager reduced, at the option of the payor; by

(ii) The amount of the wager.

(3) *Special rules.* Amounts paid with respect to identical wagers are treated as paid with respect to a single wager. The determination of whether wagers are identical is made under § 31.3402(q)–1(c)(1)(ii). In addition, a gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is $600 or more and if the proceeds are at least 300 times as large as the amount wagered. See § 7.6041–1 of this chapter to determine whether a winning from bingo, keno, or slot machines is a reportable gambling winning and thus subject to withholding under section 3406.

(e) *Certain real estate transactions.* A real estate reporting person (the so-called broker) as defined in section 6045(e)(2) must not withhold under section 3406 on a payment made with respect to a real estate transaction that is subject to reporting under sections 6045 (a) and (e) and § 1.6045–4 of this chapter.

(f) *Certain payments after an acquisition of accounts or instruments.* A payor who acquires pre-1984 accounts or instruments described in § 31.3406(d)–1(b)(2)(iv) for which the payor does not have a taxpayer identification number or has an obviously incorrect taxpayer identification number as defined in § 31.3406(h)–1(b)(2) must start

withholding under section 3406(a)(1)(A) and § 31.3406(d)–1 on those accounts or instruments no later than sixty days following the date of the payor's acquisition of those accounts or instruments.

(g) *Certain gross proceeds.* No withholding under section 3406 is required with respect to any portion of the original issue discount on an instrument or security that is subject to withholding under section 3406 as reportable gross proceeds of such instrument or security under section 6045.

§ 31.3406(g)–3 Exemption while payee is waiting for a taxpayer identification number.

(a) *In general*—(1) *Backup withholding not required for 60 days.* If a payor has received an awaiting-TIN certificate from a payee with respect to an account or instrument receiving reportable interest or dividends as described in section 3406(b)(2), the payor must exempt the payee from withholding under section 3406(a)(1)(A) during the 60-day exemption period to the extent and in the manner described in either paragraph (a) (2) or (3) of this section. The 60-day exemption period means the 60-consecutive-day period beginning with the day the payor receives the awaiting-TIN certificate. The payor must withhold under section 3406 beginning after the 60-day exemption period if the payor has not received a taxpayer identification number from the payee in the manner required in § 31.3406(d)–1. Regardless of whether the payee provides an awaiting-TIN certificate to a payor, the payor is required to withhold under section 3406(a)(1)(D) and § 31.3406(d)–2 on reportable interest or dividend payments as described in § 31.3406(d)–2 if the payee fails to certify, under penalties of perjury, that the payee is not subject to withholding due to notified payee underreporting as required in section 3406(a)(1)(D) and § 31.3406(d)–2.

(2) *Reserve method.* A payor must not withhold under section 3406 during the 60-day exemption period unless the payee (or a joint payee in the case of a joint account) desires to make a withdrawal of more than $500 of either principal or interest from the account in any single transaction during the period. If a payee (or a joint payee) desires to make a withdrawal of more than $500 during the 60-day exemption period, the payor is required under section 3406 to withhold 31 percent of all reportable payments made during the period and at the time of withdrawal unless the payee reserves 31 percent of all reportable payments made to the account during the period.

(3) *Alternative rule; 7-day grace period*—(i) *In general.* A payor who receives an awaiting-TIN certificate may elect, on a payee-by-payee basis or in general, to exempt reportable interest or dividend payments to a payee from withholding under section 3406 applying the rules in paragraph (a)(3)(ii) or (iii) of this section.

(ii) *Withholding on withdrawals.* Under this paragraph (a)(3)(ii), a payor must obtain a certified taxpayer identification number from the payee within 60 days after the date that the payor receives the awaiting-TIN certification. In addition, the payor must withhold under section 3406 on any withdrawals made after the close of 7 business days after the date the awaiting-TIN certification is received and before the earlier of the date that the payor receives a certified taxpayer identification number from the payee, the date the account is closed (in which case the payor must withhold on any reportable payment made at the time the account or relationship is closed), or the date withholding under section 3406 starts on all reportable payments made to the account, instrument, or relationship. All cash withdrawals in an amount up to the reportable payments made from the day after the date of receipt of the awaiting-TIN certification to the date of withdrawal are treated as reportable payments.

(iii) *Withholding regardless of withdrawals.* Under this paragraph (a)(3)(iii), a payor must start withholding under section 3406 on the account not later than 7 business days after the date the payor receives the awaiting-TIN certification on reportable payments thereafter made to the account (whether or not the payee makes a cash withdrawal). The payor must withhold under section 3406 until the earlier of the date the payor receives a certified taxpayer identification number from the payee, the date the account is closed, or the date withholding under section 3406 starts on all reportable payments made to the account, instrument, or relationship. The payor must obtain a certified taxpayer identification number from the payee within 60 days after the date that the payor receives the awaiting-TIN certificate or undertake a mailing each year soliciting the certified taxpayer identification number from the payee until the earlier of the calendar year that the certified taxpayer identification number is received, or the calendar year in which the account is closed. However, if the account is closed in December of a calendar year, the mailing must be made after the account is closed and before January 31 of the subsequent calendar year.

(b) *Special rule for readily tradable instruments.* The 60-day awaiting-TIN exemption described in paragraph (a)(1) of this section applies to payments made with respect to readily tradable instruments only if the payee provides an awaiting-TIN certificate directly to the payor. If a broker acquires a readily tradable instrument through a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)) for a payee who has no taxpayer identification number, the broker must advise the payor as required in § 31.3406(d)–4(a)(1) that the payee failed to provide a taxpayer identification number under penalties of perjury, regardless of whether the payee provides an awaiting-TIN certificate to the broker. Once a payor is notified by a broker that a payee failed to provide a taxpayer identification number in the required manner, or that the payee is subject to withholding under section 3406(a)(1) (B) or (C), the payor must impose withholding under section 3406 for the appropriate period described in § 31.3406(e)–1.

(c) *Exceptions*—(1) *In general.* The 60-day awaiting-TIN exemption described in paragraph (a) of this section does not apply to—

(i) Window transactions (as defined in § 31.3406(b)(2)–3(b));

(ii) Redemptions of bearer obligations that are subject to reporting under section 6045; or

(iii) Other amounts that are subject to reporting under section 6045 (except as described in paragraph (c)(2) of this section).

(2) *Special rule for amounts subject to reporting under section 6045 other than proceeds of redemptions of bearer obligations.* If a broker's customer does not provide a taxpayer identification number to the broker, and the broker effects a sale that is subject to reporting under section 6045 (other than a redemption of a bearer obligation), § 31.3406(d)–3(b) applies, whether or not the sale is pursuant to an instruction by electronic transmission, provided the customer furnishes an awaiting-TIN certificate to the broker before the sale. For purposes of this paragraph (c)(2), the 30-day period provided in § 31.3406(d)–3(b) is a 60-day period.

(d) *Awaiting-TIN certificate.* A payee qualifies for the 60-day awaiting-TIN exemption provided in paragraph (a) of this section if the payee furnishes a written statement to the payor, signed under penalties of perjury, that the payee has not been issued a taxpayer identification number, that the payee has applied for a taxpayer identification number or intends to apply for a

number in the near future, and that the payee understands that if the payee does not provide a number to the payor within 60 days, the payor is required under section 3406 to withhold 31 percent of any reportable payment thereafter made to the payee until the payor receives a number, and 31 percent of a withdrawal to the extent of reportable payments made to the payee during the 60-day period, as described in paragraph (a) of this section. Language that is substantially similar to the awaiting-TIN certification on Form W–9 will satisfy the requirements of this paragraph (d).

(e) *Form for awaiting-TIN certificate.* A payor may use Form W–9 for the awaiting-TIN certificate, or a payor may include language that is substantially similar to the awaiting-TIN certification on Form W–9 in any other document of the payor. See § 31.3406(h)–3, which provides that Form W–9 is the prescribed form but permits use of substitute forms, and specifies the length of time the payor is required to retain the form. If Form W–9 is used, the payee should write ''Applied For'' in the space reserved for the taxpayer identification number.

§ 31.3406(h)–1 Definitions.

(a) *In general.* For purposes of section 3406 and the regulations thereunder, the definitions of this section apply.

(b) *Taxpayer identification number*—(1) *In general. Taxpayer identification number* means the identifying number assigned to a person under section 6109 (relating to identifying numbers, generally a nine-digit social security number for an individual and a nine-digit employer identification number for a nonindividual, e.g., a corporation, partnership, trust, or estate). An obviously incorrect number is not considered a taxpayer identification number. See § 31.6011(b)–2 and § 301.6109–1 of this chapter for provisions relating to obtaining a taxpayer identification number.

(2) *Obviously incorrect number. Obviously incorrect number* means a number that does not contain nine digits or a number that includes an alpha character as one of the nine digits.

(c) *Broker.—Broker* is defined in section 6045(c)(1) and § 1.6045–1(a)(1) of this chapter. If there could be more than one broker with respect to any acquisition, only the broker having the closest contact (as determined under § 5f.6045–1(c)(3) (ii) and (iii) of this chapter) with the payee is treated as a broker. In the case of any instrument, the term *broker* does not include any person who is the payor with respect to the instrument as described in § 31.3406(a)–2.

(d) *Readily tradable instrument.—Readily tradable instrument* means—

(l) Any instrument that is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)); or

(2) Any instrument that is regularly quoted by brokers or dealers making a market.

(e) *Day.—Day* means a calendar day unless specified otherwise under any section of the regulations under section 3406. For example, see §§ 31.3406(d)–5(a) and 31.3406(g)–3(a)(2).

(f) *Business day.—Business day* means any day other than a Saturday, Sunday, or legal holiday (within the meaning of section 7503).

§ 31.3406(h)–2 Special rules.

(a) *Joint accounts*—(1) *Relevant name and taxpayer identification number combination.* For purposes of identifying the account subject to withholding under sections 3406(a)(1)(B) and (C), the relevant name and taxpayer identification number combination is that which is used for information reporting purposes.

(2) *Optional rule for accounts subject to backup withholding under section 3406(a)(1) (B) or (C) where the names are switched.* See § 31.3406(d)–5(c)(4)(iii) under which a payor may withhold under section 3406(a)(1)(B) as required even though the names or taxpayer identification numbers on the account have been switched. The rules under § 31.3406(d)–5(c)(4)(iii) may be applied comparably by a payor who is required to withhold under section 3406(a)(1)(C).

(3) *Joint foreign payees*—(i) *In general.* If the first payee listed on an account or instrument provides the penalties of perjury statement regarding its foreign status, withholding under section 3406 applies unless—

(A) Every joint payee provides the statement regarding foreign status (pursuant to the relevant regulations issued under sections 6045 and 6049); or

(B) Any one of the joint payees who has not established foreign status provides a taxpayer identification number to the payor in the manner required in § 31.3406(d)–1.

(ii) *Information reporting on an account including foreign payees.* If any one of the joint payees who has not established foreign status provides a taxpayer identification number under paragraph (a)(3)(i)(B) of this section, that number is the taxpayer identification number that is required to be furnished for purposes of information reporting and withholding under section 3406.

(b) *Backup withholding from an alternative source*—(1) *In general.* A payor may not withhold under section 3406 from a source maintained by the payor other than the source with respect to which there exists a liability to withhold under section 3406 with respect to the payee. See section 3403 and § 31.3403–1, which provide that the payor is liable for the amount required to be withheld regardless of whether the payor withholds.

(2) *Exceptions for payments made in property*—(i) *Backup withholding from alternative source.* In the case of a payment that is made in property (other than money), the payor must withhold under section 3406 31 percent of the fair market value of the property determined immediately before or on the date of payment. The payor may withhold under section 3406 from the principal amount being deposited with the payor or from another source maintained by the payee with the payor. The source from which the tax is withheld under section 3406 must be payable to at least one of the persons listed on the account subject to withholding. If the account or source is not payable exclusively to the same person or persons listed on the account subject to withholding under section 3406, then the payor must obtain a written statement from all other persons to whom the account or source is payable authorizing the payor to withhold under section 3406 from the alternative account or source. A payor that elects to withhold under section 3406 from an alternative source may determine the account or source from which the tax is to be withheld, or may allow the payee to designate the alternative source. A payee may not, however, require a payor to withhold under section 3406 from a specific alternative source. See § 31.3402(q)–1(d), *Example 5*, for methods of withholding on prizes, awards, and gambling winnings paid in property other than cash.

(ii) *Deferral of withholding.* If the payor cannot locate, using reasonable care (following procedures substantially similar to those set forth in § 31.3406(d)–5(c)(3)(ii) (A) and (B)), an alternative source of cash from which the payor may satisfy its withholding obligation pursuant to paragraph (b)(2)(i) of this section, the payor may defer its obligation to withhold under section 3406, except for reportable payments of property made in connection with prizes, awards, or gambling winnings, until the earlier of—

(A) The date the payor makes a cash payment to the account subject to

withholding under section 3406 or cash is otherwise deposited in the account in a sufficient amount to satisfy the obligation in full; or

(B) The close of the fourth calendar year after the obligation arose.

(iii) *Barter exchanges.* In the case of a barter exchange that issues scrip to, or credits the account of, a member or client of the exchange in payment for property or services, the barter exchange may withhold under section 3406 from—

(A) The scrip or credit, if converted to cash in order to satisfy the deposit requirements of section 6302 and § 31.6302–4; or

(B) Any other source maintained by the exchange for the member or client in the manner described in paragraph (b)(2) of this section.

(c) *Trusts.* Withholding under section 3406 applies to reportable payments made to a trust if any of the conditions for imposing withholding under section 3406 apply to the trust. Generally, a trust is not a payor and will not be required to withhold under section 3406 on reportable payments that it makes to its beneficiary who is subject to withholding under section 3406. The preceding sentence does not apply, however, to a grantor trust with two or more grantors described in § 31.3406(a)–2(b)(4), which is treated as a middleman payor. The trustee of a trust described in this paragraph (c) may certify that the trust's taxpayer identification number is correct and that the trust is not subject to withholding due to notified payee underreporting, without regard to the status of the beneficiaries of the trust.

(d) *Adjustment of prior withholding by middlemen.* A middleman payor (as defined in § 31.3406(a)–2(b)) who receives a payment from which tax has been erroneously withheld under section 3406 may seek a refund of the tax withheld by the payor from whom the middleman payor received the payment (referred to as the ''upstream payor''). Alternatively, the middleman payor may obtain a refund of the tax by claiming a credit for the amount of tax withheld by the upstream payor against the deposit of any tax imposed by this chapter which the middleman payor is required to withhold and deposit (as described in section 6413 and § 31.6413(a)–2). In either case, the middleman payor must pay or credit the gross amount of the payment (including the tax withheld) to its payee as though it had received the gross amount of the payment from the upstream payor and must withhold under section 3406 only if one of the conditions for imposing backup withholding exists with respect to its payee. If its payee is not subject to withholding under section 3406, the middleman payor must pay or credit the full amount of the payment to the payee. See § 31.6413(a)–3 regarding repayment by a payor of tax erroneously collected from a payee.

(e) *Conversion of amounts paid in foreign currency into United States dollars*—(1) *Convertible foreign currency.* If a payment is made in a currency other than the United States dollar, the amount subject to withholding under section 3406 is determined by applying the statutory rate of backup withholding to the foreign currency payment and converting the amount withheld into United States dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1) of this chapter) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner.

(2) *Nonconvertible foreign currency.* [Reserved]

(f) *Coordination with other sections.* For purposes of section 31, chapter 24 (other than section 3402(n)) of subtitle C of the Internal Revenue Code (relating to employment taxes and collection of income tax at source) and so much of subtitle F (other than section 7205) of the Internal Revenue Code (relating to procedure and administration) as relates to this chapter, and the regulations thereunder—

(1) An amount required to be withheld under section 3406 must be treated as a tax required to be withheld under section 3402;

(2) An amount withheld under section 3406 must be treated as an amount withheld under section 3402;

(3) An amount withheld under section 3406 must be deposited as required under § 31.6302–4;

(4) *Wages* includes the gross amount of any reportable payment (as defined in section 3406(b)) except for purposes of section 6014 (relating to an election by the taxpayer not to compute the tax on his annual return);

(5) *Employee* includes a payee of any reportable payment; and

(6) *Employer* includes a payor who is required to withhold the tax under section 3406 (as defined in § 31.3406(a)–2(a)) with respect to any reportable payment (as defined in section 3406(b)).

(g) *Tax liabilities and penalties.* A payor is subject to the same civil and criminal penalties for failing to impose withholding under section 3406 as an employer who fails to withhold on a payment of wages. In addition, a broker may be subject to the penalty under section 6705 (failure of a broker to provide notice to a payor).

(h) *To whom payor is liable for amount withheld.* A payor is not liable to any person for any amount withheld under section 3406. A payor is liable only to the United States for an amount that is required to be withheld as provided in § 31.3403–1.

§ 31.3406(h)–3 Certificates.

(a) *Prescribed form to furnish information under penalties of perjury*—(1) *In general.* Except as provided in paragraph (c) of this section, the Form W–9 is the form prescribed under section 3406 on which the payee certifies, under penalties of perjury, that—

(i) The taxpayer identification number furnished to the payor is correct (as required in § 31.3406(d)–1 and § 31.3406(d)–5);

(ii) The payee is not subject to withholding due to notified payee underreporting (as required in § 31.3406(d)–2);

(iii) The payee is an exempt recipient (as described in § 31.3406(g)–1); or

(iv) The payee is awaiting receipt of a taxpayer identification number (as described in § 31.3406(g)–3).

(2) *Use of a single or multiple Forms W–9 for accounts of the same payee.* A valid Form W–9 must include the name and taxpayer identification number of the payee. Except as provided in paragraph (b) of this section, the payee must sign under penalties of perjury and date the Form W–9 in order to satisfy the requirements of this section. A payor or broker may require a payee to furnish a separate Form W–9 for each obligation, deposit, certificate, share, membership, contract, or other instrument, or one Form W–9 for all the payee's obligations or relationships with the payor or broker. In addition, a payee of a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds (within the same family of funds) may be permitted, in the discretion of the mutual fund, to provide one Form W–9 with respect to shares acquired or owned in any of the funds.

(b) *Prescribed form to furnish a noncertified taxpayer identification number.* With respect to accounts or other relationships where the payee is not required to certify, under penalties of perjury, that the taxpayer identification number being furnished is correct, the payor or broker may obtain the taxpayer identification number orally or may use Form W–9, a

substitute form, or any other document, but the payee is not required to sign the form.

(c) *Forms prepared by payors or brokers—(1) Substitute forms; in general.* A payor or broker may prepare and use a form that contains provisions that are substantially similar to those of the official Form W–9. A payor or broker may use any document relating to the transaction, such as the signature card for an account, so long as the certifications are clearly set forth. A payor or broker who uses a substitute form may furnish orally or in writing the instructions for the Form W–9 that relate to the account. A payor or broker may refuse to accept certifications (including the official Form W–9) that are not made on the form or forms provided by the payor or broker. A payor or broker may refuse to accept a certification provided by a payee only if the payor or broker furnishes the payee with an acceptable form immediately upon receipt of an unacceptable form or within 5 business days of receipt of an unacceptable form. An acceptable form for this purpose must contain a notice that the payor or broker has refused to accept the form submitted by the payee and that the payee must submit the acceptable form provided by the payor in order for the payee not to be subject to withholding under section 3406. If the payor or broker requires the payee to furnish a form for each account of the payee, the payor or broker is not required to furnish an acceptable form until the payee furnishes the payor or broker with the payee's account numbers. A payor or broker may use separate substitute forms to have a payee certify under penalties of perjury that—

(i) The payee's taxpayer identification number is correct; and

(ii) The payee is not subject to withholding under section 3406 due to notified payee underreporting.

(2) *Form for exempt recipient.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that the payee is an exempt recipient (described in § 31.3406(g)–1 or described in the respective reporting section), provided the form contains provisions that are substantially similar to those of the official Form W–9 relating to exempt recipients. A certificate must be prepared in accordance with the instructions applicable to exempt recipients on Form W–9, and must set forth fully and clearly the data called for therein. If a payor will treat the payee as an exempt recipient only if the payee files a certificate as to its exempt status, the certificate is valid only if it contains the payee's taxpayer identification number. Thus, a payee must include the payee's taxpayer identification number on a certificate that a payor requires to be made in order to treat the payee as an exempt recipient.

(d) *Special rule for brokers.* A broker may act as the payee's agent for purposes of furnishing a taxpayer identification number or certification to a payor with respect to any readily tradable instrument (as defined in § 31.3406(h)–1(d)) provided the payee provides a taxpayer identification number on Form W–9 or other acceptable substitute form to the broker. The payor may rely on a taxpayer identification number provided by the broker unless certification is required (as described in § 31.3406(d)–4) and the broker notifies the payor that the number was not certified.

(e) *Reasonable reliance on certificate*—(1) *In general.* A payor is not liable for the tax imposed under section 3406 if the payor's failure to deduct and withhold the tax is due to reasonable reliance, as defined in paragraph (e)(2) of this section, on a Form W–9 (or other acceptable substitute) required by this section.

(2) *Circumstances establishing reasonable reliance.* For purposes of paragraph (e)(1) of this section, a payor can reasonably rely on a Form W–9 (or other acceptable substitute) unless—

(i) The form does not contain the name and taxpayer identification number of the payee (or does not state, in lieu of a taxpayer identification number, that the payee is awaiting receipt of a taxpayer identification number (i.e., an awaiting-TIN certificate));

(ii) The form is not signed and dated by the payee;

(iii) The form does not contain the statement, when required, that the payee is not subject to withholding due to notified payee underreporting;

(iv) The payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form; or

(v) For purposes of section 3406(a)(1)(C), the payor is required to subject the account to which the form relates to withholding under section 3406(a)(1)(C) under the circumstances described in § 31.3406(c)–1(c)(3)(iii).

(f) *Who may sign certificate*—(1) *In general.* A Form W–9 or other acceptable substitute form may be signed by any person who is authorized to sign a declaration under penalties of perjury on behalf of the payee as provided in section 6061 and the regulations thereunder (relating to who may sign generally for an individual, which includes certain agents who may sign returns and other documents), section 6062 and the regulations thereunder (relating to who may sign corporate returns), and section 6063 and the regulations thereunder (relating to who may sign partnership returns).

(2) *Notified payee underreporting.* A payee who has not been notified that he is subject to withholding under section 3406(a)(1)(C) as a result of notified payee underreporting may make the certification related to notified payee underreporting. In addition, a payee who was subject to withholding under section 3406(a)(1)(C) due to notified payee underreporting may certify that he is not subject to withholding under section 3406(a)(1)(C) due to notified payee underreporting if the Internal Revenue Service has provided the payee with written certification that withholding under section 3406(a)(1)(C) due to notified payee underreporting has terminated.

(g) *Retention of certificates*—(1) *Accounts or instruments that are not pre-1984 accounts and brokerage relationships that are post-1983 brokerage accounts.* With respect to an account or instrument that is not a pre-1984 account (as described in § 31.3406(d)–1(b)(3)), or with respect to a brokerage relationship that is a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)), a payor or broker who receives a Form W–9 or other acceptable substitute form related to withholding under section 3406 must retain the form in its records for 3 years from the date the account is opened or the instrument is purchased. The form may be retained on microfilm or microfiche.

(2) *Accounts or instruments that are pre-1984 accounts and brokerage relationships that are not post-1983 brokerage accounts.* With respect to a pre-1984 account (as described in § 31.3406(d)–1(b)(1)) or with respect to a brokerage relationship that is not a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(1)), a payor or broker is not required to retain any Form W–9 or other acceptable substitute form. If, however, the payor or broker requires the payee to file only one Form W–9 or substitute form for all accounts or instruments of the payee, the payor or broker must retain the single form in the manner and for the period of time described in paragraph (g)(1) of this section if that form relates to any account or instrument that is not a pre-1984 account or relates to a post-1983 brokerage account. If a payee has certified that the payee is an exempt recipient described in § 31.3406(g)–1,

the payor or broker must retain the form unless the payor or broker can establish the existence of procedures that are reasonably calculated to ensure that a payee who has so certified is accurately identified in the payor's or broker's records.

(h) *Cross references.* For the requirement to file an information return (and furnish the related statement) with respect to a reportable payment, particularly if that payment has been subject to withholding under section 3406, see subtitle F, chapter 61, subparts B and C of the Internal Revenue Code. See § 31.6302–4 for the requirement to deposit amounts withheld under section 3406 on either a monthly or semi-weekly basis. See § 31.6011(a)–4(b) for the requirement to file Form 945, Annual Return of Withheld Federal Income Tax, to reflect amounts withheld under section 3406. See § 31.6071(a)–1 for the time for filing the Form 945.

§ 31.3406(i)–1 Effective date.

Sections 31.3406–0 through 31.3406(i)–1 (except §§ 31.3406(d)–5 and 31.3406(g)–1(c) and except for international transactions) are effective after December 31, 1996, and, optionally, for reportable payments made and transactions occurring on or after December 21, 1995. For the effective date of § 31.3406(d)–5, see § 31.3406(d)–5(i). Section 31.3406(g)–1(c) is effective before January 1, 1997. See §§ 35a.9999–0T through 35a.9999–5 of this chapter for rules that apply to international transactions after December 31, 1996.

Par. 9. Section 31.6011(a)–5(a) is amended by:

1. Removing the word ''or'' immediately after the language ''941PR,'' in the first and third sentences of paragraph (a)(1).

2. Adding the language '', or Form 945'' immediately after the language ''Form 941VI'' in the first and third sentences of paragraph (a)(1).

3. Adding the language ''(or other person)'' immediately after the word ''employer'' in the second, third, fourth, and sixth sentences of paragraph (a)(1).

4. Removing the authority citation at the end of the section.

Par. 10. Section 31.6011(a)–6 is amended by revising the heading and the first and third sentences of paragraph (a)(1) to read as follows:

§ 31.6011(a)–6 Final returns.

(a) *In general*—(1) *Federal Insurance Contributions Act; income tax withheld from wages and nonpayroll payments.* An employer (or other person) who is required to make a return on a particular form pursuant to § 31.6011(a)–1, § 31.6011(a)–4, or § 31.6011(a)–5, and who in any return period ceases to pay wages or nonpayroll payments in respect of which he is required to make a return on that form, must make the return for the period as a final return. * * * Every such person filing a final return (other than a final return on Form 942 or Form 943) must furnish information showing the date of the last payment of wages (as defined in section 3121(a) or section 3401(a)), and, if appropriate, the date of the last payment of nonpayroll payments defined in § 31.6011(a)–4(b). * * *

* * * * *

Par. 11. Sections 31.6051–4 and 31.6413(a)–3 are added to read as follows:

§ 31.6051–4 Statement required in case of backup withholding.

(a) *Statements required from payor.* Every payor of any reportable payment (as defined in section 3406(b)(1)) who is required to deduct and withhold tax under section 3406 must furnish to the payee a written statement containing the information required by paragraph (c) of this section.

(b) *Prescribed form.* The prescribed form for the statement required by this section is Form 1099. In the case of any reportable interest or dividend payment as defined in section 3406(b)(2), the prescribed form is the Form 1099 required in § 1.6042–4 of this chapter (relating to payments of dividends), § 1.6044–5 of this chapter (relating to payments of patronage dividends), or § 1.6049–6(e) of this chapter (relating to payments of interest or original issue discount). Statements required to be furnished by this section will be treated as statements required by the respective sections with respect to any reportable payment, except that the statement required under this section must include the amount of tax withheld under section 3406. In no event will a statement be required under this section if a statement with the same information is required to be furnished to the recipient under another section.

(c) *Information required.* Each statement on Form 1099 must show the following:

(1) The name, address, and taxpayer identification number of the person receiving any reportable payment;

(2) The amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N whether or not the amount of the reportable payment is less than the amount for which an information return is required. If tax is withheld under section 3406, the statement must show the amount of the payment withheld upon;

(3) The amount of tax deducted and withheld under section 3406;

(4) The name and address of the person filing the form;

(5) A legend stating that such amount is being reported to the Internal Revenue Service; and

(6) Such other information as is required by the form.

(d) *Time for furnishing statements.* The statement must be furnished to the payee no later than January 31 of the year following the calendar year in which the payment was made.

(e) *Aggregation.* The payor or broker may combine the information required to be shown under this section with information required to be shown under another section even if they do not relate to the same type of reportable payment.

§ 31.6413(a)–3 Repayment by payor of tax erroneously collected from payee.

(a) *In general*—(1) *Erroneous withholding under section 3406 of the Internal Revenue Code.* If a payor or broker withholds under section 3406 from a payee in error or withholds more than the proper amount of the tax under section 3406, the payor or broker may refund the amount erroneously withheld as provided in section 6413 and this section. A payor or broker will be considered to have withheld erroneously under section 3406 only if the amount is withheld because of an error by the payor or broker (e.g., an error in flagging or identifying an account that is subject to withholding under section 3406). The payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee if—

(i) The payor or broker requires a payee described in § 31.3406(g)–1(a) or described in a provision of the Internal Revenue Code requiring the reporting of a payment subject to withholding under section 3406 to certify that it is an exempt recipient, the payee fails to make the required certification, and the payor or broker subsequently withholds under section 3406 from a payment to the payee;

(ii) The payor or broker does not require the payee to certify concerning its exempt status and the payor or broker withholds under section 3406; or

(iii) The payor or broker withholds under section 3406 from a payee after the payee provides a taxpayer identification number or required certification (including the certification relating to foreign status described in § 1.6049–5(b)(2)(iv) of this chapter or

§ 1.6045–1(g)(1) of this chapter) to the payor, but before the payor or broker treats the number or required certification as having been received under § 31.3406(e)–1(b).

(2) *Limitation.* For purposes of paragraph (a)(1) of this section, if a payor or broker withholds because the payor or broker has not received a taxpayer identification number or required certification and the payee subsequently provides a taxpayer identification number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) *Refunding amounts erroneously withheld*—(1) *Time and manner.* If a payor or broker withholds under section 3406 from a payee in error (including withholding more than the correct amount, as described in paragraph (a) of this section), the payor or broker may refund the amount erroneously withheld to the payee if the refund is made prior to the end of the calendar year and prior to the time the payor or broker furnishes a Form 1099 to the payee with respect to the payment for which the erroneous withholding occurred. If the amount of the erroneous withholding is refunded to the payee, the payor or broker must—

(i) Keep as part of its records a receipt showing the date and amount of refund and must provide a copy of the receipt to the payee (a canceled check or an entry in a statement is sufficient, provided that the check or statement contains a specific notation that it is a refund of tax erroneously withheld);

(ii) Not report on a Form 1099 as tax withheld any amount which the payor or broker has refunded to a payee; and

(iii) Not deposit the amount erroneously withheld if the payor or broker has not deposited the amount of the tax prior to the time that the refund is made to the payee.

(2) *Adjustment after the deposit of the tax.* For purposes of paragraph (b)(1) of this section, if the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Internal Revenue Code that the payor or broker is required to make in the amount of the tax that has been refunded to the payee.

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 12. The authority citation for part 35a is amended by removing the entry for 35a.3406–2 to read, in part, as follows:

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

§ 35a.3406–2 [Removed]

Par. 13. Section 35a.3406–2 is removed.

Par. 14. Section 35a.9999–0T is added to read as follows:

§ 35a.9999–0T Effective date (temporary).

In general, the provisions of §§ 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T, and 35a.9999–5 are effective before January 1, 1997. The provisions of those sections remain effective after December 31, 1996, however, for purposes of § 301.6724–1(g) of this chapter, relating to due diligence safe harbor, and for international transactions, including transactions involving a foreign payee, a foreign payor, a foreign office of a U.S. bank or broker, or a payment from sources without the United States. See §§ 31.3406–0 through 31.3406(i)–1 of this chapter for rules that apply to other transactions after December 31, 1996.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 15. The authority for part 301 continues to read in part as follows:

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

Par. 16. Section 301.6109–1 is amended by:

1. Revising the third sentence in paragraph (a)(1).

2. Revising the first sentence in paragraph (h).

The revised sentences read as follows:

§ 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Social security numbers and employer identification numbers.* * * * Social security numbers identify individual persons, while employer identification numbers identify corporations, partnerships, nonprofit associations, trusts, estates of decedents, and similar nonindividual persons. * * *

* * * * *

(h) *Effective date.* The provisions of this section are effective for information that must be furnished after April 15, 1974, except that the requirement that an estate obtain an Employer Identification Number applies on and after January 1, 1984. * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 17. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 18. In § 602.101, paragraph (c) is amended by adding an entry to the table in numerical order to read as follows: ''§ 31.3406(a)–1—§ 31.3406(i)–1...1545–0112''.

Dated: November 28, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Cynthia G. Beerbower,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–30733 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8643]

RIN 1545–AQ42

Distributions of Stock and Stock Rights

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending regulations under section 305(c) of the Internal Revenue Code relating to constructive distributions on preferred stock. The final regulations concern the treatment of stock redeemable at a premium by the issuer. The regulations generally treat a call premium as giving rise to a constructive distribution only if redemption pursuant to the call provision is more likely than not to occur. The final regulations also reflect 1990 amendments to section 305(c).

DATES: These regulations are effective December 20, 1995.

For dates of applicability of these regulations, see *Effective dates* under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kirsten L. Simpson, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1438. Responses to this collection of information are required to comply with the consistency requirements of the regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The

estimated annual burden per respondent varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 10 minutes.

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

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 22, 1994, a notice of proposed rulemaking (CO–8–91), amending regulations under section 305(c) of the Internal Revenue Code relating to constructive distributions on preferred stock, was published in the Federal Register (59 FR 32160). No public hearing was requested and none was held.

Written comments responding to the notice were received. After consideration of all the comments, the regulations proposed by CO–8–91 are adopted as revised by this Treasury decision. The principal revisions are discussed below.

Explanation of Provisions

The primary focus of the final regulations is on preferred stock callable at a premium at the option of the issuer. The final regulations retain the approach of the proposed regulations and require constructive distribution treatment with respect to an issuer call only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to the call right is more likely than not to occur.

Safe harbor rule. The proposed regulations provided a safe harbor, under which constructive distribution treatment does not result from an issuer call if the issuer and holder are unrelated, there are no arrangements that effectively require the issuer to redeem the stock, and exercise of the option to redeem would not reduce the yield of the stock. In response to comments, the final regulations make certain modifications to the safe harbor to clarify its scope.

Commentators suggested that the exclusion from the safe harbor where there are ''arrangements that effectively require the issuer to redeem'' is too narrow and will permit taxpayers who issue stock with ''understandings'' concerning redemption, whether or not legally enforceable, to qualify for the safe harbor. Commentators recommended safeguarding against abuse by changing the effectively requires redemption test to one that requires a lesser degree of probability. The IRS and Treasury intend that the safe harbor not be available where an issuer and a holder have an underlying understanding. Although the IRS and Treasury believe that the word ''arrangement'' is broad enough to include such understandings, in response to these comments, this prong of the safe harbor has been clarified.

To retain greater certainty for non-abusive transactions, however, the effectively requires redemption test has not been substantially modified. Instead, the final regulations safeguard against abuse by lowering the threshold for determining whether an issuer and a holder are related. The proposed regulations adopted a 50-percent threshold for determining whether an issuer and a holder are related. The final regulations lower this threshold to 20 percent. This threshold relates only to eligibility for the safe harbor, and not to the application of the general ''more likely than not'' test. When a holder's ownership interest exceeds this threshold, the IRS and Treasury believe it is appropriate to determine whether redemption is more likely than not to occur based on all of the facts and circumstances.

Commentators also suggested that the IRS and Treasury except preferred stock within the meaning of section 1504(a)(4) in determining whether the issuer and holder are related. The regulations do not adopt this suggestion. As noted above, the determination of whether the issuer and holder are related only governs eligibility for the safe harbor. The IRS and Treasury believe that when a holder's ownership interest in an issuer exceeds the threshold, even if all that the holder owns is preferred stock within the meaning of section 1504(a)(4), it is appropriate to determine whether redemption is more likely than not to occur based on all of the facts and circumstances.

In response to comments, the final regulations clarify that the ''arrangements'' that effectively require or are intended to compel the issuer to redeem the stock relate to the issuer call right, and not to a later mandatory redemption feature.

In testing whether a call right meets the yield prong of the safe harbor, the final regulations clarify that principles similar to the principles of section 1272(a) and the original issue discount regulations apply to determine whether exercise of the right to redeem would reduce the yield of the stock.

Miscellaneous. The final regulations expand the definition of issuer in certain circumstances. In particular, the regulations provide that if preferred stock may be acquired by a person other than the issuer (a third person), the term issuer includes such third person if the regulations would apply to the stock if the third person were the issuer, and acquisition of the stock by the third person would be treated as a redemption for federal income tax purposes (under section 304 or otherwise). In addition, if the issuer and the third person are members of the same affiliated group, the term issuer includes the third person if a principal purpose of the arrangement is to avoid the application of section 305 and the final regulations. Furthermore, an agreement or other arrangement for a person other than the issuer of the stock to acquire the stock may create a conversion transaction within the meaning of section 1258.

The final regulations provide rules for the treatment of mandatory redemption obligations and put options that are subject to contingencies. Generally, premiums on such stock are not subject to constructive distribution treatment if the contingency renders remote the likelihood of redemption. For example, where an issuer issues stock that is mandatorily redeemable in the event of an initial public offering, the regulations require evaluation of the likelihood of the occurrence of the initial public offering. The regulations provide, however, that a contingency does not include the possibility of default, insolvency, or similar circumstances, or that a redemption may be precluded by applicable law due to insufficient capital.

The preamble to the proposed regulations requested comments on the appropriate treatment of unpaid cumulative dividends. Because of the complexity of this issue, the final regulations do not provide rules for those dividends. The IRS and Treasury will continue to consider the issue, as well as other issues involving the implementation of the amendments to section 305(c) made by the Revenue Reconciliation Act of 1990. The IRS and Treasury continue to invite public comments on these issues.

EFFECTIVE DATES. The regulations apply to stock issued on or after December 20, 1995. Although the regulations do not apply to stock issued before December 20, 1995, the rules of sections 305(c) (1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508 Stat.). Moreover, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508 Stat.), with respect to stock issued on or after October 10, 1990, and issued before December 20, 1995, the economic accrual rule of section 305(c)(3) will apply to the entire call premium on stock that is not described in paragraph (b)(2) of this section if the premium is considered to be unreasonable under the principles of § 1.305–5(b) (as contained in the 26 CFR part 1 edition revised April 1, 1995). A call premium described in the preceding sentence will be accrued over the period of time during which the preferred stock cannot be called for redemption.

Special Analyses

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

Drafting Information

The principal author of these regulations is Kirsten L. Simpson of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.305–3 also issued under 26 U.S.C. 305. Section 1.305–5 also issued under 26 U.S.C. 305. Section 1.305–7 also issued under 26 U.S.C. 305. * * *

Par. 2. Section 1.305–3 is amended as follows: 1. In paragraph (e), remove the parentheses from the numbers in the headings for *Examples (1)* through *(15)*.

2. In paragraph (e), *Example 15* is revised to read as follows:

§ 1.305–3 Disproportionate distributions.

* * * * *

(e) * * *

Example 15. (i) *Facts.* Corporation V is organized with two classes of stock, class A common and class B convertible preferred. The class B stock is issued for $100 per share and is convertible at the holder's option into class A at a fixed ratio that is not subject to full adjustment in the event stock dividends or rights are distributed to the class A shareholders. The class B stock pays no dividends but it is mandatorily redeemable in 10 years for $200. Under sections 305(c) and 305(b)(4), the entire redemption premium (i.e., the excess of the redemption price over the issue price) is deemed to be a distribution of preferred stock on preferred stock which is taxable as a distribution of property under section 301. This amount is considered to be distributed over the 10-year period under principles similar to the principles of section 1272(a). During the year, the corporation declares a dividend on the class A stock payable in additional shares of class A stock.

(ii) *Analysis.* The distribution on the class A stock is a distribution to which sections 305(b)(2) and 301 apply since it increases the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation and the class B shareholders have received property (i.e., the constructive distribution described above). If, however, the conversion ratio of the class B stock were subject to full adjustment to reflect the distribution of stock to class A shareholders, the distribution of stock dividends on the class A stock would not increase the proportionate interest of the class A shareholders in the assets and earnings and profits of the corporation and such distribution would not be a distribution to which section 301 applies.

(iii) *Effective date.* This *Example 15* applies to stock issued on or after December 20, 1995. For previously issued stock, see § 1.305–3(e) *Example (15)* (as contained in the 26 CFR part 1 edition revised April 1, 1995).

Par. 3. Section 1.305–5 is amended as follows:

1. Paragraph (b) is revised.

2. In paragraph (d), remove the parentheses from the numbers in the headings for *Examples (1)* through *(9)*, redesignate *Examples 8* and *9* as *Examples 9* and *10*, respectively.

3. In paragraph (d), *Examples 4*, *5*, and *7* are revised, and *Example 8* is added.

4. Paragraph (e) is added.

The revisions read as follows:

§ 1.305–5 Distributions on preferred stock.

* * * * *

(b) *Redemption premium*—(1) *In general.* If a corporation issues preferred stock that may be redeemed under the circumstances described in this paragraph (b) at a price higher than the issue price, the difference (the redemption premium) is treated under section 305(c) as a constructive distribution (or series of constructive distributions) of additional stock on preferred stock that is taken into account under principles similar to the principles of section 1272(a). However, constructive distribution treatment does not result under this paragraph (b) if the redemption premium does not exceed a de minimis amount, as determined under the principles of section 1273(a)(3). For purposes of this paragraph (b), preferred stock that may be acquired by a person other than the issuer (the third person) is deemed to be redeemable under the circumstances described in this paragraph (b), and references to the issuer include the third person, if—

(i) This paragraph (b) would apply to the stock if the third person were the issuer; and

(ii) Either—

(A) The acquisition of the stock by the third person would be treated as a redemption for federal income tax purposes (under section 304 or otherwise); or

(B) The third person and the issuer are members of the same affiliated group (having the meaning for this purpose given the term by section 1504(a), except that section 1504(b) shall not apply) and a principal purpose of the arrangement for the third person to acquire the stock is to avoid the application of section 305 and paragraph (b)(1) of this section.

(2) *Mandatory redemption or holder put.* Paragraph (b)(1) of this section applies to stock if the issuer is required to redeem the stock at a specified time or the holder has the option (whether or not currently exercisable) to require the issuer to redeem the stock. However, paragraph (b)(1) of this section will not

apply if the issuer's obligation to redeem or the holder's ability to require the issuer to redeem is subject to a contingency that is beyond the legal or practical control of either the holder or the holders as a group (or through a related party within the meaning of section 267(b) or 707(b)), and that, based on all of the facts and circumstances as of the issue date, renders remote the likelihood of redemption. For purposes of this paragraph, a contingency does not include the possibility of default, insolvency, or similar circumstances, or that a redemption may be precluded by applicable law which requires that the issuer have a particular level of capital, surplus, or similar items. A contingency also does not include an issuer's option to require earlier redemption of the stock. For rules applicable if stock may be redeemed at more than one time, see paragraph (b)(4) of this section.

(3) *Issuer call*—(i) *In general.* Paragraph (b)(1) of this section applies to stock by reason of the issuer's right to redeem the stock (even if the right is immediately exercisable), but only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to that right is more likely than not to occur. However, even if redemption is more likely than not to occur, paragraph (b)(1) of this section does not apply if the redemption premium is solely in the nature of a penalty for premature redemption. A redemption premium is not a penalty for premature redemption unless it is a premium paid as a result of changes in economic or market conditions over which neither the issuer nor the holder has legal or practical control.

(ii) *Safe harbor.* For purposes of this paragraph (b)(3), redemption pursuant to an issuer's right to redeem is not treated as more likely than not to occur if—

(A) The issuer and the holder are not related within the meaning of section 267(b) or 707(b) (for purposes of applying sections 267(b) and 707(b) (including section 267(f)(1)), the phrase ''20 percent'' shall be substituted for the phrase ''50 percent'');

(B) There are no plans, arrangements, or agreements that effectively require or are intended to compel the issuer to redeem the stock (disregarding, for this purpose, a separate mandatory redemption obligation described in paragraph (b)(2) of this section); and

(C) Exercise of the right to redeem would not reduce the yield of the stock, as determined under principles similar to the principles of section 1272(a) and the regulations under sections 1271 through 1275.

(iii) *Effect of not satisfying safe harbor.* The fact that a redemption right is not described in paragraph (b)(3)(ii) of this section does not affect the determination of whether a redemption pursuant to the right to redeem is more likely than not to occur.

(4) *Coordination of multiple redemption provisions.* If stock may be redeemed at more than one time, the time and price at which redemption is most likely to occur must be determined based on all of the facts and circumstances as of the issue date. Any constructive distribution under paragraph (b)(1) of this section will result only with respect to the time and price identified in the preceding sentence. However, if redemption does not occur at that identified time, the amount of any additional premium payable on any later redemption date, to the extent not previously treated as distributed, is treated as a constructive distribution over the period from the missed call or put date to that later date, to the extent required under the principles of this paragraph (b).

(5) *Consistency.* The issuer's determination as to whether there is a constructive distribution under this paragraph (b) is binding on all holders of the stock, other than a holder that explicitly discloses that its determination as to whether there is a constructive distribution under this paragraph (b) differs from that of the issuer. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed federal income tax return for the taxable year that includes the date the holder acquired the stock. The issuer must provide the relevant information to the holder in a reasonable manner. For example, the issuer may provide the name or title and either the address or telephone number of a representative of the issuer who will make available to holders upon request the information required for holders to comply with this provision of this paragraph (b).

* * * * *

(d) * * *

Example 4—(i) *Facts.* Corporation X is a domestic corporation with only common stock outstanding. In connection with its acquisition of Corporation T, X issues 100 shares of its 4% preferred stock to the shareholders of T, who are unrelated to X both before and after the transaction. The issue price of the preferred stock is $40 per share. Each share of preferred stock is convertible at the shareholder's election into three shares of X common stock. At the time the preferred stock is issued, the X common stock has a value of $10 per share. The preferred stock does not provide for its mandatory redemption or for redemption at the option of the holder. It is callable at the option of X at any time beginning three years from the date of issuance for $100 per share. There are no other plans, arrangements, or agreements that effectively require or are intended to compel X to redeem the stock.

(ii) *Analysis.* The preferred stock is described in the safe harbor rule of paragraph (b)(3)(ii) of this section because X and the former shareholders of T are unrelated, there are no plans, arrangements, or agreements that effectively require or are intended to compel X to redeem the stock, and calling the stock for $100 per share would not reduce the yield of the preferred stock. Therefore, the $60 per share call premium is not treated as a constructive distribution to the shareholders of the preferred stock under paragraph (b) of this section.

Example 5—(i) *Facts*—(A) Corporation Y is a domestic corporation with only common stock outstanding. On January 1, 1996, Y issues 100 shares of its 10% preferred stock to a holder. The holder is unrelated to Y both before and after the stock issuance. The issue price of the preferred stock is $100 per share. The preferred stock is—

(1) Callable at the option of Y on or before January 1, 2001, at a price of $105 per share plus any accrued but unpaid dividends; and

(2) Mandatorily redeemable on January 1, 2006, at a price of $100 per share plus any accrued but unpaid dividends.

(B) The preferred stock provides that if Y fails to exercise its option to call the preferred stock on or before January 1, 2001, the holder will be entitled to appoint a majority of Y's directors. Based on all of the facts and circumstances as of the issue date, Y is likely to have the legal and financial capacity to exercise its right to redeem. There are no other facts and circumstances as of the issue date that would affect whether Y will call the preferred stock on or before January 1, 2001.

(ii) *Analysis.* Under paragraph (b)(3)(i) of this section, paragraph (b)(1) of this section applies because, by virtue of the change of control provision and the absence of any contrary facts, it is more likely than not that Y will exercise its option to call the preferred stock on or before January 1, 2001. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply because the provision that failure to call will cause the holder to gain control of the corporation is a plan, arrangement, or agreement that effectively requires or is intended to compel Y to redeem the preferred stock. Under paragraph (b)(4) of this section, the constructive distribution occurs over the period ending on January 1, 2001. Redemption is most likely to occur on that date, because that is the date on which the corporation minimizes the rate of return to the holder while preventing the holder from gaining control. The de minimis exception of paragraph (b)(1) of this section does not apply because the $5 per share difference between the redemption price and the issue price exceeds the amount determined under the principles of section 1273(a)(3) (5×.0025×$105 = $1.31). Accordingly, $5 per share, the difference between the redemption price and the issue price, is treated as a constructive distribution

received by the holder on an economic accrual basis over the five-year period ending on January 1, 2001, under principles similar to the principles of section 1272(a). * * *

Example 7—(i) *Facts*—(A) Corporation Z is a domestic corporation with only common stock outstanding. On January 1, 1996, Z issues 100 shares of its 10% preferred stock to C, an individual unrelated to Z both before and after the stock issuance. The issue price of the preferred stock is $100 per share. The preferred stock is—

(1) Not callable for a period of 5 years from the issue date;

(2) Callable at the option of Z on January 1, 2001, at a price of $110 per share plus any accrued but unpaid dividends;

(3) Callable at the option of Z on July 1, 2002, at a price of $120 per share plus any accrued but unpaid dividends; and

(4) Mandatorily redeemable on January 1, 2004, at a price of $150 per share plus any accrued but unpaid dividends.

(B) There are no other plans, arrangements, or agreements between Z and C concerning redemption of the stock. Moreover, there are no other facts and circumstances as of the issue date that would affect whether Z will call the preferred stock on either January 1, 2001, or July 1, 2002.

(ii) *Analysis.* This stock is described in paragraph (b)(2) of this section because it is mandatorily redeemable. It is also potentially described in paragraph (b)(3)(i) of this section because it is callable at the option of the issuer. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on January 1, 2001, because the call would reduce the yield of the stock when compared to the yield produced by the January 1, 2004, mandatory redemption feature. Moreover, absent any other facts indicating a contrary result, the fact that redemption on January 1, 2001, would produce the lowest yield indicates that redemption is most likely to occur on that date. Under paragraph (b)(4) of this section, paragraph (b)(1) of this section applies with respect to the issuer's right to call on January 1, 2001, because redemption is most likely to occur on January 1, 2001, for $110 per share. The de minimis exception of paragraph (b)(1) of this section does not apply because the $10 per share difference between the redemption price payable in 2001 and the issue price exceeds the amount determined under the principles of section 1273(a)(3) (5×.0025×$110=$1.38). Accordingly, $10 per share, the difference between the redemption price and the issue price, is treated as a constructive distribution received by the holder on an economic accrual basis over the five-year period ending January 1, 2001, under principles similar to the principles of section 1272(a).

(iii) *Coordination rules*—(A) If Z does not exercise its option to call the preferred stock on January 1, 2001, paragraph (b)(4) of this section provides that the principles of paragraph (b) of this section must be applied to determine if any remaining constructive distribution occurs. Under paragraphs (b)(3)(i) and (b)(4) of this section, paragraph (b)(1) of this section applies because, absent any other facts indicating a contrary result, the fact that redemption on July 1, 2002, would produce a lower yield than the yield produced by the mandatory redemption feature indicates that redemption on that date is most likely to occur. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on July 1, 2002, because, as of January 1, 2001, a call by Z on July 1, 2002, for $120 would reduce the yield of the stock. The de minimis exception of paragraph (b)(1) of this section does not apply because the $10 per share difference between the redemption price and the issue price (revised as of the missed call date as provided by paragraph (b)(4) of this section) exceeds the amount determined under the principles of section 1273(a)(3) (1×.0025×$120=$.30). Accordingly, the $10 per share of additional redemption premium that is payable on July 1, 2002, is treated as a constructive distribution received by the holder on an economic accrual basis over the period between January 1, 2001, and July 1, 2002, under principles similar to the principles of section 1272(a).

(B) If Z does not exercise its second option to call the preferred stock on July 1, 2002, then the $30 additional redemption premium that is payable on January 1, 2004, is treated as a constructive distribution under paragraphs (b)(2) and (b)(1) of this section. The de minimis exception of paragraph (b)(1) of this section does not apply because the $30 per share difference between the redemption price and the issue price (revised as of the second missed call date) exceeds the amount determined under the principles of section 1273(a)(3) (1×.0025×$150=$.38). The holder is treated as receiving the constructive distribution on an economic accrual basis over the period between July 1, 2002, and January 1, 2004, under principles similar to the principles of section 1272(a).

Example 8—(i) *Facts.* The facts are the same as in paragraph (i) of Example 7, except that, based on all of the facts and circumstances as of the issue date (including an expected lack of funds on the part of Z), it is unlikely that Z will exercise the right to redeem on either January 1, 2001, or July 1, 2002.

(ii) *Analysis.* The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on either January 1, 2001, or July 1, 2002, because each call would reduce the yield of the stock. Under paragraph (b)(3)(i) of this section, neither option to call is more likely than not to occur, because, based on all of the facts and circumstances as of the issue date (including an expected lack of funds on the part of Z), it is not more likely than not that Z will exercise either option. However, the $50 per share redemption premium that is payable on January 1, 2004, is treated as a constructive distribution under paragraphs (b) (1) and (2) of this section, regardless of whether Z is anticipated to have sufficient funds to redeem on that date, because Z is required to redeem the stock on that date. The de minimis exception of paragraph (b)(1) of this section does not apply because the $50 per share difference between the redemption price and the issue price exceeds the amount determined under the principles of section 1273(a)(3) (8×.0025×$150=$3).

* * * * *

(e) *Effective date.* The rules of paragraph (b) of this section and *Examples 4, 5, 7,* and *8* of paragraph (d) of this section apply to stock issued on or after December 20, 1995. For rules applicable to previously issued stock, see § 1.305–5 (b) and (d) *Examples (4), (5),* and *(7)* (as contained in the 26 CFR part 1 edition revised April 1, 1995). Although the rules of paragraph (b) of this section and the revised examples do not apply to stock issued before December 20, 1995, the rules of sections 305(c) (1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101–508 Stat.). Moreover, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101–508 Stat.), with respect to stock issued on or after October 10, 1990, and issued before December 20, 1995, the economic accrual rule of section 305(c)(3) will apply to the entire call premium on stock that is not described in paragraph (b)(2) of this section if the premium is considered to be unreasonable under the principles of § 1.305–5(b) (as contained in the 26 CFR part 1 edition revised April 1, 1995). A call premium described in the preceding sentence will be accrued over the period of time during which the preferred stock cannot be called for redemption.

Par. 4. Section 1.305–7 is amended by revising the fourth sentence in the concluding text of paragraph (a) to read as follows:

§ 1.305–7 Certain transactions treated as distributions.

(a) * * *

* * * For example, where a redemption premium exists with respect to a class of preferred stock under the circumstances described in § 1.305–5(b) and the other requirements of this section are also met, the distribution will be deemed made with respect to such preferred stock, in stock of the same class. * * *

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. In § 602.101, paragraph (c) is amended in the table by adding the entry ''1.305–5.....1545–1438'' in numerical order.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 11, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30831 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 31 and 301

[TD 8636]

RIN 1545–AN57

Time for Furnishing Wage Statements on Termination of Employer's Operations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the time for furnishing wage statements to employees and for filing wage statements with the Social Security Administration upon the termination of an employer's operations. These regulations will affect employers and their employees in the year the employer ceases to pay wages. These regulations are intended to improve the wage reconciliation process between the Social Security Administration and the IRS.

EFFECTIVE DATE: These regulations are effective January 1, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–83–89), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–83–89), Courier's Desk. Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1994, the Federal Register (59 FR 65982) published a notice of proposed rulemaking which required an employer to furnish Forms W–2 to employees and to file Forms W–2 and W–3 with the Social Security Administration (SSA) at the same time that the employer is required to file the final Form 941 with the IRS.

Written comments responding to the notice of proposed rulemaking were received. A public hearing was held on May 8, 1995, pursuant to a notice published in the Federal Register on March 24, 1995 (60 FR 15526). After consideration of the comments that were received in response to the notice of proposed rulemaking and at the hearing, the IRS and Treasury adopt the proposed regulations, as amended and revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

Availability of Forms W–2

The regulations, as proposed, would have required an employer who ceases paying wages to furnish Form W–2 to employees and file Forms W–2 and W–3 with SSA on or before the date on which the final Form 941 is required to be filed with the IRS. Form 941 is generally due quarterly, on or before the last day of the first calendar month following the period for which it is made (i.e., April 30, July 31, October 31, and January 31). Consequently, if an employer ceased paying wages in the first quarter of the calendar year, the Forms 941, W–2 and W–3 would be due by April 30. Some commentators expressed concern that Forms W–2 and W–3 are not available in the first quarter of the calendar year. Commentators questioned whether using prior year Forms W–2 was an acceptable alternative if current year forms were unavailable.

Under the Internal Revenue Code and the existing regulations, an employee may request the Form W–2 at any time during the year if the employee is terminated and there is no reasonable expectation on the part of the employer or the employee of further employment during the calendar year. Therefore, Forms W–2 are available from the IRS, either through the mail or at the district offices, in January of each year. Specifications for the private printing of substitute Forms W–2, however, are not always available during the first quarter of the calendar year. Thus, during this period, employers may be limited to using the Forms W–2 printed by the IRS. Neither prior year Forms W–2 nor the prior year specifications for the private printing of substitute Forms W–2 should be used for filing Forms W–2 on an expedited basis for the current year because such procedures could result in significant processing errors.

Availability of Magnetic Media Specifications

Commentators questioned whether magnetic media specifications would be available in the first quarter of the calendar year for employers who are required to file on an expedited basis under the proposed regulations. Regulation section 301.6011–2 and Notice 90–15, 1990–1 C.B. 326, generally require an employer to file Forms W–2 with SSA on magnetic media if the employer is required to file 250 or more Forms W–2 in a calendar year. Employers who do not meet the 250 return threshold may also file their Forms W–2 with SSA on magnetic media.

It is not certain that magnetic media specifications, which are issued by SSA, will be available in the first quarter of the calendar year for employers who are required to file on an expedited basis. The Commissioner has the authority to provide for reasonable extensions of time, upon written application, for an employer to furnish Forms W–2 to employees and file Forms W–2 and W–3 with SSA. To assure that filers need not shift from magnetic media to paper filings in order to comply with the expedited filing requirements, the final regulations affirm that the Commissioner may adopt automatic extension procedures where appropriate.

It is anticipated that the Commissioner will establish automatic extension procedures to the extent necessary to permit employers that terminate operations a reasonable period of time, after the issuance of specifications, to make their filings on magnetic media.

It is further anticipated that these procedures will include appropriate automatic extensions of time to file

expedited Forms W–2 both for employers required to file on magnetic media and for employers who have filed on magnetic media in the past whether or not required to do so. Even though Forms W–2 are furnished to employees on paper, the automatic extension procedures are anticipated to apply to the employee copy of the Form W–2 as well as the SSA copy in order to avoid the complexities and potential errors that could arise from processing these forms at significantly different times.

It is also anticipated that the published procedure will provide for an automatic extension to a specified date which permits employers a reasonable period of time after the issuance of specifications to make their filings on magnetic media. This date will be communicated to filers sufficiently early in the year to permit adequate systems planning. In providing for these procedures, it is necessary to balance the practical issues of compliance with the concern for timely submission of information to SSA. Thus, if prior to a future year, it is anticipated that specifications will be issued sufficiently early in the year to permit a reasonable period of time for filing, while still complying with the due dates otherwise required in this regulation, the Commissioner may suspend the automatic extension procedures for that year. Discretionary extensions would continue to be considered on a case-by-case basis.

Comments are requested on the automatic extension procedures and their implementation.

Regulation section 301.6011–2(c)(4) provides that the Commissioner may, upon application, waive the requirement to file on magnetic media in the case of hardship. The final regulations clarify that the unavailability of the specifications for magnetic media filing of Form W–2 will be treated as creating a hardship. Therefore, an employer has the option of applying for a waiver from the requirement to file Forms W–2 on magnetic media and may instead file the Forms W–2 on paper. The employer must apply for a waiver within 45 days of the due date of the return.

Employers may also contact their local SSA Magnetic Media Coordinator for guidance on how to report on magnetic media. The Coordinators are listed in the annual Technical Instructions Bulletin (TIB–4) published by SSA.

Extension Procedures

Regulation section 31.6051–1(d)(2) provides procedures for an employer to request an extension of time to furnish Forms W–2 to employees. Regulation section 31.6081(a)-1 provides similar procedures for employers to request an extension of time to file Forms W–2 and W–3 with SSA. These procedures apply to employers who are required to furnish Forms W–2 to employees or file Forms W–2 and W–3 with SSA on an expedited basis. Thus, an employer who, under the final regulations, is required to furnish and file the Forms W–2 on an expedited basis may request an extension of time if necessary.

Additional month to provide Forms W–2 and W–3 to SSA

Under existing regulations Forms W–2 and W–3 are due to SSA one month after they are due to the employees. This provides employers an opportunity to correct any errors found by employees before filing the Forms W–2 with SSA. Some commentators noted that providing the Forms W–2 to SSA at the same time the forms are provided to the employees eliminates the opportunity for corrections currently provided by the regulations. To minimize the need for employers to file corrected Forms W–2 (Form W–2c, Statement of Corrected Income and Tax Amounts), the final regulations include a suggested one month additional period for providing the Forms W–2 to SSA. Thus, Forms W–2 would be due to employees at the same time as the final Form 941 (generally one month after the end of the quarter). Forms W–2 and W–3 would be due to SSA two months after the final Form 941 is due.

Modification of Revenue Procedure 84–77

In Revenue Procedure 84–77, 1984–2 C.B. 753, the IRS provided procedures for preparing and filing certain forms, including Form 941, Form W–2 and Form W–3, when a successor employer acquires substantially all of the property (1) used in a trade or business of a predecessor employer, or (2) used in a separate unit of a trade or business of a predecessor, and in connection with, or immediately after the acquisition (but during the same calendar year) the successor employs individuals who were employed in the trade or business of the predecessor immediately prior to the acquisition. Under the standard procedure described in Rev. Proc. 84–77, both the predecessor and successor employer report the wages they paid employees on Form W–2. Under the alternate procedure, the predecessor is relieved from furnishing Form W–2 to any employee who is employed by the successor employer and from filing such Forms W–2 with SSA. Instead, the successor employer assumes the predecessor's reporting obligation for those employees. The preamble to the proposed regulation stated that, other than modifying the time frame for the standard procedure, the proposed regulation would not affect the validity of Rev. Proc. 84–77.

One commentator questioned whether the proposed regulation expedited the filing requirements for the predecessor employer with regard to individuals who are not employed by the successor employer. If the predecessor employer ceases to pay wages, (*i.e.*, is required to file a final Form 941), the predecessor employer is required under these regulations to furnish Forms W–2 on an expedited basis to those individuals who are not employed by the successor employer. The predecessor employer must also file Forms W–2 and W–3 with SSA on an expedited basis for those individuals who are not employed by the successor employer. Revenue Procedure 84–77 is being modified to reflect this change.

Some commentators asked how the proposed regulations apply in the context of mergers. If a final Form 941 is not filed because a merger does not involve the cessation of business operations but only a change in corporate or business form, the expedited filing requirements are inapplicable.

Use of an agent

One commentator suggested the final regulations provide an exception from expedited filing for an employer that appoints an agent to assume the employer's reporting obligation. A similar exception was suggested in the case of a controlled group of corporations in which one member of the group acts as the payroll agent for the group. Because there is no practically effective enforceable manner for shifting liability for reporting from an employer to an agent and for assuring that the agent will satisfy the reporting obligations, these suggestions were not adopted.

Application to Returns filed by Employers for Employees in Guam, U.S. Virgin Islands, American Samoa, Commonwealth of the Northern Mariana Islands and Puerto Rico.

One commentator questioned whether the proposed regulations applied to wage statements furnished to employees and filed with SSA by employers for employees in Guam, U.S. Virgin Islands, American Samoa, Commonwealth of the Northern Mariana Islands and Puerto Rico. While these employers file variations of the Forms 941, W–2 and W–3, they are subject to the filing

requirements for Forms 941, W–2 and W–3. In addition, employees of these employers receive social security credit on the same basis as employers who file the Forms 941, W–2 and W–3. Thus, these employers are subject to the regulations.

Special Analyses

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

Drafting Information

The principal author of these regulations is Jean M. Casey, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

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

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 and part 301 are amended as follows:

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

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

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

Section 31.6051–1(d) also issued under 26 U.S.C. 6051.

Section 31.6051–2 also issued under 26 U.S.C. 6051 * * *

Section 31.6071–1 also issued under 26 U.S.C. 6071 * * *

Section 31.6081–1 also issued under 26 U.S.C. 6081 * * *

Par. 2. Section 31.6051–1, paragraph (d) is amended as follows:

1. Paragraph (d)(1) is redesignated as (d)(1)(i).

2. Paragraph (d)(1)(ii) is added.

3. Paragraph (d)(2) is revised.

The addition and revision read as follows:

§ 31.6051–1 Statements for employees.

* * * * *

(d) * * * (1)(i) * * *

(ii) *Expedited furnishing*—(A) *General rule.* If an employer is required to make a final return under § 31.6011(a)–6(a)(1) (relating to the final return for Federal Insurance Contributions Act taxes and income tax withholding from wages) on Form 941, or a variation thereof, the employer must furnish the statement required by this section on or before the date required for filing the final return. See § 31.6071(a)–1(a)(1). However, if the final return under § 31.6011(a)–6(a)(1) is a monthly return, as described in § 31.6011(a)–5, the employer must furnish the statement required by this section on or before the last day of the month in which the final return is required to be filed. See § 31.6071(a)–1(a)(2). Except as provided in paragraph (d)(2)(i) of this section, in no event may an employer furnish the statement required by this section later than January 31 of the year succeeding the calendar year to which it relates. The requirements set forth in this paragraph (d)(1)(ii) do not apply to employers with respect to employees whose wages are for domestic service in the private home of the employer. See § 31.6011(a)–1(a)(3).

(B) *Requests by employees.* An employer is not permitted to furnish a statement pursuant to the provisions of the third sentence of paragraph (d)(1)(i) of this section (relating to written requests by terminated employees for Form W–2) at a time later than that required by the provisions of paragraph (d)(1)(ii)(A) of this section.

(C) *Effective date.* This paragraph (d)(1)(ii) is effective January 1, 1997.

(2) *Extensions of time*—(i) *In general* (*a*) The Director, Martinsburg Computing Center, may grant an extension of time in which to furnish to employees the statements required by this section. A request may be made by a letter to the Director, Martinsburg Computing Center. The request must contain:

(*1*) The employer's name and address;

(*2*) The employer's taxpayer identification number;

(*3*) The type of return (i.e., Form W–2) and

(*4*) A concise statement of the reasons for requesting the extension.

(*b*) The application must be mailed or delivered on or before the applicable due date prescribed in paragraph (d)(1) of this section for furnishing the statements required by this section.

(*c*) In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth a reason for a signature other than the employer's and the relationship existing between the employer and the signer. For provisions relating to extensions of time for filing the Social Security Administration copies of the statement, see § 31.6081(a)–1(a)(3).

(ii) *Automatic Extension of Time.* The Commissioner may, in appropriate cases, publish procedures for automatic extensions of time to furnish Forms W–2 where the employer is required to furnish the Form W–2 on an expedited basis.

* * * * *

Par. 3. Section 31.6051–2, paragraph (c), first sentence is revised to read as follows:

§ 31.6051–2 Information returns on Form W–3 and Internal Revenue Service copies of Form W–2.

* * * * *

(c) *Cross references.* For provisions relating to the time for filing the information returns required by this section and to extensions of the time for filing, see §§ 31.6071(a)–1(a)(3) and 31.6081(a)–1(a)(3), respectively. * * *

Par. 4. Section 31.6071(a)–1(a)(3) is amended as follows:

1. Paragraph (a)(3)(i) is removed.

2. Paragraph (a)(3)(ii) is redesignated as paragraph (a)(3)(i) and the heading is revised.

3. A new paragraph (a)(3)(ii) is added.

The addition and revision read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) * * *

(3) * * * (i) *General rule.* * * *

(ii) *Expedited filing*—(A) *General rule.* If an employer who is required to make a return pursuant to § 31.6011(a)–1 or § 31.6011(a)–4 is required to make a final return on Form 941, or a variation thereof, under § 31.6011(a)–6(a)(1) (relating to the final return for Federal Insurance Contributions Act taxes and

income tax withholding from wages), the return which is required to be made under § 31.6051–2 must be filed on or before the last day of the second calendar month following the period for which the final return is filed. The requirements set forth in this paragraph (a)(3)(ii) do not apply to employers with respect to employees whose wages are for domestic service in the private home of the employer. See § 31.6011(a)–1(a)(3).

(B) *Effective date.* This paragraph (a)(3)(ii) is effective January 1, 1997.

* * * * *

Par. 5. Section 31.6081(a)–1(a)(3) is revised to read as follows:

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) * * *

(3) *Information returns of employers on Forms W–2 and W–3—(i) In general.* The Director, Martinsburg Computing Center, may grant an extension of time in which to file the Social Security Administration copy of Forms W–2 and the accompanying transmittal form which constitutes an information return under paragraph § 31.6051–2(a). The request must contain a concise statement of the reasons for requesting the extension. The request must be mailed or delivered on or before the date on which the employer is required to file the Form W–2 with the Social Security Administration.

(ii) *Automatic Extension of Time.* The Commissioner may, in appropriate cases, publish procedures for automatic extensions of time to file Forms W–2 where the employer is required to file the Form W–2 on an expedited basis.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

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

Par. 7. Section 301.6011–2(c)(4)(i) is revised to read as follows:

§ 301.6011–2 Required use of magnetic media.

* * * * *

(c) * * *

(4) *Waiver.* (i) The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (c)(4)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the information returns in accordance with this section exceeds the cost of filing the returns on other media. Notwithstanding the forgoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W–2 is required, the unavailability of specifications for magnetic media filing will be treated as creating a hardship. See § 31.6071(a)–1(a)(3)(ii). A request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30685 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Palletization

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On July 31, 1995, the Postal Service published a proposed rule for public comment in the Federal Register (60 FR 39080–39088) to revise current makeup standards in the Domestic Mail Manual (DMM) for second-, third-, and fourth-class mail prepared on pallets. The final rule adopts proposed changes that pertain only to the physical characteristics of pallet loads (such as minimum/maximum height and weight limits and provisions for triple-stacking). These changes will not be affected by the Postal Service's classification reform proposal currently under consideration before the Postal Rate Commission (Docket No. MC95–1). The Postal Service has decided not to adopt, at this time, those elements of the proposed rule that would be affected by implementation of classification reform to avoid burdening software developers and mailers with the need to make changes that will be supplanted shortly after their implementation. Instead, the standards for levels of pallet sortation and preparation, along with other related issues, will be addressed with the standards that the Postal Service proposes to implement with the pending classification reform filing. The Postal Service expects to publish a proposed rule on classification reform for public comment in December 1995.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: The July 31 proposed rule discussed in detail the efforts by the Postal Service to establish certain basic preparation standards that mailers must meet to ensure that pallets, and the mail placed on them, maintain their integrity throughout transportation and postal processing and allow safe handling by postal employees. At the same time, these standards allow mailers flexibility to prepare pallets by using recognized industry practices based on their specific production and service needs.

The 30-day comment period ended on August 30, 1995, and 16 written comments were received from publishers, mailer associations, printers and mailers, transportation companies, and presort software developers. After thorough consideration of these comments, the Postal Service is publishing its final rule. This final rule removes sections in DMM MO42 through MO48 relating to pallet size and revises and consolidates them into MO41 under one section on general pallet standards. The final rule also revises standards related to stacking and top-capping pallets and to identifying and notifying nonconforming mailers whose preparation methods result in pallets that fail to meet basic pallet integrity and safety standards. The final rule also establishes standards for palletizing trays of letter-size mail. DMM E333 and E416 are also revised to clarify the availability of third-class carrier route rates and special fourth-class level A and B rates for mail on pallets; these revisions also stipulate that the Postal Service will not unload containerized drop shipment loads that have not maintained their integrity in transit or that arrive in an unsafe manner. DMM MO33 is revised to require all trays on BMC, ASF, SDC, and mixed BMC pallets to be both sleeved and strapped to facilitate processing on sack and parcel sorters.

The revised DMM standards are set forth after the discussion of comments to the proposed rule. Many commenters commended the Postal Service for listening to its customers in developing standards that were fair and in accord with industry practices. Such comments are not summarized below.

Discussion of Comments

I. Maximum Height

A. Single and Stacked Pallets

Eight commenters opposed various parts of the proposal related to the maximum heights for a single pallet and for stacked pallets. Six commenters opposed limiting the height of a single pallet of sacks, parcels, or packages to 77 inches (or letter mail in trays to 12 layers) and asked why the Postal Service proposed a different maximum height for stacked pallets of 84 inches. They expressed concern over the possible loss of trailer cube capacity that might result from the 77-inch limit for drop shipments. Two commenters indicated that because different characteristics of products on pallets affect the stability of a load, the rule should be amended to allow for taller loads based on specific product characteristics; one commenter suggested that the weight limit of 2,200 pounds per pallet or stack of pallets be used as the controlling maximum rather than the total height of pallet loads.

The maximum height of 77 inches for a single pallet is derived from the general acceptance throughout the Postal Service of the Postal-PAK and pallet (with a height of 75 inches), plus allowance for packing material. Pallet loads exceeding a 77-inch height are a problem when loaded onto and unloaded from many smaller trucks and vehicles used to transport mail between postal facilities and when handled within many smaller postal facilities. The type of transportation used to move pallet loads and the facilities through which they are processed vary, depending on the level of pallet sortation and the office of entry. Low dock-door heights and limited ceiling heights within some facilities, as well as low door and internal heights of many Postal Service trailers and vehicles, were factors in establishing this maximum height. By establishing a maximum height of 77 inches for all single pallets, the Postal Service is promoting consistency in preparation standards while ensuring that postal employees can handle pallets safely and efficiently on all transportation and at all facilities, regardless of office of entry or level of sortation. The higher maximum of 84 inches for stacked pallets allows mailers to take advantage of trailer cube capacity for lighter weight pallets and allows the Postal Service to unstack the pallets where necessary to ensure compatibility with Postal Service equipment, transportation, or facilities. The maximum heights of 77 inches for a single pallet and 84 inches for stacked pallets are adopted in the final rule.

The Postal Service has also determined to limit the number of layers of trays of letter mail to 12, which is equivalent to the maximum height of 77 inches for a single pallet. Mailers will need to monitor their loads carefully to ensure that fuller trays are placed on the bottom and interspersed nearer the top to avoid crushing. As the height and weight of the pallet load increase, so does the likelihood of the lower trays being crushed and causing the entire load to collapse, particularly if the trays are older cardboard managed mail (MM) trays. If a mailing consists of many less-than-full trays, mailers should consider building loads containing less than the maximum number of layers.

B. Pallet Boxes

A maximum height of 84 inches was proposed for a single pallet box on a pallet, with a possible 60-inch maximum height restriction at some non-BMC facilities. Two commenters suggested that the Postal Service publish a listing of facilities that cannot handle the taller pallet boxes so that software developers can build varying height restrictions into their sortation programs. Ideally, the commenters preferred that all postal facilities be modified to handle pallet boxes that are 84 inches tall (pallet, box, and mail). The Postal Service was in error when it proposed a maximum height of 84 inches for any pallet box because the pallet unloaders being deployed by the Postal Service in bulk mail centers (BMCs) and many processing and distribution centers (P&DCs) can accommodate only pallets with pallet boxes that do not exceed a total height of 77 inches. The Postal Service must cut taller boxes or otherwise alter them to remove the contents manually, resulting in slower service for customers, additional handlings, and inefficient use of newly deployed mechanized equipment. Accordingly, the Postal Service has determined to adopt a 77-inch maximum, which is also consistent with the height of the Postal-PAK and pallet. Because the Postal Service proposed a maximum height of 84 inches and some mailers might have a stock of pallet boxes designed to meet the proposed maximum, the mandatory compliance date will be July 1, 1996, to allow mailers to deplete current stocks of these taller boxes.

II. Pallet Boxes

A. Providing Boxes

One commenter stated that the Postal Service should provide a pallet box ''for sack mail shippers that would conform to the specifics outlined in the revisions'' to facilitate uniformity and unloading at BMCs. The Postal Service has no plans to purchase additional equipment to provide to sack mailers. The Postal Service is purchasing additional trays and pallets, however, to meet customer demand in preparation for implementation of classification reform.

B. Securing Pallet Boxes

One commenter requested that the proposed requirement that mailers secure boxes to the pallet be optional and indicated that mailers had been entering unsecured boxes on pallets for many years, without any negative comment from the Postal Service. The proposed standard is modified in the final rule to require securing a pallet box to the pallet only if the pallet requires transportation by the Postal Service to move it from the entry office to another postal facility for distribution of the contents and the weight of the mail in the box is insufficient to hold the box in place on the pallet during transportation and processing. This modification is consistent with how the Postal Service prepares and processes mail in its own Postal-PAKs on pallets and ensures that pallets can be loaded and transported safely on Postal Service vehicles and processed as a single unit to the point where the contents are distributed.

C. Construction of Pallet Boxes

No comments were received on the proposal to allow mailers to use pallet boxes constructed of single-, double-, or triple-wall corrugated fiberboard. Single-wall corrugated fiberboard may be used only for light loads (such as lightweight parcels) that do not require transportation beyond the entry office. The Postal Service will monitor mailings presented in pallet boxes to ensure that the box construction maintains its integrity to the point of distribution of the contents.

III. Pallet Load Integrity

Failure of pallets to meet basic DMM standards negates efforts to ensure safe and efficient handling of palletized loads. Accordingly, all pallets presented to the Postal Service for acceptance, whether the pallets are provided by the Postal Service or the mailer, must meet the basic standards in the DMM pertaining to pallet labels, physical

pallet dimensions, pallet load integrity, stacking, and minimum/maximum loads and heights. The Postal Service will consider individual shipments that are presented for acceptance under the plant-verified drop shipment (PVDS) program at a destination entry postal facility to be bedloaded if the load integrity of the pallets or the safety of postal employees is compromised. Such loads might require driver unloading or may be refused by the destination facility. If a shipment is refused, the mailer or mailer's agent who is presenting the mail for acceptance at the destination entry facility has the option to rework the mail off-site to match its original preparation as verified, then resubmit it with the appropriate documentation when the entry facility can reschedule the shipment.

The Postal Service will monitor load integrity of customers' pallets at mailers plants when mail is verified by on-site postal personnel and at postal facilities where mailings are entered, whether at business mail entry units under local verification and acceptance or a destination entry facilities where mailings are drop shipped under programs such as PVDS. The Postal Service may initially notify the transportation company presenting mail to the Postal Service for acceptance or the mail preparer, or both, when pallet load integrity problems are identified. The failure of pallet loads to maintain their integrity might be caused by poor preparation methods of the mailer (for example, the load exceeds maximum weight or height limits or the load is not secured to the pallet) or the improper loading and security of pallets onto the transportation used to move pallet loads to postal facilities for acceptance (for example, pallets are not secured with shoring equipment in vehicles to prevent pallets from toppling in transit, or heavier pallets are stacked onto lighter pallets and crush the mail on the bottom).

After a mailer is notified of recurring pallet load integrity problems and allowed to make changes to improve load integrity, if the mailer's methods still do not work, the mailer will be considered nonconforming and required to meet the specifications developed by Postal Service Engineering for securing pallets, pallet box construction and dimensions, stacking of pallets, maximum height/layers of trays, and use of top caps. These specifications are included in the DMM language at the end of this discussion of comments. Mailers whose pallets continue to fail to meet minimum load integrity levels will be suspended from the pallet program.

Three comments were received from two commenters concerning load integrity. One commenter wanted to know how damaged loads will be handled, who will be notified, whether the mailer/agent will be allowed to rework the mail, and how presentation of damaged loads will affect drop shipment appointments. This commenter also noted that ''in our business, it is common to refuse loads that have not maintained their integrity. At that point, it is the shipper's or carrier's responsibility to see that the load is taken to an alternative site for reworking.'' This same commenter wanted clarification about who will determine whether pallets are properly prepared to meet load integrity standards, at what point a mailer will be considered nonconforming, and whether the mailer will have an option to pay a penalty or fine at destination to have nonconforming pallets accepted for time-sensitive mailings. The commenter also expressed concern about possible inconsistencies in the determinations by different facilities about whether a pallet load meets the load integrity standards. The second commenter wanted feedback from the Postal Service about pallet load integrity problems, starting with the mail preparer and proceeding to the owner. The Postal Service will initially contact the mailer or mailer agent (such as a transportation company) when load integrity problems are identified.

Training materials will be distributed to postal facilities that accept pallets from mailers to ensure consistent understanding and application of pallet load integrity guidelines and the procedures that apply when problems are identified. The Drop Shipment Appointment System (DSAS) will be used, where possible, to identify and track the mailers or their agents presenting problem pallet loads. The DSAS will also help to establish contact to ensure that corrective actions are taken to improve future load integrity. The Postal Service will also work with mailers to ensure that corrective actions are taken to prevent recurrence of problems and to provide training and other necessary tools that will communicate the responsibilities of all mailers or their agents who create or handle mail on pallets.

Over the next few months, the Postal Service will formulate clear, objective criteria to identify pallet load integrity problems and to establish consistent feedback mechanisms for notifying mailers or their agents when problems are identified. Until those details are developed, load integrity will be monitored at origin and destination postal facilities as it is today, feedback will be provided to mailers, and mailers will be allowed to improve preparation methods for identified problems. However, during that interim, mailers will not be determined as nonconforming or suspended from the pallet program. Accordingly, the rules relating to nonconforming mailers and suspension will not take effect until July 1, 1996.

IV. Sleeving and Strapping of Trays

No comments were received about the proposal to require mailers to sleeve and strap trays of letter mail placed onto BMC, ASF, SDC, and mixed BMC pallets; the proposed standards are adopted in the final rule. These standards provide an incentive to prepare pallets to finer levels of sortation, allowing for greater cross-dock opportunities at the BMCs and significant relief for BMC operations heavily affected by unstrapped trays. In addition, this rule adopts the proposal to extend the current requirement to sleeve all trays that contain letter-size automation rate mail and that may be processed at a BMC/ASF or AMF/AMC (that is, mail that does not originate and destinate in the delivery area of the same SCF) to include trays containing nonautomation rate letter-size mail.

V. Maximum Pallet Load

One commenter requested clarification of how the proposed 2,200-pound maximum for pallets applies to stacked pallets. The proposal to set 2,200 pounds as the maximum weight for any single pallet and as the maximum total weight for stacked pallets presented to the Postal Service is adopted in the final rule. When the weight of a single pallet or a stack of pallets is calculated, the weight of the mail and any tare placed on the bottom pallet are included in the calculation.

The proposed maximum load for trays on pallets of 12 layers, not to exceed 2,200 pounds, is also adopted in the final rule.

VI. Minimum Pallet Load

For packages, parcels, and sacks on pallets, the final rule requires mailers who prepare mail on pallets to prepare a required level of pallet sortation when there are 500 pounds of mail for that destination (for example, for a 5-digit ZIP Code or an SCF). At their option, mailers may prepare pallets for any required or optional level of sortation when they prepare at least 250 pounds of mail for a destination.

Palletization of trays of letter-size mail is based on the number of layers. Mailers may prepare a pallet when they

have from three to five layers of 1- or 2-foot managed mail (MM) or extended managed mail (EMM) trays. Preparation of pallets to required levels of sortation is mandatory with six layers of trays to that destination (for example, SCF pallets).

For improved service, the processing and distribution manager of the facility where a mailing is entered may issue a written authorization to the mailer, allowing preparation of 5-digit or 3-digit pallets containing less than the minimum volume (250 pounds of packages, parcels, or sacks or three layers of trays) if the mail on those pallets destinates in the service area of that facility.

At the mailer's option, the minimum volume used to determine when a pallet is prepared may vary within a mailing, provided that pallets are prepared to required levels of sortation when there are at least 500 pounds or six layers of mail to the destination.

Mailers are reminded that under the Postal Service's Guidelines for the Plant-Verified Drop Shipment (PVDS) Program, the driver must unload mail entered at delivery units. In some instances, the driver must break down palletized loads because of the physical limitations of a delivery unit (for example, a small or congested office that cannot accommodate large or stacked pallets).

VII. Stacking Pallets

A. Double- and Triple—Stacking

Several commenters responded favorably to the proposal to allow a mailer to double- or triple-stack pallets up to the maximum allowable height and weight (84 inches/2,200 pounds total for the stacked pallets); this proposal is adopted in the final rule. Such pallets must be presented for acceptance at the mailer's plant or a postal facility in a manner that ensures safe and efficient unloading, handling, and transporting. Triple-stacking allows a mailer to make better use of transportation for drop shipments when low-weight pallets are prepared.

When stacking pallets, the mailer must place the heaviest pallet on the bottom and the lightest pallet on the top to prevent crushing or other damage to mail on the bottom. If part of the load is crushed, the entire load is likely to collapse.

B. Securing Stacked Pallets Together

The proposed rule required that all stacked pallets be secured together with at least two straps at least ½ inch wide. Several commenters were opposed to this requirement. Two commenters stated that they stretchwrap stacked pallets together and that the stacked loads maintain their integrity throughout transportation and processing. These commenters indicated that stretchwrapping stacked pallets is consistent with the stretchwrapping operation in their plants for single pallets and that a requirement to strap or band stacked pallets would add an unnecessary cost to their operations.

The Postal Service proposed that mailers be required to secure stacked pallets with banding or strapping because this material is easier to remove than stretchwrap. Only one cut per band is required on no more than two sides of a banded pallet, whereas a stretchwrapped pallet must be cut around all four sides of the stacked pallets to separate the pallets and to insert a forklift or pallet jack. If pallets are triple-stacked, the stretchwrap must be cut on all four sides (two times between the bottom and middle pallets and between the middle and top pallets). Not only is this method time-consuming, it can be difficult to move around a tall pallet load in a full vehicle in order to cut the stretchwrap and remove the top pallet(s). The requirement to strap stacked pallets together is adopted in the final rule. The mandatory compliance date is July 1, 1996, to allow mailers who currently use other means of securing stacked pallets together to change their preparation methods.

C. Use of Top Caps

Three commenters raised issues about top caps. Under the proposed rule, mailers would have been required to top-cap the lower pallets when pallets were stacked. Top caps have been found to be one of the key elements in ensuring the stability of stacked pallets. However, as one commenter noted, the characteristics of certain mail can provide a flat, stable, and protective surface on which to place a pallet (for example, cartons of books placed on a pallet), making top caps unnecessary. The Postal Service agrees. Therefore, the final rule is modified to make top caps optional on stacked pallets when the top surface of the pallet load provides a sturdy, flat surface parallel to the pallet base, that allows for safe and efficient stacking and for preventing damage to mail or crushing of the load from pallets placed on top. The Postal Service will monitor the preparation of all stacked pallets, particularly those that are triple-stacked, to ensure that the pallets can be handled safely and without damage to the mail.

One commenter asked whether the Postal Service will provide top caps. Although the Postal Service does have a limited supply of top caps, it has no plans, at this time, to provide them to mailers on a general basis. By limiting the circumstances under which top caps are required, the Postal Service expects mailers to continue providing their own top caps to ensure the integrity of stacked mail loads.

Two commenters indicated that top-capping pallets can create problems for consolidators who combine pallets and move them closer to destinating postal facilities. Because consolidators are not manufacturing plants, they do not have scrap material to sue for top-capping stacked pallets. Mailers who prepare lightweight pallets that are likely to be stacked by consolidators for drop shipment must work out arrangements with their transportation agents about whose responsibility it is to top-cap those pallets. Regardless of the arrangements, stacked pallets must be top-capped when required to maintain load integrity.

D. Top Cap Construction

Mailers may determine the best material for ensuring pallet integrity and may use manufacturing materials that come into their plants as top-capping material. Mailers must not use flimsy paper obtained from the ends of paper rolls or similar material for top caps because this material, used alone, can cause stack failure.

VIII. Securing Single Pallet Loads

Depending on the characteristics of a mail load, strapping might not be the most effective method of ensuring load integrity of a single pallet throughout transportation and mail handling. Loads can compress during storage in a mailer's plant or while in transit, causing strapping to become loose. In those instances, stretchwrap can be more effective in securing loads on a single pallet. Therefore, in the final rule, the proposal allowing mailers to choose the most appropriate method of securing a single pallet load is adopted. Acceptable methods include strapping or wrapping with stretchable or shrinkable plastic wrap.

IX. Pallet Sortation Levels

This final rule does not adopt any of the proposed changes related to levels of pallet sortation, including the proposed allowance for working pallets or the elimination of the ''courtesy pallet,'' by requiring that all mailings placed onto any pallet be sorted to the finest level of presort. Modified proposed standards will be included in the Federal Register notice containing proposed DMM

language to implement the pending classification reform filing.

The following revisions are made to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations, See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

E Eligibility

* * * * *

E300 Third-Class Mail

* * * * *

E333 Carrier Route Presort

* * * * *

3.0 PRESORT

3.1 Qualifying Mail

* * * * *

[Add the following at the end of the current section:]

c. Correctly presorted carrier route packages that meet the package preparation standards in M043 and are sorted to the appropriate pallet level.

* * * * *

E350 Destination Entry Discounts

* * * * *

3.0 DEPOSIT

* * * * *

3.8 Unloading Vehicles

The mailer is responsible for the unloading of vehicles, subject to these conditions:

[Add new 3.8a and redesignate current 3.8a through 3.8c as 3.8b through 3.8d, respectively. Amend redesignated 3.8b.]

a. Postal employees unload palletized and containerized loads at MBMCs/FSFs/SCFs, except that the USPS does not unload or permit the mailer (or mailer agent) to unload palletized or containerized loads that are unstable or severely leaning or that have otherwise not maintained their integrity in transit.

b. [Remove the second sentence.]

* * * * *

E400 Fourth-Class Mail

* * * * *

E416 Special Fourth-Class Rates

* * * * *

2.0 SPECIAL FOURTH-CLASS PRESORT

* * * * *

2.6 Level A

[Revise the introductory text as follows:]

To qualify for the special fourth-class presort level A rate, a piece must be in a mailing of at least 500 pieces receiving identical service, properly prepared and presorted under M404 in full 5-digit sacks or under M044 on 5-digit pallets. These conditions also apply:

* * * * *

2.7 Level B

[Revise the introductory text as follows:]

To qualify for the special fourth-class presort level B rate, a piece must be in a mailing of at least 500 pieces receiving identical service, properly prepared and presorted under M404 in full or substantially full bulk mail center (BMC) sacks or under M044 on destination BMC pallets. These conditions also apply:

* * * * *

E450 Destination BMC/ASF Discount

* * * * *

3.0 DEPOSIT

* * * * *

3.8 Unloading Vehicles

* * * * *

a. [Revise the second sentence as follows:]

* * * The USPS does not unload or permit the mailer (or mailer agent) to unload palletized or containerized loads that are unstable or severely leaning or that have otherwise not maintained their integrity in transit.

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M030 Container Preparation

* * * * *

M033 Sacks and Trays

1.0 BASIC STANDARDS

* * * * *

[Add new 1.4 and 1.5 as follows:]

1.4 Sleeving and Strapping of Trays

Except under 1.5, each letter mail tray must be sleeved. All nonpalletized trays of letter mail that are transported from the mailer's plant to a BMC/ASF or AMF/AMC on USPS or mailer transportation and all trays placed on BMC/SDC or mixed BMC/SDC pallets must also be secured with a plastic strap placed tightly around the length of the tray. The strap must not crush the tray or sleeve. Strapping is not required on trays placed on pallets prepared to finer levels of sortation.

1.5 Sleeving Exception

When all pieces in a mailing originate and destinate in the delivery area of the same SCF and the trays containing those pieces are not to be processed at a BMC or an AMF, the processing and distribution manager may (on request) issue a written authorization to the mailer to submit the mailing in trays without sleeves.

* * * * *

3.0 BASIC STANDARDS FOR TRAYS—AUTOMATION RATES

* * * * *

[Remove current 3.6 and 3.7.]

M040 Palletization

M041 General Pallet Standards

[Revise 1.0 through 3.0 as follows:]

1.0 PHYSICAL CHARACTERISTICS

1.1 Standards

All pallets presented to the USPS, whether USPS- or mailer-provided, must meet the standards in 1.2 through 1.4. Mail on such pallets must meet the standards applicable to the class and rate claimed.

1.2 Construction

Pallets must be made of high-quality material that can hold loads equal to a gross weight of 2,200 pounds. Pallets must measure 48 by 40 inches and allow for four-way entry by fork trucks and two-way entry by pallet jacks.

1.3 Securing

Except for pallet boxes under 4.3, loaded pallets of mail must be wrapped with stretchable or shrinkable plastic strong enough to retain the integrity of the pallets during transportation and handling.

1.4 Nonconforming Mailers

The USPS informs mailers or their agents who present palletized mailings, including plant-verified drop shipment (PVDS), when their pallets fail to meet basic pallet integrity and safety standards. After July 1, 1996, once a mailer is notified and allowed to make changes to improve load integrity, if the mailer's methods, or those of the mailer's agent presenting PVDS mailings, do not work, the mailer is considered nonconforming. A nonconforming mailer must meet the

specifications for nonconforming mailers for use of top caps, stacking of pallets, pallet box construction, and maximum height/layers of trays in 2.0 through 4.0. After July 1, 1996, mailers will be suspended from the pallet program if their pallets continue to fail to meeting the minimum standards for load integrity levels.

2.0 TOP CAPS

2.1 Use

Top caps are used as follows:

a. Except under 2.1b and 2.1c, all pallets of sacks, letter mail trays, parcels, packages or bundles of mail, or pallet boxes must be top-capped if the pallets are double- or triple-stacked when presented to the USPS for acceptance.

b. The top pallet need not be top-capped if the strapping or banding securing the stacked pallets together neither damages the mail on the top pallet nor allows the stack to shift.

c. Lower pallet(s) containing either parcels or packages or bundles of mail need not be top-capped if the top surface of each pallet load provides a sturdy, flat surface, parallel to the pallet base, that provides safe and efficient stacking of pallets placed on top and prevents sliding of the top pallet(s), damage to the loaded mail, or crushing of the load.

2.2 Construction

Any material may be used as a top cap if it provides a flat, level surface horizontal to the base pallet, protects the integrity of the mail below while supporting a loaded pallet above, and allows easy entry of a forklift to remove the upper pallet(s). Flimsy paper or fiberboard (e.g., the ends of paper rolls) or similar material is inadequate and may not be used as a top cap.

2.3 Securing

A top cap must be secured to the pallet horizontal to the plane of the base pallet, with either stretchwrap or at least two crossed straps or bands, so that the top cap stays in place to protect the mail and maintain the integrity of the pallet load.

2.4 Nonconforming Mailers

Nonconforming mailers (see 1.4) must use top caps on all pallets of sacks, letter mail trays, parcels, or packages or bundles of mail, regardless of weight, or on pallets containing pallet boxes 60 inches high or less. Top caps must be approximately 48 by 40 inches and meet one of these construction standards:

a. Five-wood boards, with uniform edges and nine-leg pallet contact for stacking.

b. Fiberboard box-end style, with a minimum 3-inch side and wall material of at least double-wall corrugated fiberboard C and/or B flute.

c. Fiberboard honeycomb covered on both sides, with heavy linerboard at least ½ inch thick.

d. Corrugated fiberboard C flute sheet covering the entire top of the load, with standard pallet solid fiberboard corner edge protectors.

3.0 STACKING PALLETS

3.1 Double- or Triple-Stacking

Pallets may be double- or triple-stacked if:

a. The combined gross weight of the stacked pallets (pallets, top caps, and mail) does not exceed 2,200 pounds.

b. The heaviest pallet is on the bottom and the lightest is on the top.

c. The pallets are secured together with at least two straps or bands of appropriate material to maintain pallet integrity during transportation and handling. Stretchable or shrinkable plastic wrap be used to secure stacked pallets together until July 1, 1996.

d. Pallets are top-capped under the standards in 2.0.

e. The combined height of the stacked pallets and their loads does not exceed 84 inches.

3.2 Nonconforming Mailers

Nonconforming mailers (see 1.4) who stack pallets are subject to the conditions in 3.1, except that triple-stacking is allowed only for pallets of parcels and the combined height of stacked pallets may not exceed 77 inches.

4.0 PALLET BOXES

[Renumber current 4.0 through 6.0 as 5.0 through 7.0; add new 4.0 as follows:]

4.1 Use

Mailers may use pallet boxes constructed of single-, double-, or triple-wall corrugated fiberboard placed on pallets to hold sacks or parcels prepared under M042, M043, or M044. Single-wall corrugated fiberboard may be used only for light loads (such as lightweight parcels) that do not require transportation by the Postal Service beyond the entry office. The boxes must protect the mail and maintain the integrity of the pallet loads throughout transportation, handling, and processing. The base of the boxes must measure approximately 40 by 48 inches.

4.2 Maximum Height

The combined height of the pallet, pallet box, and mail may not exceed 77 inches, except that until July 1, 1996, the combined height may be up to 84 inches. The contents of the box must not extend above the top rim of the box.

4.3 Securing

Pallet boxes must be secured to pallets with strapping, banding, stretchable plastic, shrinkwrap, or other material that ensures that the pallets can be safely unloaded from vehicles, transported, and processed as single units to the point where the contents are distributed with the load intact if:

a. The pallet and its contents are transported by the USPS from the office where the mail is accepted to another postal facility where the contents are distributed.

b. The weight of the mail in the box is not sufficient to hold the box in place on the pallet during transportation and processing, a pallet box must be secured to the pallet base.

4.4 Nonconforming Mailers

Nonconforming mailers (see 1.4) may use pallet boxes only if the boxes are constructed of triple-wall corrugated fiberboard (C and/or B flute material) with a maximum height of 77 inches.

5.0 PALLET PREPARATION

[Renumber 5.3 as 5.8; add new 5.3 through 5.7; revise renumbered 5.0 as follows:]

5.1 Presort

[Delete the ''s'' at the end of ''Pallets'' in the first sentence.]

5.2 Minimum Load

In a single mailing, the minimum load per pallet is 250 pounds of second-class, third-class, or fourth-class packages and bundles of mail, parcels, or sacks (or three layers of letter trays of second-class or third-class mail), except that the processing and distribution manager of the facility where a mailing is entered may issue a written authorization to the mailer allowing preparation of 5-digit or 3-digit pallets containing less volume if the mail on those pallets is for the service area of that facility.

5.3 Required Preparation

A pallet must be prepared to a required level of sortation when there are 500 pounds of second-, third-, or fourth-class packages, bundles, sacks, or parcels (or six layers of letter trays of second-class or third-class mail).

5.4 Maximum Weight

The maximum weight (mail and pallet) is 2,200 pounds for a single pallet.

5.5 Maximum Height

The combined height of a single pallet and its load may not exceed these limits:

a. A maximum of 77 inches for packages, bundles, parcels, sacks, or fiberboard pallet boxes and their contents (sacks or parcels) on pallets, except that until July 1, 1996, the maximum for pallet boxes is 84 inches.

b. A maximum of 12 layers of second-class or third-class letter trays.

5.6 Nonconforming Mailers

For nonconforming mailers (see 1.4) of letter-size mail in trays, the combined height of a pallet and its load may not exceed six layers of MM or EMM trays.

5.7 Mail on Pallets

Mailpieces in trays, packages, bundles, and sacks must be prepared under the standards applicable to the class of mail and rate claimed.

* * * * *

M042 Second-Class Mail

* * * * *

4.0 PREPARING PALLETS OF PACKAGES OR BUNDLES

[Remove current 4.1; renumber 4.2 through 4.5 as 4.1 through 4.4. Amend renumbered 4.4 as follows:]

* * * * *

4.4 Sacking

[In the first sentence, change ''4.3'' to ''4.2.'']

5.0 PREPARING PALLETS OF COPALLETIZED FLAT-SIZE PUBLICATIONS

[Remove current 5.3; renumber 5.4 through 5.10 as 5.3 through 5.9. Amend renumbered 5.5 and 5.8 as follows:]

* * * * *

5.5 Sacking

[In the first sentence, change ''under 5.4'' to ''under 5.3.'']

* * * * *

5.8 Documentation

* * * * *

d. [Remove ''/650.'']

* * * * *

[Revise the heading of 6.0 as follows:]

6.0 PREPARING PALLETS OF SACKS OR TRAYS

[Remove current 6.1; renumber 6.2 through 6.4 as 6.1 through 6.3. Amend renumbered 6.2 and 6.3 as follows:]

* * * * *

6.2 Presort and Labeling

Presort sequence and labeling:

a. 5-digit (required for sacks, optional for trays); use destination of packages for Line 1.

b. Multicoded city (optional); use L001 for Line 1.

c. 3-digit (required for sacks, optional for trays); use L002, Column A, for Line 1.

d. SCF (required); use L002, Column B, for Line 1.

e. SDC (optional); use L201 for Line 1.

f. Transfer hub (optional).

[Revise the heading of 6.3 as follows:]

6.3 Sacks and Trays

[Revise the first sentence as follows:]

Mixed states sacks and residual trays may not be included in the palletized portion of a mailing. * * *

M043 Third-Class Mail

* * * * *

4.0 PREPARING PALLETS OF PACKAGES OR BUNDLES

[Remove current 4.1; renumber 4.2 through 4.6 as 4.1 through 4.5. Amend renumbered 4.5 as follows:]

* * * * *

4.5 Sacking

[In the first sentence, change ''4.3'' to ''4.2.'']

* * * * *

6.0 PREPARING PALLETS OF COPALLETIZED FLAT-SIZE MAILINGS

[Remove current 6.4; renumber 6.5 through 6.12 as 6.4 through 6.11. Amend 6.1 and 6.10 as follows:]

6.1 Standards

[Change ''4.2 through 4.6'' to ''4.1 through 4.5.'']

* * * * *

6.10 Sacking

[In the first sentence, change ''4.3'' to ''4.2.'']

* * * * *

7.0 PALLETIZING MACHINABLE THIRD-CLASS PARCELS

[Remove current 7.1; renumber 7.2 through 7.5 as 7.1 through 7.4. In renumbered 7.2 and 7.3, change all references from ''7.2'' to ''7.1.'']

* * * * *

8.0 PALLETIZING THIRD- AND FOURTH-CLASS MACHINABLE PARCELS

[Remove current 8.2; renumber 8.3 through 8.8 as 8.2 through 8.7. In renumbered 8.3 and 8.4, change all references from ''8.3'' to ''8.2''; revise 8.1 as follows:]

8.1 Standards

[Change ''4.2 through 4.6'' to ''4.1 through 4.5.'']

* * * * *

[Revise the heading of 9.0 as follows:]

9.0 PREPARING PALLETS OF SACKS OR TRAYS

[Remove current 9.1; renumber 9.2 through 9.4 as 9.1 through 9.3. Amend renumbered 9.1 and 9.2 as follows:]

9.1 Presort and Labeling

Presort sequence and labeling:

a. 5-digit (required for sacks, optional for trays); use destination of packages for Line 1.

b. Multicoded city (optional); use L001 for Line 1.

c. 3-digit (required for sacks, optional for trays); use L002, Column A, for Line 1.

d. SCF (required); use L002, Column B, for Line 1.

e. BMC (optional); use L705 (or L708 for BMC/ASF if DBMC rate is claimed) for Line 1.

9.2 Line 2

[Change ''9.2'' to ''9.1'' at the end of the section.]

9.3 Remaining Sacks and Trays

All sacks and trays remaining after all pallets are prepared may be presented with the palletized mailing (on the same mailing statement), if the sacks or trays are segregated from the palletized portion of the mailing.

M044 Fourth-Class Mail

* * * * *

3.0 PREPARING PALLETS OF PACKAGES

[Remove current 3.1; renumber 3.2 through 3.5 as 3.1 through 3.4.]

* * * * *

4.0 PREPARING PALLETS OF MACHINABLE PARCELS

[Remove 4.1; renumber 4.2 through 4.6 as 4.1 through 4.5.]

* * * * *

4.2 Line 2

[Change ''4.2'' to ''4.1'' at the end of the section.]

* * * * *

5.0 PREPARING PALLETS OF SPECIAL FOURTH-CLASS PRESORT

[Remove 5.1; renumber 5.2 and 5.3 as 5.1 and 5.2.]

* * * * *

5.2 Line 2

[Change ''5.2'' to ''5.1'' at the end of the section.]

M048 Automation-Compatible Flats

* * * * *

2.0 PACKAGE PREPARATION

[Renumber 2.1 as 2.0 and remove the 2.1 section heading; remove 2.2.]

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–30989 Filed 12–20–95; 8:45 am]

BILLING CODE 7710–12–M

Environmental Protection Agency

40 CFR Part 52

[GA–27–1–7186a; FRL–5320–3]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Georgia Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the revision to the Georgia State Implementation Plan (SIP). On May 5, 1994, the Georgia Environmental Protection Division submitted regulations 391–3–21–.01 through .11 establishing a Clean Fuel Fleet program. These rules became effective on May 22, 1994.

DATES: This final rule will be effective February 20, 1996, unless adverse or critical comments are received by January 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Benjamin Franco, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia 30365.

Georgia Environmental Protection Division, 4244 International Parkway, Suite 120, Atlanta, GA 30354.

FOR FURTHER INFORMATION CONTACT: Benjamin Franco, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 x–4211. Reference file GA27–1–7186a.

SUPPLEMENTARY INFORMATION: Section 246(a) of the 1990 Clean Air Act (CAA) requires ozone nonattainment areas classified serious and above to implement a Clean Fuel Fleet (CFF) program. The program is designed to introduce lower-emitting vehicles into centrally fueled fleets in ozone nonattainment areas classified as serious. By choosing to introduce clean fuel vehicles in centrally fueled fleets, Congress focused on vehicle operators that often have more control over their source of fuel than does the general public. Additionally, the central control which operators maintain over their vehicles simplifies the issues related to vehicle maintenance and refueling. Finally, because fleet vehicles typically travel more miles and are replaced more frequently than non-fleet vehicles, they offer a greater opportunity to improve air quality, on a per-vehicle basis and in a more timely manner, than potentially could be achieved by concentrating on a similar number of non-fleet vehicles.

The Georgia Department of Natural Resources adopted on April 29, 1994, Regulations 391–3–21–.01 through .11 establishing a CFF program. The program will be required in the counties of Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Fulton, Forsyth, Gwinnett, Henry, Paulding and Rockdale. Fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled and operated in the above counties are required to include in their new vehicle purchases a certain percentage of clean fueled vehicles (CFV). A CFV is one which meets any one of the three sets of exhaust emission standards. The emission standards and the vehicles which meet them are referred to as low emission vehicles (LEV), ultra low emission vehicles (ULEV), and zero emission vehicles (ZEV).

Vehicles weighing 26,000 lbs. or less will count towards the requirement. The purchase must start with 1998 model year vehicles. The phase-in schedule for vehicles weighing up to 8,500 lbs. Gross Vehicle Weight Rating (GVWR) is: 30 percent Model Year 1998, 50 percent Model Year 1999, 70 percent Model Year 2000 and after. The phase-in schedule for vehicles weighing above 8,500 lbs GVWR is: 50 percent Model Year 1998, 50 percent Model Year 1999, 50 percent Model Year 2000 and after. The following vehicles are exempted from these requirements: motor vehicles for lease or rental to the general public, dealer demonstration vehicles that are used solely for the purpose of promoting motor vehicle sales, emergency vehicles, law enforcement vehicles, nonroad vehicles (farm and construction vehicles), vehicles garaged at a personal residence and not being centrally fueled, and vehicles used for motor vehicle manufacturer product evaluations and tests.

Regulation 391–3–21.08 establishes a credit program in order to help fleets meet the CFF program requirements. Credits can be generated by three ways: (1) By purchasing CFVs prior to 1998, (2) by purchasing extra or exempted CFVs, and (3) by purchasing CFVs with stricter emissions standards such as ULEV and ZEV. These credits can only be used in the designated nonattainment area. Credits can be used towards future purchases or can be sold or traded to other operators. The Georgia Environmental Protection Division (GAEPD) will keep, approve and track all credits.

Final action

The EPA is approving this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 20, 1996, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 20, 1996.

The Agency has reviewed this request for revision of the Federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Actions

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State Implementation Plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 246 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 29, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(48) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(48) Clean Fuel Fleet program submitted to EPA by the Georgia Department of Natural Resources on May 5, 1994.

(i) Incorporation by reference.

(A) Addition of Regulations 391–3–21–.01, ''Definitions,'' 391–3–21–.02, ''Covered Area,'' 391–3–21–.03, ''Covered Fleet Operators,'' 391–3–21–.04, ''Covered Fleet Vehicles,'' 391–3–21–.05, ''Determination of Capable of Being Centrally Fueled,'' 391–3–21.06, ''Purchase Requirements,'' 391–3–21.07, ''Emission Standards,'' 391–3–21.08, ''Credit Program,'' 391–3–21.09, ''Transportation Control Exemptions,'' 391–3–21.10, ''Requirements for Fuel Providers,'' 391–3–21–.11, '' Enforcement'' which became effective on May 22, 1994.

(ii) Other material. None.

[FR Doc. 95–31038 Filed 12–20–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7177

[AK–932–1430–01; A–061697, AA–45553]

Withdrawal of Public Land for the Glacier Loop Administrative Site; Revocation of Secretarial Order dated December 31, 1941; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 22.51 acres of public land from all forms of appropriation under the public land laws, including location and entry under the mining laws, for a period of 20 years for the Department of Agriculture, Forest Service, to protect the Glacier Loop Administrative Site. The land has been and will remain closed to mineral leasing as it is located within an incorporated city (30 U.S.C. 181 (1988)). This order also revokes in its entirety a Secretarial order as it affects 27.06 acres of public land withdrawn for use by the Federal Aviation Administration as Air Navigation Site No. 173. The land is no longer needed for the purpose for which it was withdrawn. The public land that will not be withdrawn for use by the Forest Service will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: December 21, 1995.

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

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

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), for protection of the Glacier Loop Administrative Site:

Copper River Meridian

Located within T. 40 S., R. 66 E., described as U. S. Survey No. 3758, Lot 1–3.

The area described contains 22.51 acres.

2. The Secretarial Order dated December 31, 1941, which withdrew public land for Air Navigation Site No. 173, is hereby revoked as it affects the following described land:

Copper River Meridian

Located within T. 40 S., R. 66 E., described as U. S. Survey No. 3758, Lot 1–2 and Lot 1–3.

The area described contains 27.06 acres.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

5. The portion of the area that is not withdrawn for the Forest Service, as described in paragraph 2, will be subject to Public Land Order No. 5180, as amended, and any other withdrawal of record.

Dated: December 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–30997 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–JA–P

43 CFR Public Land Order 7178

[CO–935–1430–01; COC–56149]

Withdrawal of National Forest System Land for Aspen Highlands Ski Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,333.34 acres of National Forest System land from mining for 50 years to protect recreational resources and facilities at the Aspen Highlands Ski Area. This land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: December 21, 1996.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

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

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for the Forest Service to protect facilities and resources at the Aspen Highlands Ski Area:

White River National Forest

Sixth Principal Meridian

T. 10 S., R. 85 W.,
Sec. 15, SE¼SE¼;
Sec. 22, lots 1, 2, 3, 4, and 5, E½SW¼, and SE¼;
Sec. 23, lots 1, 2, 3, 6, 7, 8, and 9;
Sec. 26, lots 3, 4, 5, 10, and 11, SW¼NW¼, and N½SW¼;
Sec. 27;
Sec. 28, E½E½;
Sec. 33, E½ and E½W½;
Sec. 34;
Sec. 35, lot 10, W½NW¼, SE¼NW¼, and SW¼.
T. 11 S., R. 85 W.,
Sec. 2, N½N½NW¼;
Sec. 3, N½N½N½;
Sec. 4, N½N½NE¼ and N½NE¼NW¼.

The area described contains 3,333.34 acres of National Forest System land in Pitkin County.

2. The withdrawal make by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: December 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–30998 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–JB–P

Proposed Rules

Federal Register
Vol. 60, No. 245
Thursday, December 21, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1 and 7

[Docket No. 95–34]

RIN 1557–AB37

Investment Securities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to clarify and update its rules that prescribe the standards under which national banks may purchase, sell, deal in, and underwrite securities. This proposal is part of the OCC's Regulation Review Program, a project designed to review comprehensively, modernize and simplify OCC regulations and reduce unnecessary regulatory burdens. The proposed revisions reorganize the regulation by placing related subjects together, clarify areas where the rules are unclear and confusing, and update various provisions to address market developments and to incorporate significant OCC interpretations, judicial decisions and statutory amendments.

DATES: Comments must be received by February 20, 1996.

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95–34. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number 202/874–5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Kay Bondehagen, Special Assistant to the Deputy Chief Counsel (202) 874–5200; Stuart Feldstein, Senior Attorney, Legislative and Regulatory Activities Division (202) 874–5090; Lee Walzer, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210; Lisa Lintecum, Director, Fiduciary Activities, (202) 874–5419.

SUPPLEMENTARY INFORMATION:

Background

OCC Regulation Review Program

The OCC is proposing to revise 12 CFR part 1 pursuant to its Regulation Review Program. Pursuant to this Program, the OCC is reviewing all its rules. Rules that are not necessary to protect against unacceptable risks, that do not support equitable access to banking services for all consumers or that are not needed to accomplish other statutory responsibilities of the OCC will be revised or eliminated.

Where risks are meaningful and regulation is appropriate, rules will be examined to determine if they achieve their purpose at the least possible cost. The OCC also recognizes that one source of regulatory cost is the failure of regulations to provide clear guidance because they are difficult to follow and understand. Therefore, an important component of the Regulation Review Program is to revise regulations, where appropriate, to improve clarity and better communicate the standards that the rules are intended to convey.

Investment Securities Limitations

Most of the limitations on the ability of national banks to purchase, sell, deal in, and underwrite securities trace to the Banking Act of 1933, Section 16, Public Law 73–66, 48 Stat. 184 (codified as amended at 12 U.S.C. 24 (Seventh) (1933)). More recently, the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA)[1] and the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRI Act)[2] removed quantitative limits on national banks' purchases of certain types of mortgage- and small business-related securities, subject to any regulations prescribed by the OCC.

Although the OCC has revised part 1 a number of times since the early 1960s, the current version still contains many provisions dating from 1963. See 28 FR 9916 (1963). The OCC revised part 1 in 1971, adding the distinctions among ''Type I security,'' ''Type II security'' and ''Type III security.'' See 36 FR 6737 (1971). Guidelines were added to the part in 1982. See 47 FR 5701 (1982). The OCC revised part 1 again in 1989 principally to reflect amendments to 12 U.S.C. 24 (Seventh) by adding obligations of the African Development Bank and Inter-American Investment Corporation to the description of Type II securities. See 54 FR 1333 (1989). To reduce regulatory burden, the OCC also amended part 1 in 1993 to eliminate a requirement that a national bank maintain certain information for a specified period of time to demonstrate prudence in making determinations and carrying out securities transactions. See 58 FR 27443 (1993). The OCC tended to graft these changes onto the previous regulatory framework, resulting in a sometimes confusing combination of definitions and restrictions.

The OCC did not amend part 1 to reflect the statutory change resulting from the enactment of SMMEA in 1984. Nor have changes been made to the rule to reflect significant judicial decisions and interpretations of the OCC.

Proposal

This proposal modernizes the rules in part 1 and furthers the goals of the OCC's Regulation Review Program. In order to make part 1 more accessible and comprehensive, the proposal restructures many sections of the rule. The proposal also updates the rule to incorporate statutory changes to 12 U.S.C. 24 (Seventh), judicial decisions and long-standing OCC interpretations. The following discussion identifies and explains the significant proposed changes. The OCC requests comments on all aspects of this proposal, and, in addition, requests specific comments on certain changes that are highlighted. The OCC also welcomes any additional comments relevant to this proposal. A table summarizing the areas where changes are proposed is set forth at the end of this preamble.

Authority, purpose, and scope (section 1.1)

The proposal consolidates the current ''Scope and application'' section (§ 1.2) with the ''Authority'' section (§ 1.1). The sections are substantially condensed to eliminate redundant and unnecessary language.

The limitations set forth in part 1 apply to national banks, Federal branches of foreign banks, District of

[1] Sec. 105(c), Pub. L. 98–440, Title I, 98 Stat. 1691 (codified as amended at 12 U.S.C. 24 (Seventh) (1984)).

[2] Pub. L. 103–325, 108 Stat. 2160 (1994).

Columbia banks and state banks that are members of the Federal Reserve System.[3] This section further clarifies that foreign branches of national banks may be authorized to conduct additional international activities pursuant to 12 CFR part 211.

Definitions (section 1.2)

The proposal substantially revises the definitions section to add several definitions, updates others, and brings the definitions that currently appear in various places in the regulation into a single section. The following definitions have been added: ''investment company,'' ''Type IV security,'' and ''Type V security.'' The definitions of Type I, II, and III securities also have been substantially revised so that these types of securities are defined by their characteristics, not by the statutory limitations on the extent to which national banks may deal in, underwrite, purchase, or sell them. No substantive change in the authority of a national bank results from these revisions. In addition, as indicated with various individual definitions below, many definitions are revised to clarify their meaning and to incorporate the results of statutory changes, judicial decisions, and established OCC interpretations. Of particular note are the following proposed revisions:

Capital and surplus (section 1.2(a))

The proposal defines ''capital and surplus'' as Tier 1 and Tier 2 capital includable in risk-based capital under the Minimum Capital Ratios in 12 CFR part 3, plus the balance of a bank's allowance for loan and lease losses that is not included in Tier 2 capital. This is the same standard used in the OCC's recent revisions to its lending limit regulation. See 60 FR 8526 (February 15, 1995). As stated in the Preamble to the new lending limit rule, 60 FR 8528, the OCC's reasons for revising the definition of ''capital and surplus'' are to reduce the different definitions of capital currently used for various regulatory purposes and to use a well-recognized standard that banks are already required to calculate.

Investment grade (section 1.2(d))

''Investment grade'' means that a security is rated in one of the top four rating categories by each nationally recognized statistical rating organization that has rated the security. For example, if two nationally recognized statistical rating organizations rate the security in one of their top four categories, the security would qualify as ''investment grade'' even if other nationally recognized statistical rating organizations had not rated the security. However, if one of the two organizations rating the security did not rate the security in one of the top four categories, the security would not qualify as ''investment grade.'' Thus, when a security is given different ratings by different nationally recognized rating organizations, the lowest rating governs for purposes of this definition.

Investment security (section 1.2(e))

To be an ''investment security'' under the proposed definition, a security must be an investment grade marketable debt obligation or, if the security is not rated, it must be the credit equivalent of an investment grade marketable debt obligation. These standards reflect current OCC guidance and practice.

The OCC requests comments on whether the regulation should describe more specifically the characteristics of securities that are the ''credit equivalent of investment grade'' securities, and, if so, what description would be appropriate.

Commenters also are requested to address whether other securities with characteristics functionally equivalent to a debt obligation might be classified as an ''investment security.''

Marketable (section 1.2(f))

This proposed definition attempts to rely on more objective standards than the current definition of ''marketable.'' Currently, a marketable security is defined in § 1.5(a) as one that ''may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.'' The proposed definition places more emphasis on indicators of a ready market for a security rather than a prediction of whether the security can be sold quickly at a particular price. As proposed, marketable securities include: (1) Securities registered under the Securities Act of 1933 (the Securities Act), 15 U.S.C. 77a *et seq.*; (2) certain government securities and municipal revenue bonds not required to be registered under the Securities Act; and (3) investment grade securities sold pursuant to SEC Rule 144A, 17 CFR 230.144A.

SEC Rule 144A provides a ''safe harbor'' exemption from the registration requirements of the Securities Act for resales of privately offered or ''restricted'' securities to qualified institutional buyers. The rationale for treating securities that qualify under SEC Rule 144A as readily marketable is that they may be sold without the need to prepare and receive SEC clearance of a registration statement used in connection with the sale. There may be a situation, however, based upon the particular security, when the security is not necessarily immediately sellable.

The OCC requests comments regarding whether this definition of ''marketable'' is sufficiently inclusive, particularly regarding other exemptions under the Securities Act, such as the statutory nonpublic offering exemption, that enable a seller to sell a security promptly at market or fair value, and whether the definition is appropriately inclusive of foreign sovereign debt.

The OCC also welcomes comments regarding alternative definitions of ''marketable'' that would address the OCC's concerns about liquidity. Commenters may suggest adopting a more general standard, or retaining the current standard whereby a security sold with reasonable promptness for a price that reasonably corresponds to its fair value is marketable. Commenters are asked to address how the OCC might objectively measure such a standard.

Type I security (section 1.2(h))

As in the current rule, the proposal defines a ''Type I'' security to mean specified government securities. The proposal also incorporates into the definition the key elements of the interpretation now found in § 1.110 regarding securities backed by the full faith and credit of the U.S. Government. The proposed definition is consistent with 12 U.S.C. 24 (Seventh), which does not require that government securities be ''marketable'' or otherwise qualify as ''investment securities.''

Type II security (section 1.2(i))

The proposal redefines a ''Type II'' security to mean an investment security that is issued by certain state, international or multilateral organizations, or that is otherwise listed or described in the statute. The definition differs from the current rule, which describes a Type II security both by the investment limits that apply to it, and by examples of qualifying types of issuers. The proposed definition also includes the statutory requirement that this type of security must qualify as an ''investment security,'' in addition to being issued by a qualifying type of issuer.

Type III security (section 1.2(j))

Part 1 currently defines a ''Type III'' security to mean a security that ''a bank may purchase and sell for its own

[3] State banks that are members of the Federal Reserve System are subject to the same limitations and conditions with respect to the purchasing, selling, underwriting and holding of investment securities and stock applicable to national banks under 12 U.S.C. 24 (Seventh). 12 U.S.C. 335.

account, subject to a 10 percent limitation, but may neither deal in nor underwrite.'' § 1.3(e). Instead of defining a Type III security in this manner, the proposal redefines a Type III security as an investment security that does not qualify as a Type I, II, IV, or V security. Examples of Type III securities include corporate bonds and municipal revenue bonds.

Commenters are asked to address whether other examples of Type III securities also should be specifically referenced in the regulation. In particular, commenters are asked to address whether foreign securities that are currently eligible for investment by foreign branches of U.S. banks should be included as Type III securities.

Type IV security (section 1.2(k))

The substance of a ''Type IV'' security was established, although not named ''Type IV,'' by amendments made to 12 U.S.C. 24 (Seventh) in 1984 by SMMEA and in 1994 by the RCDRI Act. The proposed definition tracks the statutory changes. SMMEA amended 12 U.S.C. 24 (Seventh) to permit national banks to purchase without limitation certain residential and commercial mortgage-related securities offered and sold pursuant to section 4(5) of the Securities Act, 15 U.S.C. 77d(5), or residential mortgage-related securities as defined in section 3(a)(41) of the Securities Exchange Act of 1934 (the Exchange Act), 15 U.S.C. 78c(a)(41). As previously noted, part 1 was never amended to incorporate this 1984 statutory revision. The RCDRI Act defined a new type of small business-related security in section 3(a)(53)(A) of the Exchange Act, 15 U.S.C. 78c(a)(53)(A), and added a class of commercial mortgage-related securities to section 3(a)(41) of the Exchange Act, 15 U.S.C. 78c(a)(41).

The amendments to 12 U.S.C. 24 (Seventh) made by the RCDRI Act removed limitations on purchases by national banks of certain small business-related and commercial mortgage-related securities. The amendments provide the OCC authority to prescribe regulations to ensure that acquisitions of such securities are conducted in a manner consistent with safe and sound banking practices. The OCC has concerns that undue concentration of risk could arise if a bank invested in a security backed by a small number of loans or where one or a small number of loans represented a large percentage of the assets in the pool. This type of concentration of risk is more likely to arise with respect to commercial mortgage- and small business-related securities than with respect to residential mortgage-related securities. For this reason, the proposal requires a Type IV security that is small business- or commercial mortgage-related be fully secured by interests in a pool of homogeneous loans of numerous obligors. The definitions of a Type IV small business-related security and a commercial mortgage-related security also require that the aggregate amount of collateral from loans of any one obligor not exceed 5 percent of the total amount of collateral for the security when the security is issued, in order to assure diversification.

In some instances, such as the prepayment of underlying loans, an issuer or trustee may have the legal right to substitute collateral. If the issuer or trustee has the legal right to substitute collateral, the diversification requirement applies whenever the issuer or trustee substitutes collateral throughout the term of an issue, rather than merely at issuance.

Where the issuer or trustee does not have the legal right to substitute collateral or elects not to exercise the right, the diversification requirement applies only at issuance. If the diversification requirement applied throughout the term of an issue without ongoing substitution of collateral, prepayment of loans in the pool would reduce the number of loans that serve as collateral for the security and, at some point, the aggregate amount of collateral from loans of one obligor could exceed the proposed 5 percent limit and result in a violation of the regulation. Such a result would have the unintended consequence of deterring potential issuers from securitizing existing collateral.

The OCC requests comments on whether the term ''homogeneous loans'' should be specifically defined. The OCC also welcomes comments on whether the proposed requirement for certain Type IV and all Type V securities, that the aggregate amount of collateral from loans of any one obligor may not exceed 5 percent of the total amount of collateral for that security, or some other standard, would be appropriate to assure adequate diversification of the collateral.

Type V security (Section 1.2(l))

The proposal adds a definition of ''Type V security'' in order to address separately investment grade securities that represent interests in assets a national bank may invest in directly. The definition reflects the OCC's long-standing interpretations that in addition to the investments specifically described in 12 U.S.C. 24 (Seventh), national banks may hold securitized forms of assets in which they may invest directly.[4] In order to assure the high quality of this type of asset-backed security, however, the definition requires that Type V securities be rated investment grade. The practical effect of the definition is that Type V securities are recognized as high quality indirect interests in assets in which a national bank could invest directly.

A Type V security also must be fully secured by interests in a pool of homogeneous loans to numerous obligors. The definition requires a pool of loans homogeneous as to type of loan, term of loan, or other distinguishing characteristics, in order to facilitate performance projections based on the common features of loans in the pool. As an added safeguard to assure diversification of the collateral supporting the security, the definition requires that the aggregate amount of collateral from loans of any one obligor not exceed 5 percent of the total amount of collateral for the security. Like the similar requirement for Type IV securities, this diversification requirement applies throughout the term of the issue only if the issuer exercises a legal right to substitute collateral.

Commenters are invited to address whether these standards, which also apply to certain Type IV securities, are appropriate.

Limitations on dealing in, underwriting, and purchasing and selling securities (Section 1.3)

The proposal consolidates into one section the provisions regarding limitations on dealing in, underwriting, purchasing, and selling different types of securities. Proposed § 1.3 incorporates portions of current §§ 1.4, ''Type I securities; standards for authorized transactions;'' 1.5(b), ''Judgment based predominantly upon

[4] Interpretive Letter No. 362 (May 22, 1986), reprinted in [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (bonds collateralized by mortgages); Interpretive Letter No. 388 (June 16, 1987), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612 (mortgage-backed pass-through certificates); Interpretive Letter No. 416 (February 16, 1988), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (securitized automobile loans); Investment Securities Letter No. 29 (August 3, 1988), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,899 (investment limits for asset-backed securities consisting of GMAC receivables); Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (securitized mortgages); Interpretive Letter No. 540 (December 12, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252 (securitized credit card receivables); *Security Pacific* v. *Clarke*, 885 F.2d 1034 (2d Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990) (national bank authority to securitize assets).

reliable estimates;'' 1.6, ''Type II securities; authority to deal in and underwrite;'' and 1.7, ''Types II and III securities; limitations on holdings.'' Current § 1.7(c), ''Limitations prescribed in eligibility rulings,'' has been removed as unnecessary. Current references to ''prudent banking judgment'' have been changed to ''safe and sound banking practices.'' The latter change is consistent with the OCC's implementation of this requirement and is not intended to change the applicable standard. Most of the limitations on Type I, II, III, and IV securities reflected in this section are derived from 12 U.S.C. 24 (Seventh).

In the proposal, the limitations with respect to Types II, III, and V securities are expressed in terms of ''the aggregate par value of the obligations of any one obligor,'' which is essentially the current approach. The OCC requests comments on whether this is an appropriate measure and, if not, whether alternative measures would be preferable.

Type II and III securities; other investment securities limitations (Section 1.3(d))

As in current § 1.7, the proposal provides that a national bank may not hold Type II and III securities of any one obligor that have a combined aggregate par value exceeding 10 percent of the bank's capital and surplus. However, aggregation is not required with respect to industrial development bonds. Instead, the 10 percent limitation applies separately to each security issue of a single obligor when the proceeds of that issuance are to be used to acquire and lease real estate and related facilities to economically and legally separate industrial tenants, and the issuance is payable solely from and secured by a first lien on the revenues to be derived from rentals paid by the lessee under net noncancellable leases. This provision incorporates the substance of the interpretation that currently appears at 12 CFR 7.7570. The OCC proposes to remove § 7.7570 in conjunction with this change.

Type IV securities (Section 1.3.(e))

The new section describing eligible Type IV securities confirms the authority granted to national banks by SMMEA and the RCDRI Act to purchase and sell certain mortgage- and small business-related securities. The section also reflects OCC interpretations concerning the authority of a national bank to deal in obligations that are fully secured by Type I securities, in which national banks may deal.[5] These interpretations reflect the OCC's consistent approach of looking to the substance of an instrument, and not just its form, to determine the activities a bank may conduct in connection with the instrument. In the case of Type IV securities that are fully secured by Type I securities, the ultimate source of repayment is Type I securities. The proposal does not limit the categories of Type IV securities in which banks may deal, provided that the securities are collateralized by Type I securities. Thus, a bank's authority to deal in the securities under this part would be determined with reference to the standards that apply to Type I securities. (The ability of a bank to securitize and sell its loans, including loans that qualify as collateral for Type IV securities, is addressed in § 1.3(g).)

Type V securities (Section 1.3(f))

The proposal establishes a quantitative concentration limitation of 15 percent of a bank's capital and surplus for purchases and sales of Type V securities of any one obligor (or certain related obligors), rather than the 10 percent limit that the OCC currently applies to asset-backed securities that qualify as Type III securities. The OCC believes this approach is appropriate because: (1) The 15 percent standard is the same level used for the basic lending limit threshold; (2) the qualitative standards for a Type V security have been tightened, so that Type V securities are a high quality type of asset-backed security; and (3) under certain circumstances set forth in § 1.4(c), holdings of Type V securities of different issuers will be aggregated for purposes of calculating compliance with the 15 percent limitation. Therefore, the OCC believes an investment limitation of 15 percent of a bank's capital and surplus should not present undue investment or concentration risk.

The OCC solicits comments on whether a higher investment limitation, such as 25 percent of a bank's capital and surplus, would be sufficient to prevent excessive concentration.

Asset securitization (Section 1.3(g))

This new section reflects the OCC's established position that national banks may securitize and sell their loan assets. The ability of banks to sell conventional bank assets through the issuance and sale of certificates evidencing interests in pools of the assets provides flexibility that can enhance banks' safety and soundness.[6] Asset securitization provides an important source of liquidity by allowing banks to convert relatively illiquid assets into instruments with maturities and other features that investors are readily willing to purchase. Another important benefit is the increased credit available, due to the fact that a bank may make more loans with a given level of capital (when the assets are removed from the bank's balance sheet) and may diversify its lending into new markets without incurring undue risk. Also, a bank is less dependent on deposits to fund its loans, improving bank profitability, with positive implications for reducing bank failure rates and minimizing draws on the deposit insurance funds. The treatment described in the proposal reflects the OCC's long-standing treatment of national banks' asset sales activities as affirmed by case law.[7]

[5] See Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218; Interpretive Letter No. 362 (May 22, 1986), reprinted in [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532.

[6] See, e.g., Remarks by Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System before the American Bankers Association (October 8, 1994). See also Statement by Donald G. Coonley, Chief National Bank Examiner, OCC, Asset Securitization and Secondary Markets: Hearings Before the Subcomm. on Policy, Research, and Insurance of the Comm. on Banking, Finance and Urban Affairs, 102d Cong., 1st Sess. 2–4 (1991), reprinted in OCC Quarterly Journal (December 1991); and Joint Statement by Richard Spillenkothen, Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, and Donald H. Wilson, Financial Markets Officer, Federal Reserve Bank of Chicago, Secondary Market for Commercial Real Estate Loans: Hearings Before the Subcomm. on Policy, Research, and Insurance of the Comm. on Banking, Finance and Urban Affairs, 102d Cong., 2d Sess. 16–19 (1992), reprinted in 78 Fed. Res. Bull. 492 (1992).

[7] See, e.g., Interpretive Letter No. 585 (June 8, 1992), reprinted in [1992–1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,406 (securitized motor vehicle retail installment sales contracts purchased from automobile dealers); Interpretive Letter No. 540 (December 12, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252 (securitized credit card receivables originated by bank or purchased from others); Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (securitized mortgages); Interpretive Letter No. 416 (February 16, 1988), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (securitized automobile loans); Interpretive Letter No. 388 (June 16, 1987), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612 (sale of mortgage-backed pass-through certificates); No Objection Letter No. 87–9 (December 16, 1987), reprinted in [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,038(securitization of commercial loans originated by the bank); Interpretive Letter No. 362 (May 22, 1986), reprinted in [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (sales of bonds collateralized by mortgages). Regarding sales of participations in pools of loans, see Letter from Billy C. Wood, Deputy Comptroller, Multinational Banking (May 29, 1981), reprinted in [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH)

Continued

Investment company shares (Section 1.3(h))

The proposal permits a national bank to purchase and sell for its own account shares of a registered investment company, subject to two requirements: First, the investment company's portfolio must be comprised entirely of assets in which the bank could invest directly. Second, the amount of the bank's investment in shares of any one investment company is subject to the most stringent investment limitations applicable to the underlying securities and loans that comprise that investment company's portfolio. This provision incorporates OCC interpretations concerning the authority of a national bank to hold instruments representing indirect interests in assets that the bank could invest in directly. See Banking Circular 220 (November 21, 1986); An Examiner's Guide to Investment Products and Practices at 23 (December 1992).[8]

The OCC seeks comments on whether the definition of ''investment company'' should be revised to include limited partnerships with fewer than 100 investors, i.e., a partnership that would not qualify as an investment company within the meaning of section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1), provided that the partnerships' portfolios consist solely of Type I securities that the bank may purchase and sell for its own account.

Securities held based on estimates of obligor's performance (Section 1.3(i))

Notwithstanding the general definition of an investment security (§ 1.2(e)), the proposal retains the flexibility contained in the current rule, for a bank to treat certain debt securities as investment securities when the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to meet its obligations under that security. The bank may not hold securities classified as investment securities solely in reliance on projections of an obligor's future performance that in the aggregate exceed 5 percent of the bank's capital and surplus. The bank must also believe that the security may be sold with reasonable promptness at a price which corresponds reasonably to its fair value. This approach is modeled upon the OCC's current rule, which allows banks an additional degree of flexibility to determine the quality of debt obligations, for a limited portion of the bank's investment portfolio. The OCC notes that securities representing interests in loans made for community development purposes are one type of security that could, depending upon their characteristics, be eligible for investment by national banks under this standard.

The OCC requests comments as to whether it should provide further clarification of the standards applicable to securities held based on estimates of obligor's performance and, if so, in what respects clarification is needed.

Calculation of limits (Section1.4)

Proposed § 1.4 is new. Paragraphs (a) and (b), relating to the calculation date and authority to require more frequent calculations, are modeled on provisions contained in the OCC's new lending limit regulation. As explained in connection with the lending limit rule, the provision reduces regulatory burden by allowing banks to rely on information they already collect for their Call Reports to calculate compliance with their lending limits. The same reasoning applies to calculating limits of banks' securities holdings, and the proposal achieves a consistent approach in those two areas.

Calculation of Type III and Type V securities holdings (Section 1.4(c))

This proposed paragraph is a new approach to investment securities limitations designed to address situations where a bank's investments in securities of different issuers present similar sources of risk, and, therefore, warrant aggregation. In calculating the amount of its investment in Type III or Type V securities, the proposal requires a bank to combine obligations of issuers that are related directly or indirectly through common control and securities that are credit-enhanced by the same entity. These aggregation rules, which result in a bank being treated as if it has a greater investment in the securities of one obligor than would otherwise be the case, apply separately to Type III and Type V securities held by a bank. Current OCC policies already apply comparable standards for aggregation of Type III securities. As applied to Type V securities, the aggregation rules provide important safeguards in connection with the 15 percent limit provided for investments in Type V securities. Thus, banks are given more investment flexibility with Type V securities, but the increased investment authority is subject to explicit safeguards to address risk concentrations.

Comment is invited regarding other bases upon which a bank should combine its holdings when calculating its investment in Type III or Type V securities of any one obligor. Specifically, the OCC seeks comments as to whether a bank should combine obligations that are predominately collateralized by loans made by the same originator or by originators that are related directly or indirectly through common control. In addition, commenters are asked to address whether and under what circumstances an issuer or affiliate of the issuer would provide a guarantee or other form of credit enhancement for Type V securities that could be a source of credit exposure of the investing bank to the issuer or its affiliate. Comment is also invited on whether the 15 percent investment limitation or a lower limitation is appropriate under these circumstances.

The OCC is not at this time proposing to apply an aggregate limit to a bank's combined holdings of Type III and Type V securities, but requests commenters to address whether some form of an aggregate limitation should apply to a bank's exposure to a single obligor, regardless of the type of the obligation. For example, under the proposal, a bank could invest in Type V securities of any one obligor in an amount not exceeding 15 percent of the bank's capital and surplus, and Type III securities of the same obligor in an amount not exceeding 10 percent of the bank's capital and surplus. In addition, under the lending limit rules, the bank could also make loans to the same obligor in an amount up to 15 percent—or 25 percent depending upon the collateral—of the bank's capital and surplus. Of course, the OCC retains the ability to take action in connection with concentrations inconsistent with safe and sound banking practices.

¶ 85,275; Letter from Paul M. Homan, Senior Deputy Comptroller for Bank Supervision (February 1, 1980), reprinted in [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,213; Letter from John M. Miller, Deputy Chief Counsel (July 31, 1979), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,182; Letter from Paul M. Homan, Senior Deputy Comptroller for Bank Supervision (April 20, 1979), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,167; Letter from H. Joe Selby, Deputy Comptroller for Operations (October 17, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,144; Letter from John G. Heimann, Comptroller of the Currency (May 18, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,116; Letter from Charles B. Hall, Deputy Comptroller for Banking Operations (February 14, 1978), reprinted in [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,100; Letter from Robert Bloom, Acting Comptroller of the Currency (March 30, 1977), reprinted in [1973–78 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 97,093. Regarding national bank authority to securitize assets, see Security Pacific v. Clarke, 885 F.2d 1034 (2d Cir. 1989), cert. denied, 493 U.S. 1070 (1990).

[8] The Federal Reserve Board has adopted a similar interpretation relating to state member banks' investments in mutual funds that invest only in eligible securities. See 12 CFR 208.124.

Calculation of investment company holdings (section 1.4(d))

In calculating the amount of its investment in investment company shares under this proposal, a bank must use reasonable efforts to calculate and combine its pro rata share of a particular security in the portfolios of each investment company with the bank's direct holdings of securities of that issuer.

Safe and sound banking practices; credit information required (Section 1.5)

The requirement of ''prudent banking judgment'' in current § 1.8 is moved to § 1.5 and changed to require banks to adhere to ''safe and sound banking practices,'' in addition to any specific requirements of part 1. The OCC will continue its supervision of national bank investment securities activities, including those activities covered by the changes to part 1, to ensure that these investments are effected in a safe and sound manner. In recognition of the different types of risks that may affect the quality of a security, the proposal reflects the OCC position that safe and sound banking practices entail appropriate consideration of the market, interest rate, liquidity, legal, and operations and systems risks, as well as credit risk, posed by certain types of securities investments.[9] These standards are made clearly applicable to all types of permissible securities activities and holdings described in § 1.3. This change also makes the language of part 1 consistent with the authority of a federal banking agency to institute a cease-and-desist proceeding against an insured depository institution that has engaged or is about to engage in an ''unsafe and unsound practice.'' 12 U.S.C. 1818(b). The ''unsafe and unsound practice'' standard is well recognized by the courts. See, *e.g., Northwest National Bank, Fayetteville, Arkansas* v. *U.S. Department of the Treasury, Office of the Comptroller of the Currency,* 917 F.2d 1111 (8th Cir. 1990); *Gulf Federal Savings and Loan* v. *Federal Home Loan Bank Board,* 651 F.2d 259 (5th Cir.. 1981), *cert. denied,* 458 U.S. 1121 (1982); *Groos National Bank* v. *Comptroller of the Currency,* 573 F.2d 889 (5th Cir. 1978). The proposed section also gives banks additional flexibility in maintenance of records for examination purposes.

Convertible securities (section 1.6)

Proposed § 1.6 revises current § 1.9 to clarify the restrictions on investment in certain convertible securities and how banks must account for securities that are convertible into stock or have stock purchase warrants attached.

Securities held in satisfaction of debts previously contracted; holding period; disposal; accounting treatment; non-speculative purpose (section 1.7)

Proposed § 1.7 contains new information in paragraphs (b) ''holding period,'' (c) ''accounting treatment,'' and (d) ''non-speculative purpose,'' which embody standards consistent with OCC's Other Real Estate Owned regulation, see 58 FR 46529 (September 2, 1993), and the OCC's related interpretation, see Interpretive Letter No. 604 (October 8, 1992). A national bank holding securities in satisfaction of debts previously contracted may do so for a period of five years from the date that ownership of the securities was originally transferred to the bank, plus an additional five years, if permitted by the OCC.

Nonconforming investments (section 1.8)

This new section clarifies that a bank does not violate an applicable investment limitation when an investment in securities that was legal when made becomes nonconforming as a result of any of certain enumerated events, provided the bank exercises reasonable efforts to bring the investment into conformity with applicable limitations. The events included in the regulation are: A decline in the bank's capital; a merger of obligors, issuers, or credit-enhancers; issuers becoming related directly or indirectly related through common control; deterioration in the quality of a security so that the security is no longer an investment security; the substitution of collateral by an issuer or trustee that causes a Type IV or Type V security no longer to conform to the diversification requirements of §§ 1.2(k)(1) and (2) and 1.2(l); a change in the investment securities limitations rules; or other events identified by the OCC. This approach to nonconforming holdings is based upon the approach contained in the OCC's new lending limit regulation.

Commenters are specifically asked to address whether: (1) The phrase ''reasonable efforts'' needs additional clarification, and if so, how it might be defined or should be documented for the purposes of this section; (2) the OCC should require a bank to make ''reasonable efforts'' to bring into conformity an investment where the quality of a security deteriorates so that the security is no longer an investment security; and (3) any other events should be added to the list of circumstances that may cause an investment in securities to become nonconforming.

Amortization of premiums (current section 1.10)

Current § 1.10 is removed. The OCC believes the section is no longer necessary because generally accepted accounting principles (GAAP) appropriately govern the treatment of premiums. GAAP requires that a bank defer recognition of a premium paid for an investment security and amortize the premium over the period to maturity of the security. In contrast, current § 1.10 permits a bank to charge off the entire premium at the time of purchase or to amortize the premium in any manner the bank considers appropriate as long as the premium is extinguished entirely at or before the maturity of the security.

Interpretations

Indirect general obligations (section 1.100)

Proposed § 1.100 is derived from current § 1.120, but clarifies and shortens the text. Current paragraphs (f) ''Tax anticipation notes,'' and (g) ''Bond anticipation notes'' of § 1.120 are removed as unnecessary.

Eligibility of securities for purchase, dealing in, and underwriting by national banks; general guidelines (current section 1.100)

The proposal removes current § 1.100, which contains introductory and explanatory comments that the OCC believes are unnecessary in light of other proposed changes to part 1.

Taxing powers of a State or a political subdivision (section 1.110)

Section 1.110 is a shortened version of current § 1.130, with portions removed that are no longer necessary. New text is added to provide standards for determining when obligations that are expressly or implicitly dependent upon voter or legislative authorization of appropriations are considered supported by the full faith and credit of a State or political subdivision.

Prerefunded or escrowed bonds and obligations secured by Type I securities (section 1.120)

Proposed § 1.120 is derived from current § 1.120(e).

Type II securities; guidelines for obligations issued for university and housing purposes (section 1.130)

Proposed § 1.130 is a streamlined version of current § 1.140, and also clarifies the types of issuers whose

[9] See OCC Banking Circular 277, reprinted in 5 Fed. Banking L. Rep. (CCH) ¶ 58,717 (October 27, 1993).

obligations qualify as Type II securities. Current § 1.140(c)(1) and portions of (c)(2) have been removed. See Proposed § 1.130(c).

The OCC welcomes comments on any aspect of the proposed regulation, particularly, those issues specifically noted in this preamble.

DERIVATION TABLE

[Only Substantive Modifications, Additions and Changes are Indicated]

Revised provision	Original provision	Comments
§ 1.1	§§ 1.1, 1.2	Modified.
§ 1.2(a)		Added.
§ 1.2(b)	§ 1.3(g)	Modified.
§ 1.2(c)		Added.
§ 1.2(d)		Added.
§ 1.2(e)	§ 1.3(b)	Modified.
§ 1.2(f)	§ 1.5(a)	Significant change.
§ 1.2(g)	§ 1.3(f)	
§ 1.2(h)	§§ 1.3(c), 1.110	Modified.
§ 1.2(i)	1.3(d)	Modified.
§ 1.2(j)	§ 1.3(e)	Modified.
§ 1.2(k)		Added.
§ 1.2(l)		Added.
	§ 1.3(a)	Removed.
§ 1.3(a)	§ 1.4	Modified.
§ 1.3(b)	§§ 1.3(d), 1.6, 1.7(a)	Modified.
§ 1.3(c)	§§ 1.3(e), 1.7(a)	Modified.
§ 1.3(d)	§ 1.7(a), 12 CFR 7.7570	Modified.
§ 1.3(e)		Added.
§ 1.3(f)		Added.
§ 1.3(g)		Added.
§ 1.3(h)		Added.
§ 1.3(i)	§§ 1.5(b), 1.7(b)	Modified.
§ 1.4		Added.
§ 1.5	§ 1.8	Significant change.
§ 1.6	§ 1.9	Modified.
§ 1.7(a)	§ 1.11	
§ 1.7(b)		Added.
	§ 1.7(c)	Removed.
	§ 1.7(d)	Added.
§ 1.7(c)		Added.
§ 1.8		Added.
	§ 1.10	Removed.
	§ 1.100	Removed.
§ 1.100(a)	§ 1.120	
§ 1.100(b)(1)	§ 1.120(a)	
§ 1.100(b)(2)	§ 1.120(b)	
§ 1.100(b)(3)	§ 1.120(c)	
§ 1.100(b)(4)	§ 1.120(d)	
§ 1.110	§ 1.130	Modified.
	§ 1.120(f)	Removed.
	§ 1.120(g)	Removed.
§ 1.120	§ 1.120(e)	
§ 1.130(a)	§ 1.140(a)	Modified.
§ 1.130(b)	§ 1.140(b)	
§ 1.130(c)	§ 1.140(c)	Modified.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Paperwork Reduction Act of 1995

The OCC invites comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of OCC functions, including whether the information has practical utility;

(2) The accuracy of the estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on

the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 1.6 and 1.7. This information is required to evidence compliance with statutory limitations on the quantity and type of investments by national banks. The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 3,000.

Estimated total annual reporting and recordkeeping burden: 6,000 hours.

Start-up costs to respondents: None.

Records are to be maintained for life of the investment.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing burden and increasing the discretion of national banks regarding their sound investment activities.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 1 is revised to read as follows:

PART 1—INVESTMENT SECURITIES REGULATION

Sec.

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

§ 1.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1 *et seq.*, 12 U.S.C. 24 (Seventh), and 12 U.S.C. 93a.

(b) *Purpose.* This part prescribes standards under which national banks may purchase, sell, deal in, underwrite, and hold securities, consistent with the authority contained in 12 U.S.C. 24 (Seventh) and safe and sound banking practices.

(c) *Scope.* The standards set forth in this part apply to national banks, District of Columbia banks, and federal branches of foreign banks. Further, pursuant to 12 U.S.C. 335, State banks that are members of the Federal Reserve System are subject to the same limitations and conditions that apply to national banks in connection with purchasing, selling, dealing in, and underwriting securities and stock. In addition to activities authorized under this part, foreign branches of national banks also may be authorized to conduct international activities pursuant to part 211 of this title.

§ 1.2 Definitions.

(a) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the OCC's Minimum Capital Ratios in Appendix A to part 3 of this chapter based upon the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under 12 CFR part 3, based upon the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3).

(b) *General obligation of a State or political subdivision means:*

(1) An obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation; or

(2) An obligation payable from a special fund or by an obligor not possessing general powers of taxation, when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise provide funds to cover all required payments on the obligation.

(c) *Investment company* means an investment company, including a mutual fund, registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8.

(d) *Investment grade* means a security rated investment grade (in one of the top four rating categories) by each nationally recognized statistical rating organization that has rated the security.

(e) *Investment security* means a marketable debt obligation that is not predominantly speculative in nature. A security is not predominantly speculative in nature if it is rated investment grade. When a security is not rated, the security must be the credit equivalent of securities rated investment grade.

(f) *Marketable* means that the security is:

(1) Registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.;*

(2) Exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c, and authorized under 12 U.S.C. 24 (Seventh) as eligible for investment without limitation by a national bank, such as a security issued or guaranteed by:

(i) The United States or a territory thereof;

(ii) The District of Columbia;

(iii) A State of the United States;

(iv) A political subdivision of a State or territory;

(v) A public instrumentality of one or more States or territories; or

(vi) A person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States;

(3) A municipal revenue bond exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c(a)(2); or

(4) Offered and sold pursuant to Securities and Exchange Commission Rule 144A, 17 CFR 230.144A, and rated investment grade.

(g) *Political subdivision* means a county, city, town, or other municipal corporation, a public authority, and generally any publicly-owned entity that is an instrumentality of a State or of a municipal corporation.

(h) *Type I security* means:

(1) Obligations of the United States;

(2) Obligations issued, insured, or guaranteed by a department or an agency of the United States Government, if the obligation, insurance or guarantee commits the full faith and credit of the United States for the repayment of the obligation;

(3) Obligations issued by a department or agency of the United States, or an agency or political subdivision of a State of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States has been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of non-payment by the third party obligor(s);

(4) General obligations of a State of the United States or any political subdivision;

(5) Obligations authorized under 12 U.S.C. 24 (Seventh) as permissible for a national bank to deal in, underwrite, purchase, and sell for the bank's own account; and

(6) Other securities the OCC deems eligible as Type I securities in accordance with 12 U.S.C. 24 (Seventh).

(i) *Type II security* means an investment security that represents:

(1) Obligations issued by a State, or a political subdivision or agency of a State, for housing, university, or dormitory purposes;

(2) Obligations of international and multilateral development banks and organizations listed in 12 U.S.C. 24 (Seventh);

(3) Other obligations listed in 12 U.S.C. 24 (Seventh) as permissible for a bank to deal in, underwrite, purchase, and sell for the bank's own account, subject to a limitation of 10 percent of the bank's capital and surplus; and

(4) Other securities the OCC deems eligible as Type II securities in accordance with 12 U.S.C. 24 (Seventh).

(j) *Type III security* means an investment security that does not qualify as a Type I, II, IV, or V security, such as corporate bonds and municipal revenue bonds.

(k) *Type IV security* means:

(1) A small business-related security as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), that is fully secured by interests in a pool of homogeneous loans to numerous obligors. The aggregate amount of collateral from loans of any one obligor may not exceed 5 percent of the total amount of collateral for the security;

(2) A commercial mortgage-related security that is offered or sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), or a commercial mortgage-related security as defined in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), that represents ownership of a promissory note or certificate of interest or participation that is directly secured by a first lien on one or more parcels of real estate upon which one or more commercial structures are located and that is fully secured by interests in a pool of homogeneous loans to numerous obligors. The aggregate amount of collateral from loans of any one obligor may not exceed 5 percent of the total amount of collateral for the security.

(3) A residential mortgage-related security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), or a residential mortgage-related security as defined in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)), and that does not otherwise qualify as a Type I security.

(l) *Type V security* means a security that:

(1) Is rated investment grade;

(2) Is not a Type IV security; and

(3) Is fully secured by interests in a pool of homogeneous loans (that a national bank could invest in directly) to numerous obligors. The aggregate amount of collateral from loans of any one obligor may not exceed 5 percent of the total amount of collateral for the security.

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

(a) *Type I securities.* A national bank may deal in, underwrite, purchase, and sell Type I securities for its own account. The amount of Type I securities that the bank may deal in, underwrite, purchase, and sell is not limited to a specified percentage of the bank's capital and surplus.

(b) *Type II securities.* A national bank may deal in, underwrite, purchase, and sell Type II securities for its own account, provided the aggregate par value of the obligations of any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus. This limitation applies to obligations that the bank is legally committed to purchase and sell in addition to existing holdings.

(c) *Type III securities.* A national bank may purchase and sell Type III securities for its own account, provided the aggregate par value of the obligations of any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus. This limitation applies to obligations that the bank is legally committed to purchase and sell in addition to existing holdings.

(d) *Type II and III securities; other investment securities limitations.* A national bank may not hold Type II and III securities of any one obligor with an aggregate par value exceeding 10 percent of the bank's capital and surplus. However, if the proceeds of each issue are to be used to acquire and lease real estate and related facilities to economically and legally separate industrial tenants, and if each issue is payable solely from and secured by a first lien on the revenues to be derived from rentals paid by the lessee under net noncancellable leases, the bank may apply the 10 percent investment limitation separately to each security issue of a single issuer of such securities.

(e) *Type IV securities.* A national bank may purchase and sell Type IV securities for its own account. The amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus. A national bank also may deal in Type IV securities that are fully secured by Type I securities.

(f) *Type V securities.* A national bank may purchase and sell Type V securities for its own account provided the aggregate par value of the obligations of any one obligor does not exceed 15 percent of the bank's capital and surplus. This limitation includes obligations the bank is legally committed to purchase and sell in addition to existing holdings.

(g) *Asset securitization.* A national bank may securitize and sell its loan assets as a part of its banking business.

The amount of securitized loans that a bank may sell is not limited to a specified percentage of the bank's capital and surplus.

(h) *Investment company shares.* A national bank may purchase and sell for its own account investment company shares, provided that the portfolio of the investment company consists wholly of securities and loans that the national bank may purchase and sell for its own account under this part, subject to the most stringent investment and/or lending limitation that would apply to the underlying securities or loans that comprise such company's portfolio.

(i) *Securities held based on estimates of obligor's performance.* (1) Notwithstanding § 1.2(e) of this part, a national bank may treat a debt security as an investment security for purposes of this part if the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to satisfy its obligations under that security, and the bank believes that the security may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.

(2) The aggregate value of securities treated as investment securities under paragraph (i)(1) of this section may not exceed 5 percent of the bank's capital and surplus.

§ 1.4 Calculation of limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 24 (Seventh) and this part, a bank's limitations shall be determined as of the most recent of the following dates:

(1) The date on which the bank's Consolidated Report of Condition and Income is properly signed and submitted;

(2) The date on which the bank's Consolidated Report of Condition and Income is required to be submitted; or

(3) When there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3.

(b) *Authority of OCC to require more frequent calculations.* If the OCC determines for safety and soundness reasons that a bank should calculate its investment limits more frequently than required by paragraph (a) of this section, the OCC may provide written notice to the bank directing the bank to calculate its investment limitations at a more frequent interval. The bank shall thereafter calculate its investment limits at that interval until further notice.

(c) *Calculation of Type III and Type V securities holdings.* In calculating the amount of its investment in Type III or Type V securities of any one obligor, a bank shall combine:

(1) Obligations of issuers that are related directly or indirectly through common control; and

(2) Securities that are credit-enhanced by the same entity.

(d) *Calculation of investment company holdings.* In calculating the amount of its investment in investment company shares under this part, a bank shall use reasonable efforts to calculate and combine its pro rata share of a particular security in the portfolios of each investment company with the bank's direct holdings of securities of that issuer.

§ 1.5 Safe and sound banking practices; credit information required.

(a) A national bank shall adhere to safe and sound banking practices and the specific requirements of this part in conducting the activities described in § 1.3. This includes appropriate consideration of the market, interest rate, credit, liquidity, legal, and operations and systems risks presented by a proposed activity. The bank's particular activities must be appropriate for that bank.

(b) In conducting these activities, the bank shall determine that there is adequate evidence that an obligor possesses resources sufficient to provide for all required payments on its obligations, or, in the case of securities deemed to be investment securities on the basis of reliable estimates of an obligor's performance, that the bank reasonably believes that the obligor will be able to satisfy the obligation.

(c) Each bank shall maintain records available for examination purposes adequate to demonstrate that it meets the requirements of this section. The bank may store the information in any manner that can be readily retrieved and reproduced in a readable form.

§ 1.6 Convertible securities.

(a) When a national bank purchases an investment security convertible into stock, or with a stock purchase warrant attached, the bank shall write down the carrying value of the security to an amount that represents the value of the security considered independently of the conversion feature or attached stock purchase warrant.

(b) A national bank may not purchase securities convertible into stock at the option of the issuer.

§ 1.7 Securities held in satisfaction of debts previously contracted; holding period; disposal; accounting treatment; non-speculative purpose.

(a) *Securities held in satisfaction of debts previously contracted.* The restrictions and limitations of this part, other than those set forth in paragraphs (b),(c), and (d) of this section, do not apply to securities acquired:

(1) Through foreclosure on collateral;

(2) In good faith by way of compromise of a doubtful claim; or

(3) To avoid loss in connection with a debt previously contracted.

(b) *Holding period.* A national bank holding securities pursuant to paragraph (a) of this section may do so for a period not to exceed five years from the date that ownership of the securities was originally transferred to the bank. The OCC may extend the holding period for up to an additional five years.

(c) *Accounting treatment.* A bank shall mark-to-market securities held pursuant to paragraph (a) of this section.

(d) *Non-speculative purpose.* A bank may not hold securities pursuant to paragraph (a) of this section for speculative purposes.

§ 1.8 Nonconforming investments.

(a) An investment in securities, which conforms to this part when made, will not be deemed a violation, but will be treated as nonconforming if the investment no longer conforms to this part because;

(1) The bank's capital declines;

(2) Issuers, obligors, or credit-enhancers merge;

(3) Issuers become related directly or indirectly through common control;

(4) The investment securities rules change;

(5) The security no longer qualifies as an investment security;

(6) The substitution of collateral by an issuer or trustee causes a Type IV or Type V security no longer to conform to the diversification requirements of §§ 1.2(k)(1) and (2) and 1.2(l)(3); or

(7) Other events identified by the OCC occur;

(b) A bank shall exercise reasonable efforts to bring an investment that is nonconforming as a result of events described in paragraph (a) of this section into conformity with this part unless to do so would be inconsistent with safe and sound banking practices.

Interpretations

§ 1.100 Indirect general obligations.

(a) *Obligation issued by an obligor not possessing general powers of taxation.* Pursuant to § 1.2(c) of this part, an obligation issued by an obligor not possessing general powers of taxation qualifies as a general obligation of a State or political subdivision for the purposes of 12 U.S.C. 24 (Seventh), if a party possessing general powers of taxation unconditionally promises to make sufficient funds available for all required payments in connection with the obligation.

(b) *Indirect commitment of full faith and credit.* The indirect commitment of the full faith and credit of a State or political subdivision (that possesses general powers of taxation) in support of an obligation may be demonstrated by any of the following methods, alone or in combination, when the State or political subdivision pledges its full faith and credit in support of the obligation.

(1) *Lease/rental agreement.* The lease agreement must be valid and binding on the State or the political subdivision, and the State or political subdivision must unconditionally promise to pay rentals that, together with any other available funds, are sufficient for the timely payment of interest on, and principal of, the obligation. These lease/rental agreements may, for instance, provide support for obligations financing the acquisition or operation of public projects in the areas of education, medical care, transportation, recreation, public buildings, and facilities.

(2) *Service/purchase agreement.* The agreement must be valid and binding on the State or the political subdivision, and the State or political subdivision must unconditionally promise in the agreement to make payments for services or resources provided through or by the issuer of the obligation. These payments, together with any other available funds, must be sufficient for the timely payment of interest on, and principal of, the obligation. An agreement to purchase municipal sewer, water, waste disposal, or electric services may, for instance, provide support for obligations financing the construction or acquisition of facilities supplying those services.

(3) *Refillable debt service reserve fund.* The reserve fund must at least equal the amount necessary to meet the annual payment of interest on, and principal of, the obligation as required by the applicable law. The maintenance of a refillable reserve fund may be provided, for instance, by statutory direction for an appropriation, or by statutory automatic apportionment and payment from the State funds of amounts necessary to restore the fund to the required level.

(4) *Other grants or support.* A statutory provision or agreement must unconditionally commit the State or the political subdivision to provide funds which, together with other available funds, are sufficient for the timely payment of interest on, and principal of, the obligation. Those funds may, for instance, be supplied in the form of annual grants or may be advanced whenever the other available revenues are not sufficient for the payment of principal and interest.

§ 1.110 Taxing powers of a State or political subdivision.

(a) An obligation is considered supported by the full faith and credit of a State or political subdivision possessing general powers of taxation when the promise or other commitment of the State or the political subdivision will produce funds, which (together with any other funds available for the purpose) will be sufficient to provide for all required payments on the obligation. In order to evaluate whether a commitment of a State or political subdivision is likely to generate sufficient funds, a bank shall consider the impact of any possible limitations regarding the State's or political subdivision's taxing powers, as well as the availability of funds in view of the projected revenues and expenditures. Quantitative restrictions on the general powers of taxation of the State or political subdivision do not necessarily mean that an obligation is not supported by the full faith and credit of the State or political subdivision. In such case, the bank shall determine the eligibility of obligations by reviewing, on a case-by-case basis, whether tax revenues available under the limited taxing powers are sufficient for the full and timely payment of interest on, and principal of, the obligation. The bank shall use current and reasonable financial projections in calculating the availability of the revenues. An obligation expressly or implicitly dependent upon voter or legislative authorization of appropriations may be considered supported by the full faith and credit of a State or political subdivision if the bank determines, on the basis of past actions by the voters or legislative body in similar situations involving similar types of projects, that it is reasonably probable that the obligor will obtain all necessary appropriations.

(b) An obligation supported exclusively by excise taxes or license fees is not a general obligation for the purposes of 12 U.S.C. 24 (Seventh). Nevertheless, an obligation that is primarily payable from a fund consisting of excise taxes or other pledged revenues qualifies as a ''general obligation,'' if, in the event of a deficiency of those revenues, the obligation is also supported by the general revenues of a State or a political subdivision possessing general powers of taxation.

§ 1.120 Prerefunded or escrowed bonds and obligations secured by Type I securities.

(a) An obligation qualifies as a Type I security if it is secured by an escrow fund consisting of obligations of the United States or general obligations of a State or a political subdivision, and the escrowed obligations produce interest earnings sufficient for the full and timely payment of interest on, and principal of, the obligation.

(b) If the interest earnings from the escrowed Type I securities alone are not sufficient to guarantee the full repayment of an obligation, a promise of a State or a political subdivision possessing general powers of taxation to maintain a reserve fund for the timely payment of interest on, and principal of, the obligation may further support a guarantee of the full repayment of an obligation.

(c) An obligation issued to refund an indirect general obligation may be supported in a number of ways that, in combination, are sufficient at all times to support the obligation with the full faith and credit of the United States or a State or a political subdivision possessing general powers of taxation. During the period following its issuance, the proceeds of the refunding obligation may be invested in U.S. obligations or municipal general obligations that will produce sufficient interest income for payment of principal and interest. Upon the retirement of the outstanding indirect general obligation bonds, the same indirect commitment, such as a lease agreement or a reserve fund, that supported the prior issue, may support the refunding obligation.

§ 1.130 Type II securities; guidelines for obligations issued for university and housing purposes.

(a) *Investment quality.* An obligation issued for housing, university, or dormitory purposes is a Type II security only if it:

(1) Qualifies as an investment security, as defined in § 1.2(e); and

(2) Is issued for the appropriate purpose and by a qualifying issuer.

(b) *Obligation issued for university purposes.* (1) An obligation issued by a State or political subdivision or agency of a State or political subdivision for the purpose of financing the construction or improvement of facilities at or used by a university or a degree-granting college-level institution, or financing loans for studies at such institutions, qualifies as a Type II security. Facilities financed in this manner may include student buildings, classrooms, university utility buildings, cafeterias, stadiums, and university parking lots.

(2) An obligation that finances the construction or improvement of facilities used by a hospital may be eligible as a Type II security, if the hospital is a department or a division of a university, or otherwise provides a nexus with university purposes, such as an affiliation agreement between the university and the hospital, faculty positions of the hospital staff, and training of medical students, interns, residents, and nurses (*e.g.*, a ''teaching hospital'').

(c) *Obligation issued for housing purposes.* An obligation issued for housing purposes may qualify as a Type II security if the security otherwise meets the criteria for a Type II security.

PART 7—INTERPRETIVE RULINGS

3. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 7.7570 [Removed]

4. Section 7.7570 is removed.

Dated: December 14, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–30969 Filed 12–20–95; 8:45 am]

BILLING CODE 4810–33–P

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12 CFR Parts 9 and 19

[Docket No. 95–32]

RIN 1557–AB12

Fiduciary Activities of National Banks; Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to revise its rules that govern the fiduciary activities of national banks. The OCC also proposes to relocate provisions concerning disciplinary sanctions imposed by clearing agencies to its rules of practice and procedure. This proposal is another component of the OCC's Regulation Review Program, which is intended to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens.

DATES: Comments must be received by February 20, 1996.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 95–32. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by electronic mail to REG.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Donald N. Lamson, Assistant Director, Securities and Corporate Practices Division, (202) 874–5210; Lisa Lintecum, Director, Fiduciary Activities, (202) 874–5419; Dean Miller, Special Advisor, Fiduciary Activities, (202) 874–4852; Aida M. Plaza, Director for Compliance, Multinational Banking, (202) 874–4610.

SUPPLEMENTARY INFORMATION:

Background

The OCC proposes to revise 12 CFR part 9, which governs the fiduciary activities of national banks, as a component of its Regulation Review Program. One goal of the Regulation Review Program is to review all of the OCC's rules with a view toward eliminating provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities, including the oversight of national banks' fiduciary activities. Another goal of the Program is to improve clarity of the OCC's regulations.

This rulemaking is the OCC's first comprehensive revision of the rule since 1963.[1] Much about national banks' fiduciary business has changed since that time, including the nature and scope of the fiduciary services that banks offer and the structures and operational methods that banks use to deliver those services. The OCC's particular goal in revising part 9 is to accommodate those changes by lifting unnecessary regulatory burden and facilitating the continued development of national banks' fiduciary business consistent with safe and sound banking practices and national banks' fiduciary obligations. Three principal themes have emerged from the OCC's review of part 9.

First, bank organizational structures, particularly with respect to the geographic structure of banking organizations, have changed significantly since Congress created the basic framework for national banks' fiduciary operations. These changes strongly suggest that part 9 should be adjusted so that its requirements are more workable for both large, multistate fiduciary banking organizations and small banks that conduct fiduciary activities primarily on a local basis.

Second, national banks' fiduciary activities, in many respects, are subject to state law. In some cases, however, the OCC has the flexibility either to prescribe a uniform Federal standard or to direct national banks to follow state law.

Third, over the years, part 9 has been applied to a wide variety of investment advisory activities and related services, not all of which involve the bank's exercise of investment discretion. In some cases, banks engaged in these activities are subject to different standards than other types of entities that conduct the same type of business, raising the question of whether the OCC should narrow the range of investment advisory activities to which part 9 applies.

These three themes form the basis for requests for comment on specific provisions and issues described in detail in the remainder of this preamble discussion.

More generally, the proposal revises part 9 in its entirety. The proposal updates, clarifies, and streamlines part 9, incorporates significant interpretive positions, and eliminates unnecessary regulatory burden wherever possible to promote more efficient operation and supervision of national banks' fiduciary activities. The proposal adds headings for ease of reference, but, for the most part, retains the numbering system used in the current regulation. Commenters are invited to address all aspects of the proposal, including recommending further improvements to its organization, structure, and content.

Section-by-Section Description of the Proposal

Authority, Purpose, and Scope (Proposed § 9.1)

The proposal adds a new provision that explicitly sets forth the statutory authority for, and the purpose and scope of, part 9. In addition to standards found in part 9, the OCC provides guidance (including policies, procedures, precedents, circulars, and bulletins) regarding the fiduciary activities of national banks in the ''Comptroller's Handbook for Fiduciary Activities.'' The OCC currently is revising the guidance contained in the ''Comptroller's Handbook for Fiduciary Activities.'' The OCC anticipates that the revised fiduciary guidance will consist of a

[1] National banks have been authorized to exercise fiduciary powers since 1913. In 1962, the responsibility for the oversight of their fiduciary activities was transferred from the Board of Governors of the Federal Reserve System to the OCC. See 12 U.S.C. 92a. Following the transfer of oversight responsibilities, the OCC promulgated 12 CFR part 9 in 1962 (27 FR 9764), and revised it soon thereafter in 1963 (28 FR 3309).

series of booklets in a comprehensive ''Comptroller's Handbook,'' which will replace the ''Comptroller's Handbook for Fiduciary Activities'' and other OCC guidance currently found in separate publications.

Definitions (Proposed § 9.2)

The proposal moves the definitions currently found at § 9.1 to proposed § 9.2. Some definitions are removed, and others are added. Significant changes are noted below.

Affiliate (Proposed § 9.2(a))

The proposal adds a definition of ''affiliate'' to part 9. This definition cross-references the definition in the Federal Reserve Act at 12 U.S.C. 221a(b), which is consistent with the way the OCC defines the term ''affiliate'' in a number of its other regulations.

Applicable Law (Proposed § 9.2(b))

The current regulation uses the term ''local law,'' as defined at § 9.1(g), to refer to the laws of the state or other jurisdiction governing a fiduciary relationship. The proposal replaces ''local law'' with ''applicable law'' in order to streamline some of the operative provisions of part 9 and to make clear that the bodies of authority that govern a national bank's fiduciary relationships include Federal law (including regulations), state law governing a national bank's fiduciary relationships (that is, fiduciary duties and responsibilities) the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship. The Federal law relevant to a national bank's fiduciary activities includes, for example, provisions of the Federal banking laws (12 U.S.C. 1 *et seq.*), the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), and the rules issued pursuant to those acts. The OCC does not intend the term ''applicable law'' to incorporate any state law or other body of authority that would not otherwise apply to a national bank's fiduciary relationships. The OCC invites comment on the adequacy of this definition.

Fiduciary Capacity (Proposed § 9.2(e))

Under the current regulation, the term ''fiduciary,'' defined at § 9.1(b), includes ''a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking'' and goes on to list the ''traditional'' fiduciary capacities enumerated by 12 U.S.C. 92a: Trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and committee of estates of lunatics. The proposed definition of ''fiduciary capacity'' retains the current regulation's list of traditional fiduciary capacities with minor modification. For example, the phrase ''committee of estates of lunatics'' is removed because it is outdated and because the definition of the term ''guardian'' is broad enough to encompass that capacity. The proposed definition also clarifies that acting as registrar of stocks and bonds includes acting as transfer agent.

The current regulation's definition of ''fiduciary'' also includes fiduciary capacities that are not listed in the fiduciary powers statute. These capacities include ''managing agent'' and, as a catch-all category, ''any other similar capacity.''

The proposal attempts to establish a clearer and more objective boundary for the coverage of part 9 while retaining the traditional concept that acting on another's behalf is at the heart of serving in a fiduciary capacity. Under the proposal, the term ''fiduciary capacity'' includes, in addition to the statutory fiduciary capacities, ''any capacity involving investment discretion on behalf of another'' and ''any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a.'' [2] The proposal uses investment discretion as the factor that distinguishes fiduciary from non-fiduciary investment advisory activities. Thus, under the proposal, part 9 applies to (and, accordingly, requires a national bank to obtain fiduciary powers for) any investment advisory activity in which the bank manages the assets of another. Conversely, a national bank is not subject to part 9 with respect to an activity in which the bank does not have investment discretion, unless, of course, the bank acts in one of the ''traditional'' fiduciary capacities. For example, part 9 does not govern a directed custodian account (absent a ''traditional'' fiduciary capacity) because the customer, and not the bank, has investment discretion, although the bank may provide advice about investments appropriate to the customer's objectives. The proposed investment discretion test affects only those activities in which the bank does not act in one of the enumerated ''traditional'' fiduciary capacities. Part 9 continues to apply to activities in which the bank acts in a ''traditional'' fiduciary capacity regardless of whether the bank has investment discretion, *e.g.*, self-directed IRA accounts for which the bank is a named trustee.

As an alternative to using investment discretion as the dividing line between fiduciary and non-fiduciary investment advisory activities, the OCC could adopt an approach that relies on state law. Under a state law approach, for example, part 9 would apply to a national bank's investment advisory activity if that activity, when engaged in by competing state fiduciaries, requires state authorization and is regulated as a fiduciary activity under state law. Thus, the applicability of part 9 to a national bank's investment advisory activities could differ among states. The OCC invites comment on this and other alternative approaches to defining which investment advisory activities to regulate under part 9.

Adopting an approach that excludes some types of investment advisory activities from part 9's coverage raises the question of how to oversee these ''non-fiduciary'' investment advisory activities. Some of these activities already are subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 14, 1994),[3] the anti-fraud provisions of the Securities Exchange Act of 1934, and the recordkeeping and confirmation requirements for brokerage customers under the OCC's rules at 12 CFR part 12. In addition, a national bank must conduct its investment advisory activities (as with all its activities) in a manner consistent with safe and sound banking practices. Furthermore, the national bank must adhere to any conditions imposed by the OCC in writing in connection with approval of an application or request. The OCC invites comment on whether these existing regulatory safeguards are adequate to regulate non-fiduciary investment advisory activities. If the existing safeguards are not adequate, the OCC invites comment on what additional safeguards are appropriate.

For example, even if the OCC adopts the investment discretion approach, the OCC could continue to subject non-discretionary investment advice to pertinent provisions of part 9 (*e.g.*, those

[2] The term ''fiduciary capacity'' under the proposal also includes acting as a custodian under a uniform gifts to minors act, because a custodian under a uniform gifts to minors act is a fiduciary under current part 9.

[3] The four Federal banking agencies have recently issued a clarification of the Interagency Statement. See ''Joint Interpretation of the Interagency Statement on Retail Sales of Nondeposit Investment Products (September 12, 1995).

governing self-dealing and conflicts of interest). Alternatively, the OCC could use provisions of the Investment Advisers Act of 1940 (Advisers Act)[4] as a point of reference. Under the Advisers Act, as implemented by the Securities and Exchange Commission (SEC),[5] an investment adviser must, among other things: (1) Provide clients and prospective clients with a written disclosure statement about the adviser's business practices and educational and business background; (2) comply with specific contractual requirements in their dealings with clients, including a prohibition against assigning an advisory contract without client consent and restrictions on performance fee arrangements; (3) comply with prohibitions against misstatements or misleading omissions of material facts and fraudulent acts or practices; and (4) comply with anti-fraud provisions dealing with advertising, solicitations, and custody or possession of client funds. In addition, the Supreme Court has held that a registered investment adviser owes its clients an affirmative duty of good faith and full and fair disclosure of all material facts, especially where the adviser's interests may conflict with those of its clients.[6]

Fiduciary Officers and Employees (Proposed § 9.2(f))

The proposal replaces the term ''trust department,'' defined at § 9.1(j), with the term ''fiduciary officers and employees,'' to reflect the increasing diffusion of fiduciary functions throughout a national bank.

Investment Discretion (Proposed § 9.2(j))

As mentioned earlier, the proposal defines the term ''fiduciary capacity'' to include any capacity involving investment discretion on behalf of another. The new term ''investment discretion,'' in turn, includes any account for which a national bank has the authority to determine what securities or other assets to purchase or sell on behalf of the account. The OCC considers this term to apply whether or not the bank itself in fact exercises that discretion or delegates that function to another.

Approval Requirements (Proposed § 9.3)

Consistent with § 9.2 of the current regulation, the proposal directs a national bank seeking approval to exercise fiduciary powers and a person seeking approval to organize a special-purpose national bank limited to fiduciary powers, to appropriate provisions in 12 CFR part 5 (rules, policies, and procedures for corporate activities).

Administration of Fiduciary Powers (Proposed § 9.4)

The proposal relocates most of the substance of current § 9.7 to proposed § 9.4, but relocates provisions in current § 9.7 relating to policies and procedures, review of assets, and recordkeeping, to other sections specifically addressing those topics (proposed §§ 9.5, 9.6, and 9.8, respectively). The proposal also relocates a provision in current § 9.7 relating to the need for fiduciary counsel to proposed § 9.5 (policies and procedures).

The proposal continues to place the primary responsibility for a national bank's fiduciary activities on its directors. Under the proposal, as under the current rule, the board may assign functions related to the exercise of fiduciary powers to bank directors, officers, employees, and committees thereof. The proposal allows a national bank to use personnel and facilities of the bank to perform services related to the exercise of its fiduciary powers, and to allow any department of the bank to use fiduciary officers and employees and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law. The proposal retains the requirement that all fiduciary officers and employees must be adequately bonded.

The proposal adds a new provision, at proposed § 9.4(c), to clarify that a national bank may enter into an agency agreement with another entity to purchase or sell services related to the exercise of fiduciary powers. This provision reflects the OCC position contained in Fiduciary Precedent 9.1300 (found in the ''Comptroller's Handbook for Fiduciary Activities'').[7]

Policies and Procedures (Proposed § 9.5)

Current § 9.5 requires a national bank to adopt policies and procedures with respect to brokerage placement practices but not with respect to other areas of fiduciary practice. The proposal, on the other hand, requires that a national bank have written policies and procedures to ensure that its fiduciary practices comply with applicable law. The proposal lists particular areas that a bank's policies and procedures should address.

Several of the items on this list of required policies and procedures stem from provisions located in other sections of the current regulation, including methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security (current § 9.7(d)); selection and retention of legal counsel readily available to advise the bank and its fiduciary officers and employees on fiduciary matters (current § 9.7(c)); and investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution (current § 9.10(a)).

Other items on the list are not based on requirements in the current regulation, including methods for preventing self-dealing and conflicts of interest, allocation to fiduciary accounts of any financial incentives the bank may receive for investing fiduciary funds in a particular investment,[8] and disclosure to beneficiaries and other interested parties of fees and expenses charged to fiduciary accounts. The OCC believes that these new items are important to the proper exercise of national bank fiduciary powers, and should be addressed in a bank's policies and procedures.

The OCC invites comment on whether to add any items to, or delete any items from, the proposed list.

Review of Assets of Fiduciary Accounts (Proposed § 9.6)

The proposal clarifies current § 9.7(a)(2) by explicitly requiring national banks to perform two distinct types of written asset reviews with respect to fiduciary accounts: individual account reviews and reviews of assets by issuer.[9] Before accepting a fiduciary account, a national bank must review the account to determine whether it can administer the account properly. After accepting a fiduciary account for which

[4] 15 U.S.C. 80b–1–80b–21. Under the Advisers Act, investment advisers generally must register with the Securities and Exchange Commission if, for compensation, they engage in the business of advising others, either directly or through certain types of publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities. Banks and bank holding companies are, for the most part, exempt from the requirements of the Advisers Act.

[5] The SEC's rules governing investment advisers are found at 17 CFR part 275.

[6] See *SEC* v. *Capital Gains Research Bureau,* 375 U.S. 180 (1963); *Transamerica Mortgage Advisors, Inc.,* v. *Lewis,* 444 U.S. 11, 17 (1979).

[7] See also 12 U.S.C. 1867 (regulation and examination of bank service corporations); Fiduciary Precedent 9.1390 (fiduciary support services rendered by agent); and Trust Interpretive Letter #168 (August 3, 1988) (use of an affiliate to perform trust administrative and investment services).

[8] See Fiduciary Precedent 9.3115 (acceptance of financial benefits by bank fiduciaries).

[9] See Fiduciary Precedent 9.4102.

a national bank has investment discretion, and each year thereafter, the bank promptly must conduct an individual account review of the account's assets to evaluate whether they are appropriate, individually and collectively, for the account. In addition to the individual account review, a bank must conduct an annual review of assets by issuer to determine the investment merit of the assets (or potential assets) in fiduciary accounts for which the bank has investment discretion, to the extent appropriate for that asset. The OCC anticipates that the scope of a bank's assets review will vary, depending on the nature of the particular asset.

To contrast the two types of review, a review of assets by issuer determines what investments, by issuer, (*e.g.*, common stock of Corporation X) are potentially appropriate investments for the bank's fiduciary accounts. In some banks, for example, the review of assets by issuer results in a list of permissible fiduciary investments for the bank's fiduciary accounts. The person or committee in charge of investing for a particular fiduciary account chooses investments from this list. An individual account review, on the other hand, determines whether the investments chosen for that particular account are appropriate, individually and collectively, given the objectives of the account.

The OCC invites comment on whether these specific standards are necessary or appropriate and, if not, what alternative approaches are preferable. For example, commenters may wish to discuss approaches that distinguish between large and small accounts or between large and small institutions.

Recordkeeping (Proposed § 9.8)

The proposal clarifies the recordkeeping requirements currently found at §§ 9.7(a)(2) and 9.8. In particular, a national bank must document the establishment and termination of fiduciary accounts, must maintain adequate records for fiduciary accounts, must retain records for a specified period of time, and must make sure its fiduciary records are distinguishable from other bank records.

Audit of Fiduciary Activities (Proposed § 9.9)

The proposal retains the current § 9.9 requirement that a national bank perform suitable audits of its fiduciary activities annually (specifically, at least once during each calendar year and not later than 15 months after the last audit), and that the bank report the results of the audit (including all actions taken as a result of the audit) in the minutes of the board. The proposal removes as redundant the requirement that the national bank ascertain compliance with ''law, this part, and sound fiduciary principles.''

The proposal clarifies that if a bank adopts a continuous audit system in lieu of performing annual audits, the bank may perform discrete audits of each fiduciary activity, on an activity-by-activity basis, at intervals appropriate for that activity. For example, a bank may determine that it is appropriate to audit certain low-risk fiduciary activities every 18 months. A bank that adopts a continuous audit system must report the results of any discrete audits performed since the last audit report (including all actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year and not later than 15 months after the last audit report.

The proposal also clarifies that a national bank's audit committee may not include directors who are members of a fiduciary committee of the bank.[10] The proposal also modifies the current regulation's position that active officers of the bank may not serve on the audit committee. Under the proposal, only officers who participate significantly in the administration of the bank's fiduciary activities are barred from serving on the audit committee. This proposed position provides some degree of flexibility to smaller banks, which may have a limited number of outside directors.

Finally, the proposal permits an audit committee of an affiliate of the bank to conduct the required audit. This change allows a bank holding company to audit the fiduciary activities of its subsidiary national banks through a central audit committee. This approach facilitates consolidation of functions, and the accompanying efficiencies, within a bank holding company structure.

The OCC invites comment on these proposed changes and, in addition, on the relationship between the audit requirement and the OCC's fiduciary examination process (in particular, the extent to which OCC examiners should rely on a bank's internal or external fiduciary audits).

Fiduciary Funds Awaiting Investment or Distribution (Proposed § 9.10)

As mentioned earlier, the proposal relocates to proposed § 9.5 the current regulation's requirement that a national bank adopt policies and procedures regarding short-term investments. The proposal retains the current regulation's general prohibition against allowing fiduciary funds to remain uninvested and undistributed any longer than reasonable for proper account management. The OCC invites comment on whether reasonableness is a sufficiently clear standard and, if not, on what standard is appropriate.

The proposal continues to allow a national bank to deposit idle fiduciary funds (i.e., fiduciary funds awaiting investment or distribution) in its commercial, savings, or another department, provided that the bank secures the deposit with appropriate collateral. Additionally, the proposal explicitly allows a national bank to use, as collateral for self- deposits of idle fiduciary funds, assets (including surety bonds) that qualify under state law as appropriate security for deposits of fiduciary funds. The proposal also permits a national bank to deposit idle fiduciary funds with affiliates.

Surety bonds as collateral. Under 12 U.S.C. 92a(d), a national bank may deposit idle fiduciary funds with itself (*e.g.*, in its commercial or savings department) only if it pledges United States bonds or ''other securities'' approved by the OCC. Current § 9.10(b)(3) allows a bank to meet this requirement by pledging qualifying assets of the bank to secure a deposit in compliance with local law.

Under the OCC's interpretation of § 9.10(b)(3), a national bank may pledge, as a qualifying asset, a surety bond as collateral for a deposit of idle fiduciary funds if a surety bond is permissible collateral under state law, unless the instrument governing the fiduciary relationship prohibits the use of a surety bond. This interpretation recognizes that a surety bond provides protection that is functionally at least equivalent to the protection provided by other types of assets that the OCC has approved under section 92a(d). Moreover, this interpretation promotes Congress' policy objective of protecting the interests of beneficiaries and ensures that national banks are not disadvantaged in a state that permits its institutions to use surety bonds to secure deposits of idle fiduciary funds.

The proposal explicitly incorporates this interpretation into part 9 by allowing a national bank to secure deposits of idle fiduciary funds with assets, including surety bonds, that qualify under state law as appropriate security for deposits of fiduciary funds. The theory that a surety bond is comparable to other forms of security permitted by the OCC could have a broader application, however. In particular, the OCC invites comment on

[10] See Fiduciary Precedent 9.2505 (a member of a fiduciary committee may not serve on the trust audit committee).

whether to adopt a uniform standard allowing national banks in all states to use surety bonds as collateral for these deposits.

Deposits with affiliates. Section 92a(d) authorizes a national bank to pledge assets to secure self-deposits of idle fiduciary funds. Thus, section 92a(d) accommodates a bank with a trust department and a commercial or savings department, the bank organizational structure prevalent when Congress enacted the statutory language in 1918. However, the statutory language does not address other organizational structures that have evolved since 1918. For example, some banks today are special-purpose trust companies. These entities do not have commercial or savings departments in which to deposit idle fiduciary funds, but many are affiliated with banks that do. Other banks operate as part of a large system of affiliated banks and wish, for reasons of efficiency, to consolidate their fiduciary payment and disbursement functions in a single bank. In these situations, a bank may want to deposit idle fiduciary funds with an affiliated bank. However, the OCC has previously applied 12 CFR 9.12(c) to restrict a national bank from depositing idle fiduciary funds with an affiliated bank unless authorized by the instrument governing the account, court order, or state law.

Some states explicitly authorize their banks to deposit idle fiduciary funds with affiliated banks, however. Thus, a national bank in any of these states may deposit idle fiduciary funds in an affiliated bank in accordance with current 12 CFR 9.12(c) (because the deposit is authorized by state law). Additionally, however, many of these states require that these deposits be secured with a pledge of assets. The OCC previously took the position that neither a national bank making a deposit of idle fiduciary funds with an affiliate, nor a national bank accepting the deposit, can pledge assets to secure the deposit, regardless of whether state banks can pledge in that situation. Consequently, a national bank could not legitimately comply with a state's pledging requirement and, thus, could not avail itself of the state's authorization to deposit idle fiduciary funds with an affiliate bank. The OCC believes that a prohibition on pledging assets to secure idle fiduciary funds deposited by or with affiliates is not legally required and may prevent a national bank from achieving efficiencies in its fiduciary operations.

Consequently, the OCC proposes to allow a national bank to secure a deposit of idle fiduciary funds by or with an affiliate if consistent with applicable law. This change is consistent with a recent OCC interpretative letter,[11] and should facilitate more efficient fiduciary operations in multi-bank holding companies.

Investment of Fiduciary Funds (proposed § 9.11)

The proposal condenses current § 9.11 without changing its substance. The proposal simply directs a national bank to invest fiduciary funds in a manner consistent with applicable law. Applicable law, as described earlier, includes Federal law, state law governing a national bank's fiduciary relationships, the terms of the instrument governing the relationships, and any court order pertaining to the relationships.

Self-dealing and Conflicts of Interest (Proposed § 9.12)

The proposal retains the substance of current § 9.12, which addresses fiduciary conflicts of interest. However, the proposal clarifies a point concerning the general rule, found at current § 9.12(b), that a national bank may not lend, sell, or otherwise transfer assets held in a fiduciary capacity to the bank or any of its directors, officers, or employees, or to affiliates of the bank or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank. Current § 9.12(b) provides certain exceptions to this general rule, such as where local law authorizes those loans. However, under 12 U.S.C. 92a(h), it is unlawful for a national bank to lend to its directors, officers, or employees any funds it holds in trust. A national bank cannot invoke the exceptions in current § 9.12(b) in contravention of section 92a(h). Thus, the proposal clarifies that despite the exceptions to the general rule, a bank may not lend to any of its directors, officers, or employees any funds it holds in trust, except with respect to bank's own employee benefit plans in accordance with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)), which specifically authorizes loans to participants and beneficiaries of such plans under certain circumstances.

Custody of Fiduciary Assets (Proposed § 9.13)

The proposal retains the substance of current § 9.13, which addresses custody of fiduciary assets. The proposal continues to require joint custody or control of fiduciary assets, separation of fiduciary assets from the assets of the bank, and separation or identification of the assets of each fiduciary account from all other accounts (except when assets are invested in collective investment funds). The proposal also continues to allow a national bank to maintain fiduciary assets off-premises.

Deposit of Securities With State Authorities (Proposed § 9.14)

Under current § 9.14, whenever state law requires institutions acting as fiduciaries to deposit securities with state authorities for the protection of trust accounts, a national bank in that state must make a similar deposit before it can act in a fiduciary capacity.[12] The proposal retains this general requirement.

However, current § 9.14 does not address how a bank should calculate the amount of its required deposit when the bank administers trust assets from offices located in more than one state—*i.e.*, whether the bank must compute the amount of deposit required by a particular state on the basis of all of the bank's trust assets nationwide, or on the basis of the bank's trust assets in that state. This issue will become increasingly significant as interstate branching becomes more common. Many states have laws requiring a state fiduciary to deposit an amount of securities based on its total trust assets. These laws apparently did not contemplate that state fiduciaries would expand geographically and administer significant amounts of trust assets from other states.

It is unnecessary to require a bank with multistate trust operations to deposit in each state in which it administers trust assets an amount based on its total trust assets nationwide. To do so goes far beyond the deposit requirement's purpose of protecting trust assets relating to a particular state, and unnecessarily burdens a bank that conducts fiduciary operations in multiple states. Consequently, the proposal allows a national bank to meet its deposit requirement in each state based on the

[11] Letter from Julie L. Williams, Chief Counsel (November 6, 1995).

[12] This provision stems from the fiduciary powers statute. See 12 U.S.C. 92a(f).

amount of trust assets administered from offices located in that state.[13]

Fiduciary Compensation (Proposed § 9.15)

The proposal retains the substance of current § 9.15, which addresses fiduciary compensation. Under the proposal, a national bank may charge a reasonable fee for its fiduciary services if the amount is not set or governed by applicable law. Moreover, the proposal prohibits an officer or an employee of a national bank from retaining any compensation for acting as a co-fiduciary with the bank in the administration of a fiduciary account, except with the specific approval of its board of directors.

Receivership or Voluntary Liquidation of Bank (Proposed § 9.16)

The proposal retains the substance of current § 9.16, which addresses receivership and voluntary liquidation. The proposal directs a receiver or liquidating agent to close promptly all fiduciary accounts to the extent practicable (in accordance with OCC instructions and the orders of the court having jurisdiction) and to transfer all remaining fiduciary accounts to substitute fiduciaries.

Surrender or Revocation of Fiduciary Powers (Proposed § 9.17)

The proposal retains the substance of current § 9.17, which addresses surrender and revocation of fiduciary powers. The proposal sets forth the standards and procedures that apply when a national bank seeks to surrender its fiduciary powers. The proposal also describes the standards that apply when the OCC seeks to revoke a bank's fiduciary powers.

Collective Investment Funds (Proposed § 9.18)

The proposal revises current § 9.18, which governs the establishment and operation of common trust funds and other collective investment funds by national banks.[14] The central purpose of this proposed revision is to lift certain unnecessary regulatory burdens currently imposed on institutions that administer collective investment funds, while preserving appropriate protections to beneficiaries (and other interested parties) of fiduciary accounts participating in those funds.

The OCC has not rewritten § 9.18 since 1972. In 1982, the OCC published an advance notice of proposed rulemaking requesting public comment on § 9.18 (47 FR 27833, June 25, 1982). The OCC specifically solicited comments on several issues.[15] Moreover, the OCC indicated its intention to undertake a comprehensive review of its collective investment fund regulation.

The OCC received over 70 comments, most of which indicated that technological advances and new customer needs rendered portions of § 9.18 obsolete or even counter-productive. In November 1984, however, the OCC suspended its consideration of amendments to § 9.18, due to pending litigation stemming from the OCC's approval of collective investment funds consisting of Individual Retirement Accounts, Keogh Accounts, or other employee benefit accounts that are exempt from taxation (collective IRA funds).[16] The OCC determined that it would be premature to pursue significant changes to § 9.18 under the circumstances.

In view of the disposition of the collective IRA fund litigation,[17] the OCC decided in 1990 to resume the rulemaking process by publishing a proposal to amend § 9.18 (55 FR 4184, February 7, 1990) (1990 Proposal) based largely on the public comments received in 1982.[18] The OCC received 150 comment letters on the 1990 Proposal. In 1994, the OCC decided to revise § 9.18 as part of the comprehensive review of part 9 under its Regulation Review Program, rather than proceed with § 9.18 alone. This proposal incorporates many of the elements of the 1990 Proposal. Readers seeking additional background on these elements may refer to the 1990 Proposal.

This current proposal retains the general structure of § 9.18. Paragraph (a) authorizes national banks to invest fiduciary assets in two types of collective investment funds. Paragraph (b) sets forth the requirements applicable to funds authorized under paragraph (a). Paragraph (c) describes other types of collective investments available to national bank fiduciaries. Significant changes to current § 9.18 are noted below.

(a)(1) and (a)(2) Funds (Proposed § 9.18(a)).

The proposal retains the substance of current § 9.18(a), which authorizes national banks to invest fiduciary assets in common trust funds ((a)(1) funds) and funds consisting of employee benefit and other tax-exempt trusts ((a)(2) funds). The proposal, however, relocates to § 9.18(a) the substance of current § 9.18(b)(2), which provides

[13] See also Op. Chief Counsel, Office of Thrift Supervision (December 24, 1992) (interpreting 12 U.S.C. 1464(n)(5) (the Federal savings association equivalent of 12 U.S.C. 92a(f) with virtually identical language) and concluding that a Federal savings association should compute the amount of a required state deposit based on the amount of trust assets administered from offices located in that particular state, rather than on the basis of the bank's total trust assets nationwide).

[14] Because the regulations of the Office of Thrift Supervision incorporate § 9.18, this revision also affects collective investment funds administered by Federally-chartered savings and loan associations. 12 CFR 550.13(b). Moreover, because common trust funds must comply with § 9.18 in order to qualify for tax-exempt status under section 584 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 584), this revision affects state-chartered banks, trust companies, and other financial institution fiduciaries that administer collective investment funds.

[15] These issues included: (1) operations of guaranteed insurance contract funds; (2) establishment of commingled agency accounts; (3) commingling of Keogh trusts with corporate employee benefit funds; (4) establishment of common trust funds for individual retirement accounts; (5) advertising of common trust funds; and (6) commingling of charitable trusts with employee benefit trusts.

[16] See, *e.g.,* ''Decision of the Comptroller of the Currency on the Application by Citibank, N.A., pursuant to 12 CFR 9.18(c)(5) to Establish Common Trust Funds for the Collective Investment of Individual Retirement Account Trusts Exempt from Taxation under Section 408 of the Internal Revenue Code of 1954'' (Oct 31, 1982), reprinted in 1 Comptroller of the Currency Q.J. No. 4 (1982), at 45; and ''Decision of the Office of the Comptroller of the Currency on the Application by Wells Fargo Bank, N.A. to Establish a Common Trust Fund for the Collective Investment of Individual Retirement Account Trust Assets Exempt From Taxation Under section 408(a) of the Internal Revenue Code of 1954, as amended'' (Jan. 28, 1984) (Wells Fargo Decision).

[17] See *Investment Company Institute* v. *Clarke,* 789 F.2d 175 (2d Cir. 1986), *cert. denied,* 479 U.S. 940 (1986); *Investment Company Institute* v. *Conover,* 790 F.2d 925 (D.C. Cir. 1986), *cert. denied,* 479 U.S. 939 (1986), *Investment Company Institute* v. *Clarke,* No. 86–3725 (W.D.N.C. August 25, 1986, *appeal withdrawn by stipulation,* Jan. 6, 1987).

[18] The 1990 proposal included revisions that would: (1) Eliminate the requirement for specific approval by an institution's board of directors prior to establishing a collective investment fund, and eliminate the requirement for national banks to file fund plans of operation with the OCC; (2) clarify the participation in collective investment funds by certain tax-exempt employee benefit funds; (3) broaden the authority to establish ''closed-end'' collective investment funds, the assets of which are illiquid; (4) eliminate the specific regulatory prohibition in § 9.18(b)(5)(v) on advertising the availability and performance of common trust funds; (5) eliminate the fixed percentage limitation in §§ 9.18(b)(9)(i) and 9.18(c)(3) on the interest a single participating account may have in a particular common trust fund; (6) eliminate the fixed percentage limitation in § 9.18(b)(9)(ii) on the concentration of investment by a common trust fund in the obligations of any one entity; (7) eliminate the liquidity requirement in § 9.18(b)(9)(iii) applicable to the assets of common trust funds; (8) eliminate the limitations in § 9.18(b)(12) on fees and expenses incurred by an institution in the administration of a collective investment fund, but require appropriate disclosure; (9) eliminate the requirement in § 9.18(c)(2)(ii) that investments in variable-amount notes be made on a short-term basis; (10) provide an expeditious procedure for the review of new types of funds; and (11) codify the authority to establish registered collective investment funds whose assets consist solely of Individual Retirement Accounts, Keogh Accounts, or other eligible employee benefit accounts.

guidance on the circumstances under which a bank may place employee benefit and other tax-exempt trust assets in either an (a)(1) or an (a)(2) fund, and on the circumstances under which a bank may place trusts for which the bank is not the trustee in an (a)(2) fund.[19]

The proposal makes significant changes to current § 9.18(b), which sets forth the requirements for (a)(1) and (a)(2) funds. On balance, these changes, described below, will reduce the Federal regulatory burdens imposed on collective investment funds and enable banks to operate collective investment funds more efficiently. The term ''collective investment fund,'' as used in § 9.18, encompasses both (a)(1) funds and (a)(2) funds.

Written Plan (Proposed § 9.18(b)(1)).

Like the 1990 Proposal, this proposal eliminates as unnecessary two requirements from current § 9.18(b)(1). First, instead of requiring the full board of directors to approve new collective investment fund plans, the proposal allows a committee of the board to perform this function. Second, the proposal removes the requirement that the bank file (a)(1) and (a)(2) fund plans with the OCC.[20] Additionally, the proposal relocates a provision on fund valuation from current § 9.18(b)(1) to proposed § 9.18(b)(4), described below.

Fund Management (Proposed § 9.18(b)(2))

The proposal provides an exception to the ''exclusive management'' requirement, found in current § 9.18(b)(12), to allow prudent delegation of responsibilities to others.[21] This exception is consistent with the modern prudent investor rule as set forth in the American Law Institute's Restatement (Third) of Trusts (1992).[22]

[19] Like the 1990 Proposal, this proposal eliminates from current § 9.18(b)(2) references to specific sections of the Internal Revenue Code and to specific Internal Revenue Service rulings to make clear that the OCC promulgates this regulation solely on the authority of Federal banking law and not under authority of the Internal Revenue Code.

[20] However, national banks must file written plans with the OCC in order to establish special exemption funds (*i.e.*, funds that deviate from the requirements of § 9.18(a) and (b)), in accordance with proposed § 9.18(c)(5).

[21] In the past, the OCC recognized only limited exceptions to the exclusive management requirement. See, e.g., Fiduciary Precedent 9.5320 (an affiliate may manage a bank's collective investment fund).

[22] See Rest. 3rd, Trusts (Prudent Investor Rule), section 171 (Duty with Respect to Delegation): ''A trustee has a duty personally to perform the responsibilities of the trusteeship except as a prudent person might delegate those responsibilities to others. In deciding whether, to whom and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in supervising agents, the trustee is under a duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person would act in similar circumstances.''

The proposal also provides an exception to the exclusive management requirement for collective IRA funds registered under the Investment Company Act of 1940. A bank with a collective IRA fund generally registers that fund as an investment company under the Investment Company Act because the SEC takes the position that IRA, Keogh, and certain other similar trusts may not qualify for exemption from registration. However, the exclusive management requirement of current § 9.18(b)(12) arguably conflicts with the Investment Company Act.[23] Currently, the OCC grants waivers of the exclusive management requirement for collective IRA funds that register as investment companies. The proposal obviates the need for these routine waivers.

Proportionate Interests (Proposed § 9.18(b)(3))

The proposal retains the requirement in current § 9.18(b)(3) that all participating accounts in a collective investment fund must have a proportionate interest in all of the fund's assets. However, the proposal eliminates the language concerning the propriety of investing fiduciary assets in a collective investment fund. The permissibility of investing the assets of a fiduciary account in a particular collective investment fund is governed by proposed § 9.11, which allows investments consistent with applicable law.

Valuation (Proposed § 9.18(b)(4))

The proposal consolidates existing provisions relating to valuation of collective investment funds, including current § 9.18(b)(1) (method of valuation), current § 9.18(b)(4) (frequency and date of valuation), and current § 9.18(b)(15) (valuation of short-term investment funds). The OCC invites comment on the need to clarify valuation issues in the regulatory text or an interpretive ruling accompanying part 9.

The OCC also invites comment on the proposed exception to the quarterly valuation requirement for collective investment funds that are invested primarily in real estate or other assets that are not readily marketable. Allowing banks to value these illiquid collective investment funds annually rather than quarterly appears consistent with the one-year prior notice allowance for withdrawals from these funds, found at § 9.18(b)(4).

[23] See, e.g., Wells Fargo Decision, *supra* note 16, at 10.

Admission and Withdrawal of Accounts (Proposed § 9.18(b)(5))

The proposal consolidates existing provisions relating to admissions and withdrawals of accounts, including current § 9.18(b)(4) (prior request or notice), current § 9.18(b)(6) (method of distribution), and current § 9.18(b)(7) (segregation of investments).

The proposal also substantially revises the current regulation's standard for distributions to an account withdrawing from a collective investment fund. Current § 9.18(b)(6) sets a Federal standard requiring the bank to make distributions in cash, ratably in kind (*i.e.*, a proportional share in each of the assets held by the collective investment fund), or a combination of the two. The OCC believes that this Federal standard may not be sufficiently flexible to address distribution problems that arise, particularly with respect to collective investment funds that invest primarily in assets that are not readily marketable (illiquid assets). Even with respect to these collective investment funds that invest primarily in illiquid assets, banks generally make distributions in cash only, either from the fund's cash reserves or after selling some of the fund's assets within the one-year prior notice period. However, if withdrawal requests exceed the fund's cash reserves, and if the bank believes the market for the fund's assets is depressed, a bank under the constraint of the one-year time limit may have to resort to ratable in-kind distributions rather than (1) sell fund assets at depressed prices, or (2) liquidate the fund. With ratable in-kind distributions of certain assets, such as readily marketable securities, a withdrawing participant may easily convert the distribution into cash. However, that may not be the case for ratable in-kind distributions of illiquid assets, where valuation may be complicated and a recipient may have no practical avenue to liquidate its proportionate share of an asset.

In response to these concerns, the proposal allows any distributions consistent with applicable law. The OCC believes that this approach will provide banks with sufficient flexibility to address complex distribution problems that may arise (particularly with respect to collective investment funds that invest primarily in illiquid assets), while maintaining the basic

protections of state fiduciary law.[24] The OCC invites comment on whether to adopt this proposed state law-based approach instead of retaining a Federal standard. In the event that the OCC does not adopt the state law-based approach, the OCC also invites comment on what Federal standard is appropriate.

Moreover, the OCC invites comment on whether, if the OCC adopts a state law-based standard, there is a need to retain the provision that allows a prior notice period of up to one year for withdrawals from funds with assets not readily marketable (proposed § 9.18(b)(5)(iii)).

Audits and Financial Reports (Proposed § 9.18(b)(6))

The proposal retains the requirements in current § 9.18(b)(5)(i)–(iv) regarding collective investment fund annual audits and financial reports. The proposal also adds a requirement that a national bank disclose in the annual financial report fees and expenses charged to the fund, consistent with OCC precedent.[25]

The proposal, however, provides an exception to this requirement for collective IRA funds registered under the Investment Company Act. As mentioned earlier, a bank generally registers a collective IRA fund as an investment company under the Investment Company Act. The requirement that the auditors are responsible only to the bank's board of directors arguably conflicts with the Investment Company Act.[26] Currently, the OCC grants waivers of this requirement for collective IRA funds registered as investment companies. The proposal obviates the need for these routine waivers.

Advertising Prohibition for Common Trust Funds (Proposed § 9.18(b)(7))

The proposal retains and clarifies the current regulation's prohibition on advertising (a)(1) funds. Current § 9.18(b)(5)(v) prohibits a national bank from advertising or publicizing (a)(1) funds except as provided in the regulation. Current § 9.18(b)(5)(iv) allows a national bank to publicize the availability of financial reports for (a)(1) funds in connection with the promotion of the general fiduciary services of the bank. The OCC interprets these provisions to allow a bank to advertise (a)(1) funds only in connection with the advertisement of the general fiduciary services of the bank.[27]

Self-dealing and Conflicts of Interest (Proposed § 9.18(b)(8))

The proposal retains the substance of current § 9.18(b)(8), which addresses self-dealing and conflicts of interest specific to collective investment funds. A national bank administering a collective investment fund must comply with these provisions in addition to the self-dealing and conflicts of interest provisions found in § 9.12, which apply to all fiduciary activities of national banks.

Mortgage Reserve Account (Proposed § 9.18(b)(9))

The proposal retains the substance of current § 9.18(b)(11), which allows a bank administering a collective investment fund to establish a mortgage reserve account for overdue interest payments on mortgages in the fund. The OCC invites comment on the extent to which banks use mortgage reserve accounts, and whether their experience suggests the need for any modifications to this provision.

Fees and Expenses (Proposed § 9.18(b)(10))

The proposal retains the quantitative management fee limitation, found in current § 9.18(b)(12). Under this limitation, a bank administering a collective investment fund may charge a fund management fee only if the total fees charged to a participating account (including the fund management fee) does not exceed the total fees that the bank would have charged if it had not invested assets of the account in the fund. Moreover, the proposal retains the requirement that the bank absorb fund establishment and reorganization expenses, also found in current § 9.18(b)(12).

The proposal, however, eliminates other provisions in § 9.18(b) that specifically permit or prohibit certain expenses, including current § 9.18(b)(5)(i) (expenses for audits performed by independent public accountants), current § 9.18(b)(5)(iv) (expenses for printing and distributing financial reports), and current § 9.18(b)(10) (expenses incurred in servicing mortgages). Rather than mandating the treatment of specific expenses (other than establishment and reorganization expenses), the proposal defers to state law, in effect, by allowing a bank to charge any reasonable expenses incurred in operating the collective investment fund to the extent not prohibited by applicable law. When expenses of a fund are reasonable and permissible under state law, and are fully disclosed in appropriate documentation,[28] the OCC believes that it is not necessary to micromanage the precise types of expenses charged directly to collective investment funds.

Additionally, the OCC invites comment on whether to defer to applicable law instead of retaining the quantitative management fee limitation.

Prohibition Against Certificates (Proposed § 9.18(b)(11))

The proposal retains the substance of current § 9.18(b)(13), which prohibits a national bank administering a collective investment fund from issuing certificates evidencing an interest in the fund.

Good Faith Mistakes (Proposed § 9.18(b)(12))

The proposal retains the substance of current § 9.18(b)(14), which provides that if a bank, in good faith and in the exercise of due care, makes a mistake in administering a collective investment fund, the bank will not be in violation of this part if it takes prompt action to remedy the mistake.

Elimination of Participation, Investment, and Liquidity Requirements

The proposal eliminates the 10 percent participation limitation, the 10 percent investment limitation, and the liquidity requirement applicable to common trust funds under current § 9.18(b)(9), in accordance with the 1990 Proposal. These Federal restrictions have at times interfered with optimal management of common trust funds, and the protections found in state fiduciary law adequately address the concerns underlying these restrictions.

Other Collective Investments (Proposed § 9.18(c))

In addition to (a)(1) and (a)(2) funds, current § 9.18 authorizes other means by which a national bank may invest fiduciary assets collectively. These other collective investments, described in

[24] Thus, for example, a bank with a collective investment fund facing distribution problems, or beneficiaries (or interested parties) of fiduciary accounts participating in that fund, could seek from a court of competent jurisdiction an order authorizing an equitable solution. Allowing a bank to make distributions in accordance with a court order allows the bank to seek a solution more flexible than what current OCC regulations prescribe. A court-ordered solution also provides all interested parties with the opportunity to present their concerns in a judicial forum, ensuring that the distribution reflects a consideration of all relevant interests.

[25] See, e.g., Fiduciary Precedent 9.5330 (requiring disclosure of management fees).

[26] See, *e.g.*, Wells Fargo Decision, supra note 16, at 11–12.

[27] See, *e.g.*, Fiduciary Precedent 9.5113.

[28] See proposed § 9.18(b)(1)(iii) (disclosure of anticipated fees and expenses in the written plan) and proposed § 9.18(b)(6)(ii) (disclosure of fees and expenses in the annual financial report).

proposed § 9.18(c), are not subject to the requirements of § 9.18(b).

The proposal eliminates the requirement in current § 9.18(c)(2)(ii) that investments in variable-amount notes be made on a short-term basis, in accordance with the 1990 Proposal. The proposal also eliminates the requirement applicable to mini-funds (i.e., funds established for the collective investment of cash balances) that no participating account's interest in the fund exceed $10,000, again in accordance with the 1990 Proposal.[29] Moreover, the proposal expands the total amount of assets permitted in a mini-fund to $1,000,000.

Finally, the proposal provides an expeditious procedure for the review of new types of funds, in accordance with the 1990 Proposal. The purpose of this new procedure is to encourage innovation by improving the approval procedures for banks that wish to establish new types of funds.

Transfer Agents (Proposed § 9.20)

The proposal incorporates by means of cross-reference the SEC's rules prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2–1). Although section 17A(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(d)(1)) generally subjects all transfer agents to SEC rules, section 17A(c) (15 U.S.C. 78q–1(c)) provides that transfer agents shall register with their appropriate regulatory agencies. Current 12 CFR 9.20 sets forth procedural requirements for national banks that register as transfer agents that are virtually identical to the SEC's registration rules. Thus, the OCC does not need to maintain separate procedures, and the proposal simply incorporates the SEC's rule instead.

The proposal also clarifies that a national bank transfer agent must comply with rules adopted by the SEC pursuant to section 17A of the Securities Exchange Act (15 U.S.C. 78q–1) prescribing operational and reporting requirements that apply to all transfer agents (17 CFR 240.17Ac2–2, and 240.17Ad–1 through 240.17Ad–16).

The OCC's ''National Bank Transfer Agents' Guide'' provides additional guidance regarding the transfer agent activities of national banks, including the forms that national banks must file. The OCC sends the Guide to all national bank transfer agents, and to any person who requests it from the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Disciplinary Sanctions Imposed by Clearing Agencies (Proposed § 19.135)

The proposal relocates provisions concerning applications by national banks for stay or review of disciplinary sanctions imposed by registered clearing agencies from current §§ 9.21 and 9.22 to 12 CFR part 19, the OCC's rules of practice and procedure. Proposed § 19.135 incorporates by cross-reference the SEC's rules on this subject, which are virtually identical to current §§ 9.21 and 9.22.

Other Issues for Comment

The OCC has identified several other issues that relate to national banks' fiduciary activities. The OCC is not proposing specific regulatory text on these issues at this time, but invites comment on whether and how to address these issues in part 9.

Multistate Fiduciary Operations

As noted at the outset of this preamble discussion, bank organizational structures have changed significantly since 1913, when Congress first enacted the national bank fiduciary powers statute. Many bank holding companies currently conduct multistate fiduciary operations through separate bank or trust company subsidiaries chartered in different states. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) facilitates the consolidation of multistate fiduciary operations by permitting interstate bank mergers. Moreover, the ability to branch interstate may encourage some banks to expand the multistate fiduciary business they already have, and others to enter the fiduciary business on a multistate basis for the first time. However, the Interstate Act does not define the scope of a national bank's multistate fiduciary authority. For example, it does not address activities conducted at places other than interstate branches.

In a recent letter, the OCC analyzed the authority of a national bank to exercise fiduciary powers on an interstate basis under 12 U.S.C. 92a. See Letter from Julie L. Williams, Chief Counsel (December 8, 1995). The letter dealt with a proposal for a national bank to establish non-branch trust offices in many states and to conduct fiduciary business in each state. But the interstate considerations discussed below also apply to fiduciary activities conducted at interstate branches.

In brief, section 92a authorizes a national bank to conduct fiduciary activities but imposes no limitations on the places where, or the customers for whom, the bank may conduct those activities.[30] Since an office that conducts only fiduciary activities and does not engage in any of the so-called ''core banking functions'' in 12 U.S.C. 36(j) is not a branch for purposes of the McFadden Act (12 U.S.C. 36(c)), a bank may establish non-branch trust offices at any location, without regard to branching limitations. Thus, a national bank may conduct fiduciary activities at non-branch trust offices in states other than the state in which it has its main office. A national bank may also offer fiduciary services at its interstate branches.

The OCC believes that the effect of section 92a is that in any specific state, the extent of fiduciary powers is the same for out-of-state national banks as for in-state national banks and depends upon what the state permits for its own state institutions. A state may limit national banks from exercising any or all fiduciary powers in that state, but only if it also bars its own institutions from exercising the same powers. Therefore, a national bank with its main office in one state may exercise fiduciary powers in that state and other states, depending upon—with respect to each state—the powers each state allows its own institutions to exercise. In essence, with respect to national bank fiduciary powers in a given state, the OCC believes that section 92a applies the same standards to all national banks, regardless of where a national bank has its main office. Whether state administrative requirements connected

[29] Under current § 9.18(c)(3), a mini-fund may not exceed $100,000. Limiting participation in this fund to $10,000 is equivalent to limiting participation to 10 percent. Thus, eliminating the $10,000 limitation is consistent with eliminating the 10 percent participation limitation found in current § 9.18(b)(9).

[30] The basic authority for national banks to exercise fiduciary powers is found in 12 U.S.C. 92(a) and (b):

(a) Authority of the Comptroller of the Currency

The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

(b) Grant and exercise of powers deemed not in contravention of State or local law

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this section.

with fiduciary activities apply to national banks (other than the requirements specifically made applicable by sections 92a(f), (g), and (h)), is determined by principles of federal preemption and must be considered on a case-by-case basis.[31]

The OCC invites comment on the legal framework under section 92a for interstate fiduciary powers of national banks as discussed above and in the Letter (December 8, 1995). The OCC also invites comment on whether to add any new provisions to part 9, or modify any existing provisions (in addition to the modification of § 9.14(b)), to address other issues presented by fiduciary activities conducted on an interstate basis.

Investment Adviser to an Investment Company

When a bank or its operating subsidiary acts as an investment adviser to an investment company (such as a mutual fund), that activity raises conflicts of interest and other concerns that part 9 was not designed to address. The OCC currently addresses these concerns by imposing certain conditions on a case-by-case basis in connection with operating subsidiary filings involving mutual fund advisory activities.[32] The OCC has generally imposed the following conditions when a national bank's operating subsidiary acts as investment adviser to an investment company:

(1) The investment company is treated as an affiliate of the bank and its operating subsidiary for purposes of Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) and thus is subject to the restrictions on transactions between affiliates;

(2) The bank's aggregate direct and indirect investments in and advances to the subsidiary may not exceed an amount equal to the bank's legal lending limit under 12 CFR part 32;

(3) Neither the bank nor the subsidiary may purchase shares of the investment company for its own account; and

(4) The bank and the subsidiary are subject to the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994).

The OCC invites comment on whether these conditions are appropriate in all situations where a national bank or its operating subsidiary acts as investment adviser to an investment company, and, if so, whether to include them in part 9.

Indenture Trustee Conflicts of Interest

A national bank that serves as an indenture trustee to an issue of debt securities and also provides additional banking services to, or has additional relationships with, the securities issue or issuer, is subject to potential conflicts of interest. An indenture trustee to a debt securities issuance represents the security holders as their fiduciary, seeking interest and principal payments from the securities issuer on their behalf. If a bank provides a letter of credit to an issuer while acting as the indenture trustee for the issuer's securities, and the issuer fails to make a scheduled payment to the security holders, the bank, as indenture trustee, must declare the issuer in default and seek payment from itself as issuer of the letter of credit. In this situation, the bank's role as trustee may conflict with its own interest as issuer of the letter of credit. Upon default, when the bank extends credit to the defaulted securities issuance, the bank, as creditor, becomes a competing creditor with itself as trustee for the security holders.

Before 1990, the Trust Indenture Act of 1939 contained conflict of interest prohibitions that disqualified banks from serving as indenture trustees to certain debt securities issuances if they provided credit to the securities issuer. Given the provisions of the statute, the OCC did not need to address conflicts of interest that a national bank might face with respect to securities covered by the Trust Indenture Act.

Some securities issuances, however, are exempt from the Trust Indenture Act. Exempt securities include those exempt from registration under the Securities Exchange Act of 1934, such as municipal industrial revenue bond issuances. With respect to exempt securities issuances, the OCC recommended, consistent with the pre-1990 policies articulated in the Trust Indenture Act, that a national bank avoid acting both as indenture trustee and as issuer of a letter of credit.[33]

In 1990, Congress amended the Trust Indenture Act to permit a bank to serve as both creditor and indenture trustee.[34] The Trust Indenture Act now requires that, upon default of the issuance, the indenture trustee must eliminate the conflict within 90 days or disqualify itself from further service as indenture trustee. As a result of the 1990 amendments, OCC precedent treats exempt securities more stringently than the Trust Indenture Act treats covered securities. These developments raise the issue of whether and how to address conflicts that may arise when a national bank serves as indenture trustee.

The OCC is inclined to allow a national bank to act as creditor and indenture trustee until 90 days after default, consistent with the Trust Indenture Act, with the added condition that the banks maintain adequate controls to manage the potential conflicts of interest. Additionally, the OCC is inclined to apply this policy consistently to all debt securities issuances, including debt securities issuances exempt from the Trust Indenture Act.

Because many national banks already have adopted policies and procedures to manage these potential conflicts of interest,[35] the OCC may not need to address this issue by regulation. It may be sufficient for the OCC to develop guidance on what controls banks should maintain in order to manage potential conflicts.

The OCC invites comment on how banks are managing these conflicts, and on the need to address this issue in part 9.

Waiver of Regulatory Requirements

The OCC also is considering whether to establish standards and procedures for obtaining waivers of any of the requirements in part 9. The OCC notes that a banking circular, BC–205 (dated July 26, 1985), already provides general guidance to national banks, bank counsel, and interested members of the public on requests for staff no-objection positions. The banking circular

[31] Some earlier OCC letters suggesting that all aspects of state law governing fiduciary institutions apply to national banks have generally dealt with substantive fiduciary law and have not fully distinguished between state substantive fiduciary duties and standards and state administrative requirements. *See, e.g.*, OCC Letter No. 525 (August 8, 1990), reprinted in Fed. Banking L. Rep. (CCH) ¶ 83,236.

[32] See, e.g., Interpretive Letter No. 647 (April 15, 1994), reprinted in, [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,558 (Letter approving notification by First Union National Bank of North Carolina to establish three wholly-owned operating subsidiaries to acquire the partnership interests of Lieber and Company and the assets and liabilities of Evergreen Management Corporation); Interpretive Letter No. 648 (May 4, 1994), reprinted in, [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,557 (Letter approving notification by Mellon Bank, N.A. and Mellon Bank (DE), N.A. to establish certain operating subsidiaries to acquire most of the assets, operations, and activities of The Dreyfus Corporation).

[33] See Interpretive Letter No. 293 (May 11, 1984), reprinted in Fed. Banking L. Rep. (CCH) ¶ 85,463.

[34] See Securities Act Amendments of 1990, Pub. L. 101–550.

[35] Among these policies and procedures are: (1) Favoring debt issuers that have a low risk rating to minimize the possibility of default; (2) ensuring that the credit is fully collateralized by cash or cash equivalents to give the bank a lower credit and asset quality risk and superior credit rights (compared to bondholders); (3) participating out most of the credit to reduce the bank's total credit risk; and (4) employing an independent, third party to become trustee upon default.

establishes procedures for obtaining the informal views of the OCC legal staff regarding the applicability of national banking law requirements to contemplated transactions or activities, including fiduciary activities. The OCC invites comment on whether these procedures are sufficient to accommodate meet banks that seek clarification of, or relief from, requirements in part 9, or whether the OCC should add a waiver provision specific to part 9.

This table directs readers to the provisions of the current 12 CFR part 9, if any, on which the revised 12 CFR part 9 and the amended 12 CFR part 19 are based

DERIVATION TABLE FOR 12 CFR PART 9

Revised Provision	Current Provision	Comments
§ 9.1		Added.
§ 9.2(a)		Added.
(b)	§ 9.1(g)	Significantly modified.
(c)	§ 9.1(l)	Modified.
(d)	§ 9.1(a)	Modified.
(e)	§ 9.1(b) and (h)	Significantly modified.
(f)	§ 9.1(j)	Modified.
(g)	§ 9.1(d)	Modified.
(h)	§ 9.1(c)	Modified.
(i)	§ 9.1(e)	Modified.
(j)		Added.
§ 9.3	§ 9.2	Modified.
§ 9.4	§ 9.7(a)(1), (b), and (d)	Significantly modified.
§ 9.5	§§ 9.5, 9.7(c), 9.7(d), and 9.10(a)	Significantly modified.
§ 9.6	§ 9.7(a)(2)	Significantly modified.
§ 9.8	§§ 9.7(a)(2) and 9.8	Modified.
§ 9.9	§ 9.9	Significantly modified.
§ 9.10	§ 9.10	Significantly modified.
§ 9.11	§ 9.11	Modified.
§ 9.12	§ 9.12	Modified.
§ 9.13	§ 9.13	Modified.
§ 9.14	§ 9.14	Significantly modified.
§ 9.15	§ 9.15	Modified.
§ 9.16	§ 9.16	Modified.
§ 9.17	§ 9.17	Modified.
§ 9.18(a)	§ 9.18 (a) and (b)(2)	Modified.
(b)(1)	(b)(1)	Significantly modified.
(b)(2)	(b)(12)	Significantly modified.
(b)(3)	(b)(3)	Modified.
(b)(4)	(b) (1), (4), and (15)	Significantly modified.
(b)(5)	(b) (4), (6), and (7)	Significantly modified.
(b)(6)	(b) (5)(i)–(iv)	Significantly modified.
(b)(7)	(b) (5)(iv) and (v)	Significantly modified.
(b)(8)	(b)(8)	Modified.
(b)(9)	(b)(11)	Modified.
(b)(10)	(b)(12)	Significantly modified.
(b)(11)	(b)(13)	Modified.
(b)(12)	(b)(14)	Modified.
(c)(1)	(c)(1)	Modified.
(c)(2)	(c)(2)	Modified.
(c)(3)	(c)(3)	Significantly modified.
(c)(4)	(c)(4)	Modified.
(c)(5)	(c)(5)	Significantly modified.
§ 9.20	§ 9.20	Modified.
§ 19.135	§§ 9.21 and 9.22	Modified.

Regulatory Flexibility Act

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The proposal's requirements, for the most part, are not new to the regulation. The proposal liberalizes requirements and reduces burden for all national banks that exercise fiduciary powers, regardless of size.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act of 1995

The OCC invites comment on:

(1) Whether the proposed information collection contained in this proposal is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of

information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this proposal have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–AB12), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557–AB12), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 9.8, 9.9, 9.17, and 9.18. The OCC requires this information for the proper supervision of national banks' fiduciary activities. The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 15.01 hours.

Estimated number of respondents and/or recordkeepers: 1,000.

Estimated total annual reporting and recordkeeping burden: 15,010 hours.

Start-up costs to respondents: None.

Unfunded Mandates Act of 1995

The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 9 is revised to read as follows:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

Sec.

Authority: 12 U.S.C. 24(Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q-1, and 78w.

§ 9.1 Authority, purpose, and scope.

(a) *Authority.* The OCC issues this part pursuant to its authority under 12 U.S.C. 24 (Seventh), 92a, and 93a, and 15 U.S.C. 78q, 78q-1, and 78w.

(b) *Purpose.* The purpose of this part is to set forth the standards that apply to the fiduciary activities of national banks.

(c) *Scope.* This part applies to all national banks that act in a fiduciary capacity, as defined in § 9.2(e).

§ 9.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Affiliate* has the same meaning as in 12 U.S.C. 221a(b).

(b) *Applicable law* means Federal law, state law governing a national bank's fiduciary relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.

(c) *Custodian under a uniform gifts to minors act* means a fiduciary relationship established pursuant to a state law substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute.

(d) *Fiduciary account* means an account administered by a national bank acting in a fiduciary capacity.

(e) *Fiduciary capacity means:* acting as trustee, executor, administrator, registrar of stocks and bonds (including transfer agent), guardian, assignee, receiver, or custodian under a uniform gifts to minors act; any capacity involving investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a.

(f) *Fiduciary officers and employees* means all officers and employees of a national bank to whom the board of directors or its designees has assigned functions involving the exercise of the bank's fiduciary powers.

(g) *Fiduciary records* means all written or otherwise recorded information that a national bank creates or receives relating to a fiduciary account or the fiduciary activities of the bank.

(h) *Fiduciary powers* means the authority the OCC grants to a national bank to act in a fiduciary capacity pursuant to 12 U.S.C. 92a.

(i) *Guardian* means the guardian or committee, by whatever name employed by state law, of the estate of an infant, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(j) *Investment discretion* means, with respect to an account, the authority to determine what securities or other assets to purchase or sell on behalf of the account.

§ 9.3 Approval requirements.

(a) A national bank may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

(b) A person seeking approval to organize a special-purpose national bank limited to fiduciary powers shall file an application with the OCC pursuant to 12 CFR 5.20.

§ 9.4 Administration of fiduciary powers.

(a) *Responsibilities of the board of directors.* A national bank's fiduciary activities shall be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

(b) *Use of other personnel.* The national bank may use any qualified personnel and facilities of the bank to perform services related to the exercise of its fiduciary powers, and any department of the bank may use fiduciary officers and employees and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

(c) *Agency agreements.* A national bank exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another bank or other entity, and may purchase services related to the exercise of fiduciary powers from another bank or other entity, pursuant to a written agreement.

(d) *Bond requirement.* A national bank shall ensure that all fiduciary officers and employees are adequately bonded.

§ 9.5 Policies and procedures.

A national bank exercising fiduciary powers shall adopt and follow written policies and procedures adequate to ensure that its fiduciary practices comply with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the bank's:

(a) Brokerage placement practices, including:

(1) Selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to those persons;

(2) Acquisition of services or products, including research services, in return for brokerage commissions;

(3) Allocation of research or other services among accounts, including those that did not generate commissions to pay for that research or other services; and

(4) Disclosure of information concerning these brokerage placement policies and procedures to prospective and existing customers;

(b) Methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security;

(c) Methods for preventing self-dealing and conflicts of interest;

(d) Selection and retention of legal counsel who is readily available to advise the bank and its fiduciary officers and employees on fiduciary matters;

(e) Investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution;

(f) Allocation to fiduciary accounts of any financial incentives the bank may receive for investing fiduciary funds in a particular investment; and

(g) Disclosure to beneficiaries and other interested parties of fees and expenses charged to fiduciary accounts.

§ 9.6 Review of assets of fiduciary accounts.

(a) *Individual account review*—(1) *Pre-acceptance review.* Before accepting a fiduciary account, a national bank shall review the prospective account to determine whether it can properly administer the account.

(2) *Initial post-acceptance review.* Upon the acceptance of a fiduciary account for which a national bank has investment discretion, the bank shall conduct a prompt, written review of all assets of the account to evaluate whether they are appropriate, individually and collectively, for the account.

(3) *Annual review.* At least once during every calendar year, and not later than 15 months after the last review, a bank shall conduct a written review of all assets of each account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

(b) *Annual review of assets by issuer.* At least once during every calendar year, and not later than 15 months after the last review, a bank shall conduct a written review of the investment merit of each asset in fiduciary accounts for which the bank has investment discretion, to the extent appropriate for that asset.

§ 9.8 Recordkeeping.

(a) *Documentation of accounts.* A national bank shall adequately document the establishment and termination of each fiduciary account and shall maintain adequate records for all fiduciary accounts, including any records required under 12 CFR part 12.

(b) *Retention of records.* A national bank shall retain all fiduciary records relating to an account for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account.

(c) *Separation of records.* The bank shall ensure that its fiduciary records are separate and distinct from other records of the bank.

§ 9.9 Audit of fiduciary activities.

(a) *Annual audit.* At least once during each calendar year and not later than 15 months after the last audit, a national bank shall perform, through its audit committee, a suitable audit of all of its fiduciary activities, unless the bank adopts a continuous audit system in accordance with paragraph (b) of this section. The bank shall note the results of the audit (including all actions taken as a result of the audit) in the minutes of the board of directors.

(b) *Continuous audit.* In lieu of performing annual audits under paragraph (a) of this section, a national bank may adopt a continuous audit system under which the bank performs, through its audit committee, a discrete audit of each fiduciary activity (*i.e.*, on an activity-by-activity basis) at intervals appropriate for that activity. Thus, a bank may audit certain fiduciary activities at intervals greater or less than one year, as appropriate. A bank that adopts a continuous audit system shall note the results of all discrete audits performed since the last audit report (including all actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year and not later than 15 months after the last audit report.

(c) *Audit committee.* A national bank's audit committee may consist of a committee of the bank's directors or an audit committee of an affiliate of the bank. However, the national bank's audit committee must not include:

(i) Any officers of the bank who participate significantly in the administration of the bank's fiduciary activities or;

(ii) Any members of a fiduciary committee of the bank.

§ 9.10 Fiduciary funds awaiting investment or distribution.

(a) *In general.* A national bank shall not allow funds of a fiduciary account that are awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law.

(b) *Self-deposits*—(1) *In general.* Unless prohibited by applicable law, a national bank may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings, or another department of the bank. To the extent that the funds are not insured by the Federal Deposit Insurance Corporation, the bank shall secure them by setting aside collateral, under the control of appropriate fiduciary officers and employees, in accordance with paragraph (b)(2) of this section. The market value of the collateral set aside must at all times equal or exceed the amount of the uninsured fiduciary funds.

(2) *Acceptable collateral.* A national bank may satisfy the collateral requirement of paragraph (b)(1) of this section with any of the following:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(ii) Readily marketable securities that qualify as investment securities pursuant to 12 CFR part 1;

(iii) Readily marketable securities of the classes in which state banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under state law; and

(iv) Assets, including surety bonds, that qualify under applicable state law as appropriate security for deposits of fiduciary funds.

(c) *Affiliate deposits.* If consistent with applicable law, a national bank may deposit funds of a fiduciary account that are awaiting investment or

distribution with an affiliate insured depository institution. If consistent with applicable law, a national bank may secure a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution.

§ 9.11 Investment of fiduciary funds.

A national bank shall invest funds that it holds as fiduciary in a manner consistent with applicable law.

§ 9.12 Self-dealing and conflicts of interest.

(a) *Investments for fiduciary accounts*—(1) *In general.* Unless consistent with applicable law, a national bank shall not invest fiduciary funds in the stock or obligations of, or in assets acquired from: the bank or any of its directors, officers, or employees; affiliates of the bank or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank.

(2) *Additional securities investments.* If retention of stock or obligations of the bank or its affiliates is consistent with applicable law, the bank may:

(i) Exercise rights to purchase additional stock (or securities convertible into additional stock) when offered pro rata to stockholders; and

(ii) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or the receipt of a stock dividend resulting in fractional share holdings.

(b) *Loans, sales, or other transfers from fiduciary accounts*—(1) *In general.* A national bank shall not lend, sell, or otherwise transfer assets held in a fiduciary capacity to the bank or any of its directors, officers, or employees, or to affiliates of the bank or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank, unless:

(i) The transaction is consistent with applicable law;

(ii) Legal counsel advises the bank in writing that the bank has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the bank, upon the sale or transfer of assets, shall reimburse the fiduciary account in cash at the greater of book or market value of the assets;

(iii) As provided in § 9.18(b)(8)(iii) for defaulted fixed-income investments; or

(iv) Required in writing by the OCC.

(2) *Loans of funds held in trust.* Notwithstanding paragraph (b)(1) of this section, a national bank shall not lend to any of its directors, officers, or employees any funds held in trust, except with respect to the bank's own employee benefit plans in accordance with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)).

(c) *Loans to fiduciary accounts.* A national bank may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(d) *Sales between fiduciary accounts.* A national bank may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(e) *Loans between fiduciary accounts.* A national bank may make a loan between any of its fiduciary accounts if the transaction is authorized by the instrument creating the account from which the loan is made and is not prohibited by applicable law.

§ 9.13 Custody of fiduciary assets.

(a) *Control of fiduciary assets.* A national bank shall place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. A national bank may maintain the investments of a fiduciary account off-premises, if the bank maintains adequate safeguards and controls.

(b) *Separation of fiduciary assets.* A national bank shall keep the assets of fiduciary accounts separate from the assets of the bank. A national bank shall keep the assets of each fiduciary account separate from all other accounts or shall identify the investments as the property of a particular account, except as provided in § 9.18.

§ 9.14 Deposit of securities with state authorities.

(a) *In general.* If state law requires corporations acting in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts, then before a national bank acts as a private or court-appointed trustee in that state, it shall make a similar deposit with state authorities. If the state authorities refuse to accept the deposit, the bank shall deposit the securities with the Federal Reserve Bank of the district in which the national bank is located, to be held for the protection of private or court trusts to the same extent as if the securities had been deposited with state authorities.

(b) *Assets held in more than one state.* If a national bank administers trust assets in more than one state, the bank may compute the amount of deposit required for each state on the basis of trust assets that the bank administers from offices located in that state.

§ 9.15 Fiduciary compensation.

(a) *Compensation of bank.* If the amount of a national bank's compensation for acting in a fiduciary capacity is not set or governed by applicable law, the bank may charge a reasonable fee for its services.

(b) *Compensation of co-fiduciary officers and employees.* A national bank shall not permit any officer or employee to retain any compensation for acting as a co-fiduciary with the bank in the administration of a fiduciary account, except with the specific approval of the bank's board of directors.

§ 9.16 Receivership or voluntary liquidation of bank.

If the OCC appoints a receiver for a national bank, or if a national bank places itself in voluntary liquidation, the receiver or liquidating agent shall promptly close all fiduciary accounts to the extent practicable, in accordance with OCC instructions and the orders of the court having jurisdiction. The receiver or liquidating agent shall transfer all remaining fiduciary accounts to substitute fiduciaries.

§ 9.17 Surrender or revocation of fiduciary powers.

(a) *Surrender.* In accordance with 12 U.S.C. 92a(j), a national bank seeking to surrender its fiduciary powers shall file with the OCC a certified copy of the resolution of its board of directors evidencing that intent. If satisfied that the bank has been discharged from all fiduciary duties, the OCC will provide written notice that the bank is no longer authorized to exercise fiduciary powers.

(b) *Revocation.* If the OCC determines that a national bank has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, its fiduciary powers, the Comptroller may, in accordance with the provisions of 12 U.S.C. 92a(k), revoke the bank's fiduciary powers.

§ 9.18 Collective investment funds.

(a) *In general.* Where consistent with applicable law, a national bank may invest assets that it holds as fiduciary in the following collective investment funds:

(1) A fund maintained by the bank, or by one or more affiliate banks,[1]

[1] A fund established pursuant to § 9.18(a)(1) that includes moneys contributed by entities that are affiliates under 12 U.S.C. 221a(b), but are not members of the same affiliated group, as defined at 26 U.S.C. 1504, may fail to qualify for tax-exempt status under the Internal Revenue Code. See 26 U.S.C. 584.

exclusively for the collective investment and reinvestment of money contributed to the fund by the bank, or by one or more affiliate banks, in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts to minors act.

(2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from Federal income taxation under the Internal Revenue Code.

(i) A national bank may invest assets of retirement, pension, profit sharing, stock bonus or other trusts exempt from Federal income taxation and that the bank holds in its capacity as trustee in a collective investment fund established under paragraph (a)(1) or (a)(2) of this section.

(ii) A national bank may invest assets of retirement, pension, profit sharing, stock bonus or other employee benefit trusts exempt from Federal income taxation and that the bank holds in *any* capacity (including agent), in a collective investment fund established under paragraph (a)(2) of this section if the fund itself qualifies for exemption from Federal income taxation.

(b) *Requirements.* A national bank administering a collective investments fund authorized under paragraph (a) of this section shall comply with the following requirements:

(1) *Written plan.* The bank shall establish and maintain each collective investment fund in accordance with a written plan approved by a resolution of the bank's board of directors or by a committee thereof (Plan). The bank shall make a copy of the Plan available for public inspection at its main office during all banking hours, and shall provide a copy of the Plan to any person who requests it. The Plan must contain appropriate provisions, not inconsistent with this part, regarding the manner in which the bank will operate the fund, including provisions relating to:

(i) Investment powers and policies with respect to the fund;

(ii) Allocation of income, profits, and losses;

(iii) Fees and expenses that will be charged to the fund and to participating accounts;

(iv) Terms and conditions governing the admission and withdrawal of participating accounts;

(v) Audits of participating accounts;

(vi) Basis and method of valuing assets in the fund;

(vii) Expected frequency for income distribution to participating accounts;

(viii) Minimum frequency for valuation of fund assets;

(ix) Period following each valuation date during which the valuation must be made;

(x) Bases upon which the bank may terminate the fund; and

(xi) Any other matters necessary to define clearly the rights of participating accounts.

(2) *Fund management.* A bank administering a collective investment fund shall have exclusive management thereof, except as a prudent person might delegate responsibilities to others.[2]

(3) *Proportionate interests.* Each participating account in a collective investment fund must have a proportionate interest in all the fund's assets.

(4) *Valuation*—(i) *Frequency of valuation.* A bank administering a collective investment fund shall determine the value of the fund's assets at least once every three months. However, in the case of a fund that is invested primarily in real estate or other assets that are not readily marketable, the bank shall determine the value of the fund's assets at least once each year.

(ii) *Method of valuation*—(A) *In general.* Except as provided in paragraph (b)(4)(ii)(B) of this section, a bank shall value each fund asset at market value as of the date set for valuation, unless the bank cannot readily ascertain market value, in which case the bank shall use a fair value determined in good faith.

(B) *Short-term investment funds.* A bank may value a fund's assets on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the Plan requires the bank to:

(*1*) Invest at least 80 percent of the fund's assets in bonds, notes, or other evidences of indebtedness that are payable on demand (including variable amount notes), or that have a maturity date not exceeding 91 days from the date of purchase;

(*2*) Accrue on a straight-line basis the difference between the cost and anticipated principal receipt on maturity;

(*3*) Hold the fund's assets until maturity under usual circumstances; and

(*4*) Ensure that, after effecting admissions and withdrawals, at least 20 percent of the value of the remaining fund assets are cash, demand obligations, or assets that will mature on the fund's next business day.

(5) *Admission and withdrawal of accounts*—(i) *In general.* A bank administering a collective investment fund shall admit an account to or withdraw an account from the fund only on the basis of the valuation described in paragraph (b)(4) of this section.

(ii) *Prior request or notice.* A bank administering a collective investment fund may admit an account to or withdraw an account from a collective investment fund only if the bank has approved a request for or notice of intention of taking that action on or before the valuation date on which the admission or withdrawal is based. No requests or notices may be canceled or countermanded after the valuation date.

(iii) *Prior notice period for withdrawals from funds with assets not readily marketable.* A bank administering a collective investment fund described in paragraph (a)(2) of this section that is invested primarily in real estate or other assets that are not readily marketable, may require a prior notice period, not to exceed one year, for withdrawals.

(iv) *Method of distributions.* A bank administering a collective investment fund shall make distributions to accounts withdrawing from the fund in a manner consistent with applicable law.

(v) *Segregation of investments.* If an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal but the investment is not distributed ratably in kind, the bank shall segregate and administer it for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(6) *Audits and financial reports*—(i) *Annual audit.* At least once during each 12-month period, a bank administering a collective investment fund shall arrange for an audit of the collective investment fund by auditors responsible only to the board of directors of the bank.[3]

(ii) *Financial report.* At least once during each 12-month period, a bank administering a collective investment fund shall prepare a financial report of

[2] If a fund, the assets of which consist solely of Individual Retirement Accounts, Keogh Accounts, or other employee benefit accounts that are exempt from taxation, is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the fund will not be deemed in violation of paragraph (b)(2) of this section as a result of its compliance with section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)).

[3] If a fund, the assets of which consist solely of Individual Retirement Accounts, Keogh Accounts, or other employee benefit accounts that are exempt from taxation, is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the fund will not be deemed in violation of paragraph (b)(6)(i) of this section as a result of its compliance with section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)), if the bank has access to the audit reports of the fund.

the fund based on the audit required by paragraph (b)(6)(i) of this section. The report must disclose fees and expenses charged to the fund. This report must contain a list of investments in the fund showing the cost and current market value of each investment, and a statement covering the period after the previous report showing the following (organized by type of investment):

(A) Summaries of all purchases (with costs);

(B) Summaries of all sales (with profit or loss and any other investment changes);

(C) Income and disbursements; and

(D) An appropriate notation as to any investments in default.

(iii) *Limitation on representations.* A bank may include in the financial report a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. A bank shall not publish in the financial report any predictions or representations as to future results. In addition, with respect to funds described in paragraph (a)(1) of this section, a bank shall not publish the performance of funds other than those administered by the bank or its affiliates.

(iv) *Availability of the report.* A bank administering a collective investment fund shall provide a copy of the financial report, or shall provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The bank may provide a copy of the financial report to prospective customers. In addition, the bank shall provide a copy of the report upon request to any person for a reasonable charge.

(7) *Advertising prohibition for common trust funds.* A bank shall not advertise or publicize any fund authorized under paragraph (a)(1) of this section, except in connection with the advertisement of the general fiduciary services of the bank.

(8) *Self-dealing and conflicts of interest*—(i) *Bank interests.* A bank administering a collective investment fund shall not have an interest in that fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided in this paragraph, the bank shall not lend to, sell assets to, or purchase assets from a fund. The bank shall not invest fund assets in stock or obligations, including time or savings deposits, of the bank or any of its affiliates, except for funds awaiting investment or distribution. If, because of a creditor relationship or otherwise, the bank acquires an interest in a participating account, the participating account must be withdrawn on the next withdrawal date. However, a bank may invest assets that it holds as fiduciary for its own employees in a collective investment fund.

(ii) *Loans to participating accounts.* A bank administering a collective investment fund shall not make any loan on the security of a participant's interest in the fund. An unsecured advance to a fiduciary account participating in the fund until the time of the next valuation date does not constitute the acquisition of an interest in a participating account by the bank.

(iii) *Purchase of defaulted fixed-income investments.* A bank administering a collective investment fund may purchase for its own account any defaulted fixed-income investment held by the fund if, in the judgment of the bank, the cost of segregation of the investment is greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank elects to purchase a defaulted fixed-income investment, it shall do so at the greater of market value or the sum of cost, accrued unpaid interest, and penalty charges.

(9) *Mortgage reserve account*—(i) *In general.* A bank administering a collective investment fund may transfer to a reserve account up to 5 percent of the net income derived by the fund from mortgages held by the fund during any regular accounting period. The amount held in the reserve account must not exceed 1 percent of the outstanding principal amount of all mortgages held in the fund. The bank shall deduct the amount of the reserve account from the fund's assets in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(ii) *Charges against reserve account.* At the end of each accounting period, the bank shall charge all interest payments that are due but unpaid with respect to mortgages in the fund against the reserve account to the extent available, and shall credit the payments to income distributed to participating accounts. In the event of subsequent recovery of the payments by the fund, the bank shall credit the reserve account with the amounts recovered.

(10) *Fees and expenses*—(i) *Fund management fees.* A bank administering a collective investment fund may charge a fund management fee if the total fees charged to a participating account (including the fund management fee) does not exceed the total fees that the bank would have charged had it not invested assets of the account in the fund.

(ii) *Reasonable expenses.* A bank administering a collective investment fund may charge reasonable expenses incurred in operating the collective investment fund, to the extent not prohibited by applicable law. However, a bank shall absorb the expenses of establishing or reorganizing a collective investment fund.

(11) *Prohibition against certificates.* A bank administering a collective investment fund shall not issue any certificate or other document evidencing a direct or indirect interest in the fund.

(12) *Good faith mistakes.* No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund will be deemed to be a violation of this part if, promptly after the discovery of the mistake, the bank takes whatever action is practicable under the circumstances to remedy the mistake.

(c) *Other collective investments.* In addition to the collective investment funds authorized under paragraph (a) of this section, a national bank may invest assets that it holds as fiduciary, to the extent not prohibited by applicable law, as follows:

(1) *Bank fiduciary funds.* In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of those companies exclusively for the investment of funds held by corporate fiduciaries.

(2) *Single loans or obligations.* In the following loans or obligations, if the bank's only interest in the loans or obligations is its capacity as fiduciary:

(i) A single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or a single fixed amount security, obligation, or other property, either real, personal, or mixed, of a single issuer; or

(ii) A variable amount note of a borrower of prime credit, if the bank uses the note solely for investment of funds held in its fiduciary accounts.

(3) *Mini-funds.* In a fund maintained by the bank for the collective investment of cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, or custodian under a uniform gifts to minors act, that the bank considers to be too small to be invested separately to advantage. The total assets in the fund must not exceed $1,000,000, and the number of participating accounts must not exceed 100.

(4) *Trust funds of corporations and closely-related settlors.* In any

investment specifically authorized by the instrument creating the fiduciary account or a court order, in the case of trusts created by a corporation, including its affiliates and subsidiaries, or by several individual settlors who are closely related.

(5) *Special exemption funds.* In any other manner described by the bank in a written plan approved by the OCC. The written plan is deemed approved by the OCC 30 days after it receives the plan, unless the OCC notifies the bank that the OCC has disapproved the plan or is extending review beyond the 30-day period because the proposal raises issues that require additional information or additional time for analysis. The written plan must set forth:

(i) The reason that the proposed fund requires a special exemption;

(ii) The provisions of the proposed fund that are inconsistent with paragraphs (a) and (b) of this section;

(iii) The provisions of paragraph (b) of this section for which the bank seeks an exemption; and

(iv) The manner in which the proposed fund addresses the rights and interests of participating accounts.

§ 9.20 Transfer agents.

(a) The rules adopted by the Securities and Exchange Commission (SEC) pursuant section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2–1) apply to national bank transfer agents. References to the ''Commission'' are deemed to refer to the ''OCC.''

(b) The rules adopted by the SEC pursuant section 17A of the Securities Exchange Act of 1934 prescribing operational and reporting requirements for transfer agents (17 CFR 240.17Ac2–2, and 240.17Ad–1 through 240.17Ad–16) apply to national bank transfer agents.

PART 19—RULES OF PRACTICE AND PROCEDURE

2. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), and 3909; 15 U.S.C. 78(h), 78(i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; and 31 U.S.C. 330.

3. A new § 19.135 is added to subpart E to read as follows:

§ 19.135 Applications for stay or review of disciplinary actions imposed by registered clearing agencies.

(a) *Stays.* The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays of disciplinary sanctions or summary suspensions imposed by registered clearing agencies (17 CFR 240.19d–2) apply to applications by national banks. References to the ''Commission'' are deemed to refer to the ''OCC.''

(b) *Reviews.* The regulations adopted by the SEC pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for reviews of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by registered clearing agencies (17 CFR 240.19d–3(a)–(f)) apply to applications by national banks. References to the ''Commission'' are deemed to refer to the ''OCC.''

Dated: December 11, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–30971 Filed 12–20–95; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R–0908]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: The Board is soliciting comment on how the finance charge could more accurately reflect the cost of consumer credit. In particular, the Board is asking for the public's views on the feasibility of treating as finance charges all costs imposed by the creditor or payable by the consumer as an incident to the extension of credit. The Truth in Lending Act Amendments of 1995 direct the Board to submit a report to the Congress regarding these issues. Under present law, costs such as interest are part of the finance charge; other costs, including many associated with real estate-secured lending, are excluded from the finance charge. The Board is also required to address in its report abusive refinancing practices engaged in by creditors for the purpose of avoiding a consumer's rescission rights.

DATES: Comments must be received on or before February 9, 1996.

ADDRESSES: Comments should refer to Docket No. R–0908, and may be mailed to William W. Wiles, Secretary of the 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 E. Ahrens, Senior Attorney, or Sheilah Goodman, or Kurt Schumacher, 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 Devices for the Deaf, contact Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act Amendments of 1995 (1995 Amendments Act), Pub. L. 104–29, 109 Stat. 271, enacted into law on September 30, 1995, direct the Board to submit a report to the Congress concerning the use of finance charges to accurately reflect the cost of consumer credit. The Board must consider the feasibility of including in the finance charge all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the credit transaction—especially costs associated with real estate- or home-secured lending that are currently excluded from the finance charge under section 106 of the Truth in Lending Act. As contemplated by the Congress, perhaps only charges payable in a comparable cash transaction would continue to be excluded from the finance charge. The report must also address abusive refinancing practices engaged in by a creditor for the purpose of avoiding a consumer's rescission rights. The Board will submit its report to the Congress in early spring 1996, based on the comments of interested parties and on its own analysis.

II. Finance Charges

Definition

The Truth in Lending Act (15 U.S.C. 1601 et seq.) contains rules governing the disclosure of finance charges (Section 106). The act is implemented by the Board's Regulation Z (12 CFR part 226). Rules on finance charges are contained in Regulation Z § 226.4 and accompanying official staff interpretations. The finance charge is defined as the cost of consumer credit expressed as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. The term ''imposed'' is interpreted broadly, to include any cost charged by the creditor (unless otherwise excluded), including charges for optional services paid by the consumer. Examples of a finance charge include interest, points, and service or transaction fees.

The act excludes certain costs from the finance charge, such as charges payable in a comparable cash transaction and fees paid to third-party closing agents (unless the creditor requires the services provided or retains the fee). Many costs associated with loans secured by real estate or a principal dwelling are specifically excluded; examples are fees for appraisals, document preparation, title insurance, and pest inspections prior to loan closing. The regulation also excludes charges such as application fees (charged to all applicants), late payment fees, and most taxes.

Still other costs that are generally included in the finance charge may nevertheless be excluded. For example, the act provides that credit report fees are finance charges, but provides an exception for credit report fees associated with real estate- or home-secured loans. The act also excludes optional credit life insurance premiums and fees to record a security interest if the cost is disclosed to the consumer and meets other conditions.

Annual percentage rate

In addition to requiring disclosure of finance charges as a dollar amount, the act and regulation require creditors to disclose the cost of consumer credit as an annual percentage rate (APR). Creditors must disclose an APR for all types of consumer credit—installment loans (closed-end credit) and credit card accounts or home equity lines of credit (open-end plans). The APR for closed-end credit and open-end plans reflect finance charges, but the distinct nature of these products calls for differences in how the APR is calculated.

The APR for closed-end credit is based on the amounts borrowed by the consumer in relation to the amount and timing of payments to the creditor. It factors in interest and all other finance charges. Costs such as recording fees or title insurance fees may be disclosed, but are not a part of the finance charge and thus, are excluded from the APR calculation.

Under open-end plans such as a home equity line of credit, the creditor typically sets the maximum amount that can be borrowed at any time. The amount that will actually be borrowed by the consumer, however, is typically unknown when the credit plan is established. The APR stated in advertisements and account-opening disclosures reflects only the rate of interest that will be applied to any outstanding balance the consumer may have in the future. Additional costs—whether finance or other charges—are separately identified.

Consumers with outstanding balances receive an APR on periodic statements. That APR is based on the outstanding balance and certain finance charges imposed during the cycle. Some finance charges, such as points charged in connection with establishing a home equity plan or other fees to open or renew plans, would skew the APR for the billing cycle in which they are imposed. These types of finance charges are disclosed on periodic statements but are not figured in the APR.

Request for Comment

The Board requests comments on how the definition of the finance charge could be modified, if at all, to reflect the cost of consumer credit more accurately. The Congress directs the Board to make recommendations on any necessary statutory and regulatory changes. (1995 Amendments, Section 2(f).) The Board believes the scope of the study is limited to possible modifications to the definition of the finance charge.

The 1995 Amendments contain, for the most part, provisions affecting closed-end credit that is real estate- or home-secured. The Board believes that the scope of the report is intended to cover the treatment of costs as finance charges for *all* types of consumer credit, although a focus of the study will be on those fees associated with real estate lending that are currently excluded from the finance charge. For example, many costs associated with entering into home-secured loans are the same whether the credit is an installment loan or a line of credit. Similarly, certain application fees are excluded from the finance charge for all types of credit transactions, not just those affecting installment loans.

Comment is requested on the feasibility of including in the finance charge all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the credit transaction (other than costs imposed in comparable cash transactions), particularly costs associated with real estate- or home-secured credit that are currently excluded from the finance charge. For example, mortgage brokers fees are sometimes, but not always, a finance charge under present law: A new statutory provision categorizes all brokers fees paid by the consumer to the broker (or to the creditor for delivery to the broker) as finance charges, and will go into effect when the Board issues a final rule in 1996.

In assessing the feasibility of this approach, the Board must consider the implications of including charges imposed by third parties—settlement agents and others—that may not be within the creditor's knowledge or control. Comment is requested on compliance issues that would arise if the definition of the finance charge were expanded to include charges by third parties.

Treating all costs as a finance charge would, of course, simplify creditor compliance with the TILA and Regulation Z; it would reduce the potential for disclosure errors. The Board believes the study is, in part, a reaction to the spate of class action lawsuits that followed the court decision of *Rodash* v. *AIB Mortgage Company*. (16 F.3d 1142 (11th Cir. 1994)). In *Rodash*, the court found, among other TILA violations, that the creditor improperly excluded several fees from the finance charge calculation—totalling about $225. The court awarded civil money damages and allowed the consumer to rescind a $100,000 loan.

Including all costs in the finance charge, however, would also increase the APR disclosed for closed-end credit transactions—dramatically, in some cases. For example, the APR for home-secured loans would reflect closing costs such as appraisal fees, title insurance and the like. Including premiums for optional credit life insurance or for property insurance in the finance charge could also have a significant impact on the APR. The resulting APR for installment loans may seem distorted, particularly in relation to the APR disclosed for a comparable open-end product. For example, disclosures for a home-secured open-

end plan would include closing costs and insurance premiums as finance charges, but those fees would not be included in the APR stated in advertisements or account-opening disclosures, unless the current rules on calculating the APR are changed.

III. Abusive Refinancing Practices

The act and regulation allow consumers to cancel (or rescind) certain credit transactions secured by the consumer's principal dwelling. For example, the right of rescission applies if a consumer's principal dwelling is used to secure a loan financing home improvements or a child's education. Other loans secured by a consumer's principal dwelling are not rescindable, such as a loan for a business purpose.

A consumer's right to rescind a refinanced loan depends on both the creditor and amount of money involved. If the creditor refinancing the loan is the same creditor that initially extended the credit, consumers may rescind the refinancing only to the extent new monies are advanced. For example, if a consumer's principal dwelling secures a loan with a creditor and the consumer seeks to refinance an outstanding balance of $100,000 with the same creditor, the transaction is not rescindable. If the consumer obtains $25,000 in an additional advance, the refinancing could be rescinded up to the new advance of $25,000. If the consumer refinances the loan with a new creditor instead, the entire transaction is rescindable, whether or not new monies are advanced.

The Board's report must include recommendations, if any, for statutory or regulatory changes necessary to address abusive refinancing practices engaged in by a creditor for the purpose of avoiding a consumer's rescission rights. Comment is requested on the issue.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0908, 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 to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

By order of the Board of Governors of the Federal Reserve System, December 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30994 Filed 12–20–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–95–4]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received January 19, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No._____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 28376.

Petitioner: National Business Aircraft Association, Inc.

Regulations Affected: 14 CFR 91.501.

Description of Rulechange Sought: To add a new paragraph (e) to § 91.501 defining the word ''company'' as it is used in § 91.501(b)(5) and (6) to include a governmental agency and governmental corporation, as well as defining the words ''parent'' and ''subsidiary'' to include another governmental agency or governmental corporation within the same local, state, or federal jurisdiction. This amendment, if granted, would include government aircraft operations with corporate aircraft operations under part 91 and, therefore, allow government agencies to recover the costs of owning, operating, and maintaining their aircraft in certain circumstances.

Petitioner's Reason for the Request: The petitioner feels that the current regulatory scheme discriminates against government owners and operators of civil aircraft without justification.

[FR Doc. 95–31015 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANE–35]

Proposed Alteration of V–99, V–451 and J–62

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Federal Airways V–99, V–451 and Jet Route J–62 in Massachusetts and Connecticut. Specific portions of each of the airways and jet route are no longer necessary for navigation and would be revoked. Removing the obsolete segments would eliminate clutter on the aeronautical charts.

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

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 95–ANE–35, Federal Aviation

Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANE–35.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter VOR Federal Airways V–99, V–451 and Jet Route J–62. Specific portions of each of the airways and jet route are no longer necessary for navigation and would be revoked. The airspace designation for V–99 would be revoked between Hartford, CT, and the GRAYM intersection; V–451 would be revoked between Groton, CT, and the SEEDY intersection; and J–62 would be revoked east of the Nantucket, CT, Very High Frequency Omnidirectional Range (VOR). Removing the obsolete segments would eliminate clutter on the aeronautical charts. Jet Routes and Domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, 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 jet route and airways listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004–Jet Routes

* * * * *

J–62 [Revised]

From Robbinsville, NJ; to Nantucket, MA.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–99 [Revised]

From LaGuardia, NY, via INT LaGuardia 043° and Hartford, CT, 245° radials; Hartford.

* * * * *

V–451 [Revised]

From LaGuardia, NY; INT LaGuardia 063° and Hampton, NY, 289° radials; INT Hampton 289° and Calverton, NY, 044° radials; INT Calverton 044° and Groton, CT, 243° radials; Groton.

* * * * *

Issued in Washington, DC, on December 12, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–31100 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Rregulatory Commission

18 CFR Part 37

[Docket No. RM95–9–000]

Real-Time Information Networks and Standards of Conduct; Notice of Proposed Rulemaking

December 13, 1995

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to amend its regulations to add Part 37 containing rules establishing and governing real-time information networks (RINs) and prescribing standards of conduct. Under this proposal, each public utility (or its agent) that owns and/or controls facilities used for the transmission of electric energy in interstate commerce would be required to create and/or participate in a RIN that would provide wholesale transmission customers and potential wholesale transmission customers with electronically provided information on available wholesale transmission capacity, prices, and other information that will enable them to obtain open access non-discriminatory transmission service.

DATES: Written comments (an original and 14 paper copies and one copy on a computer diskette) must be received by the Commission by February 5, 1996.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (202) 208–1283

William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE. , Washington, DC 20426 (202) 208–0849

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE. , Washington, DC 20426 (202) 208–0321

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 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. 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 indefinitely in ASCII and Wordperfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Real-time Information Networks and Standards of Conduct, Docket No. RM95–9–000, Notice of Proposed Rulemaking Table of Contents.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend 18 CFR to add Part 37 containing rules establishing and governing real-time information networks (RINs) and standards of conduct. We are issuing this notice of proposed rulemaking in conjunction with our previously proposed Open Access rule.[1]

Under the proposed Open Access rule, public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce would be required to provide open access, non-discriminatory wholesale transmission services. To ensure non-discriminatory service, the proposed Open Access rule requires the functional unbundling of wholesale services. A public utility's uses of its own transmission system for the purpose of engaging in wholesale sales and purchases of electric energy must be separated from other activities and transmission services (including ancillary services) must be taken under filed transmission tariffs of general applicability.

To ensure this separation of service, the public utility must provide customers with timely access to transmission-related information. As we stated in the Open Access NOPR, ''functional unbundling means that the public utility, in order to provide non-discriminatory open access to transmission and ancillary services information, must rely upon the same electronic network that its transmission customers rely upon to obtain transmission information about its

[1] *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 and Supplemental Notice of Proposed Rulemaking, 60 FR 17662 (April 7, 1995), IV FERC Stats. & Regs. ¶ 32,514 (March 29, 1995) (hereinafter Open Access NOPR).

system when buying or selling power.''[2] The rule we propose today is designed to begin the process of achieving this objective.

Under the proposed rule, each public utility as defined in section 201(e) of the Federal Power Act, 16 U.S.C. 824(e) (1994), (or its agent) that owns and/or controls facilities used for the transmission of electric energy in interstate commerce would be required to develop and/or participate in a RIN. The proposed regulations, relying heavily on work already done by representatives of all segments of the electric power industry, describe what information must be provided on the RIN and how RINs are to be implemented and used.

The Commission also proposes a code of conduct that would apply to all public utility transmission providers. This code of conduct would require, among other matters, a separation of the utilities' transmission system operations and wholesale marketing functions, and would define permissible and impermissible contacts between employees that conduct wholesale generation marketing functions and employees that handle transmission system operations and reliability in the system control center or at other facilities or locations.

Within 60 days of publication of a final rule in the Federal Register, public utilities would be required to file with the Commission procedures that would enable customers and the Commission to determine that public utilities are in compliance with the RINs and code of conduct requirements.

II. Public Reporting Burden

The proposed rule would require transmission providers to establish and/or participate in a RIN, which would provide wholesale transmission users and potential wholesale transmission users with information by electronic means about transmission capacity and prices.

The following collection of information contained in this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202–208–1415. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Persons wishing to comment on the collections of information should direct their comments to the Desk Officer FERC, Office of Management and Budget, Room 3019NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile: 202–395–7285 or via the Internet at hillier__t@a1.eop.gov. Comments must be filed with the Office of Management and Budget within 60 days of publication of this document in the Federal Register.[3] A copy of any comments filed with the Office of Management and Budget also should be sent to the following address at the Commission: Federal Energy Regulatory Commission, Information Services Division, Room 41–l7, Washington, DC 20426. For further information, contact Michael Miller, 202–208–1415.

ESTIMATED ANNUAL BURDEN

Data Collection	No. of Respondents	No. of Responses	Hours per Response	Total annual hours
Reporting	84	1	8352	701,568
Recordkeeping	84	1	1670	140,280
Total Annual Hours for Collection (Reporting + Recordkeeping, (if appropriate))=841,848.				

Data collection costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

Annualized Capital/Startup Costs	$190,000
Annualized Costs (Operations & Maintenance)	$620,000
Total Annualized Costs	$810,000

Internal Review

The Commission has reviewed the proposed collection of information and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this notice of proposed rulemaking, for the collection, efficient management, and use of the required information. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the information burden estimate set forth above.[4]

III. Discussion

A. Background

On March 29, 1995, the Commission issued the Open Access NOPR (referenced above). In the Open Access NOPR, the Commission proposed rules that would require public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce to provide wholesale customers with transmission services comparable to those that they provide to themselves. The goal of the Open Access NOPR is to eliminate unduly discriminatory practices in the provision of wholesale transmission services in interstate commerce, and to facilitate the development of a competitive bulk power market.

The Open Access NOPR includes minimum terms and conditions that a public utility would have to include in its wholesale transmission tariffs, the types of transmission and related ancillary services it must offer to its customers, and a requirement that each public utility purchase wholesale transmission services for its new wholesale sales and purchases under the same transmission tariffs applicable to its wholesale customers. The Open Access NOPR also proposes that public utilities be allowed to recover certain

[2] Open Access NOPR at pp. 95–96.

[3] Although the full text of this document and Attachment 1 will be published in the Federal Register, the three appendices attached to this document (Appendix ''A''—the report of the ''what'' working group, Appendix ''B''—the report of the ''how'' working group, and Appendix ''C''—templates for upload and download of files and HTML displays) will not. The complete NOPR, including these appendices, is available for inspection and copying in the Commission's Public Reference Room and is accessible through the Commission Issuance Posting System (CIPS), an electronic bulletin board service providing access to Commission documents.

[4] *See* 44 U.S.C. 3506 (c).

legitimate and verifiable stranded costs associated with certain requirements contracts entered into prior to July 11, 1994.

We do not believe that open access non-discriminatory transmission services can be completely realized until we remove real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of these obstacles is unequal access to transmission information. In the Commission's view, transmission customers must have simultaneous access to the same information available to the Transmission Provider if truly non-discriminatory transmission services are to be a reality.

For this reason, when we issued the Open Access NOPR we also issued a notice of technical conference and request for comments (RIN Notice) that initiated this proceeding.[5] In the RIN Notice, the Commission announced that we were considering establishing RIN rules to effectuate the non-discrimination goals of the Open Access NOPR, and that we expected to require a RIN or other options to ensure that potential and actual transmission service customers will receive access to information.[6]

The Commission also announced its goal to establish uniform requirements for a RIN or other communications device at the same time that it adopts a rule requiring open access non-discriminatory transmission services. To accomplish this objective, the Commission invited interested persons to file comments and to participate in a technical conference, where they could make presentations on their positions. As a starting point, the Commission attached to the RIN Notice a Commission Staff paper identifying various RIN-related issues, and directed commenters to respond to the specific issues identified in the Staff paper and to provide their general comments on the RIN concept. The RIN Notice stated that the Commission expected to hold informal conferences, enlisting working groups to discuss any remaining issues, and that input from the technical conference and informal conferences would be the basis for subsequent procedures. The RIN Notice set a timetable to be followed, so that RIN requirements could be in place no later than the effective date of a final rule on open access.

Question 1. We seek comment on whether to continue to call the information network a ''RIN'' and, if not, what name should be used in its place.

In response to the RIN Notice, Kansas City Power & Light Company and Continental Power Exchange, Inc. sponsored a forum on EBBs held on March 31, 1995 in Kansas City. That forum was attended by more than 50 representatives of the 17 entities with open access filings (at that time) at the Commission, along with state regulators from Kansas and Missouri, and the Edison Electric Institute (EEI). A follow-up workshop on EBBs and RINs, sponsored by EEI, was held in Kansas City on April 19, 1995, and was attended by more than 150 people from all segments of the electric industry.

The North American Electric Reliability Council (NERC) and its nine regional councils offered to act as sponsor and neutral facilitator for the electric industry regarding electronic information systems to:

- Determine the information requirements of transmission users;
- Develop industry wide standards for reporting and using this information;
- Ensure that any information systems developed can build upon and be compatible with existing information systems in the industry; and
- Meet the Commission's goal of ensuring that potential purchasers of transmission services would receive access to information to enable them to obtain open access transmission service on a non-discriminatory basis.

The EEI workshop participants accepted NERC's offer to facilitate industry discussions on RINs. They also decided that, rather than awaiting Commission-drafted standards, they would try to develop an industry wide consensus, for submittal to the Commission, that would ensure fair and equal participation by both transmission customers and transmission providers and that would define the necessary information requirements and standards for a RIN.

Accordingly, on May 3–4, 1995, NERC called together a sub-group of workshop participants, representing all categories of transmission users and providers, to draft a model or ''straw man'' document that would outline a preliminary list of minimum information requirements for transmission users (*i.e.*, what information should be included on a RIN) and to reach agreement on what would constitute a fair and inclusive process for reaching consensus among transmission user groups on information requirements for a RIN. The resulting consensus document (Strawman 1) set the agenda for subsequent discussions at five regional workshops, held across the country, with participation by over 500 individuals from all segments of the electric power industry. The strawman group issued a revised document (Strawman 2), on June 2, 1995, based on those discussions. Strawman 2 was distributed to the participants in the regional workshops and to Commission Staff and served as the discussion point for a NERC-sponsored workshop held in Washington, DC on June 26–28, 1995. Although participants at this workshop were not able to reach consensus on numerous issues, they were able to identify the important unresolved issues and where efforts would need to be made to reach consensus.

Other groups also got involved early on with RIN-related issues. For example, the Western Group [7] began working in February 1995 (prior to issuance of the RIN Notice) on standards for the electronic information systems needed for implementation of comparable transmission service. WRTA members were joined in their discussions by members of the Southwest Regional Transmission Association (SWRTA), and the Northwest Regional Transmission Association (NWRTA). Together, WRTA, SWRTA, and NWRTA held a series of informal workshops to discuss tariff issues. Representatives of the Western Group also attended the April 19, 1995 meeting sponsored by EEI on national RIN standards and participated in the NERC process.

In all, 108 sets of comments were submitted to the Commission in response to the RIN Notice. Although the comments were nearly uniformly favorable to the RIN concept, the

[5] Real-Time Information Networks, 60 FR 17726 (April 7, 1995), IV FERC Stats. & Regs. ¶ 35,028 (March 29, 1995).

[6] In the RIN Notice, we chose the term ''Real-Time Information Network'' to describe the electronic information system envisioned by that notice. We chose that term because we wanted to distinguish the RIN from the electronic bulletin board (EBB) rules developed for the natural gas industry and because we wanted to emphasize that information would not be distributed to different users at different times. However, we did not mean to suggest that transmission providers would be precluded from taking adequate time to evaluate requests for service before responding to them. Perhaps a more precise term would have been a same-time information network.

In the two working group reports (discussed below) we are urged to change the name ''RIN'' to ''electronic information network'', by the ''what'' working group, and to ''transmission services information network'', by the ''how'' working group. Either of these designations would be equally acceptable. In the meantime, however, we are retaining the title ''RIN'' to make clear that this NOPR is proposing rules consistent with the ideas expressed in the RIN Notice.

[7] This group is composed of 17 major transmitting utilities, 3 non-utility suppliers, 10 transmission dependent utilities (or groups of utilities), and two state commissions, all located in the western United States and western Canada (the geographic area covered by the interconnected systems of the Western Systems Coordinating Council).

comments exposed many disagreements about what information should be contained on a RIN, what kind of a RIN system or systems should be required, what transactions should be covered, how terms should be defined, etc. However, most commenters understood that access to transmission information—by all parties at the same time—is essential to ensuring non-discriminatory open access transmission services.

The comments led to a technical conference on RINs (Technical Conference) held in Washington, DC on July 27 and 28, 1995. Panels at the Technical Conference discussed the status of industry efforts to date, industry standards for information systems, what information is needed on a RIN, how a RIN should be structured, what issues need to be resolved, and what steps should be taken next. In addition, demonstrations were presented on different transmission information systems and energy trading systems.

The participants in the July 27, 1995 conference agreed that the NERC-sponsored process, seeking to reach consensus and make recommendations to the Commission on what information should be included on a RIN, should continue, with NERC acting as a facilitator to promote participants reaching consensus and to prepare a ''what'' report to the Commission describing areas of consensus and non-consensus. The participants also agreed that another industry-sponsored working group should be created, with the Electric Power Research Institute (EPRI) acting as a facilitator to promote consensus on ''how'' to implement a system that would accomplish these objectives, and to prepare a ''how'' report to the Commission.

The NERC and EPRI representatives pledged to conduct an open process that would keep all interested persons informed of developments by the working groups and that would provide input from interested persons to working group members. Interested persons also were invited to attend open workshops sponsored by both working groups.

The ''what'' industry working group consisted of 26 members providing balanced representation from all segments of the electric power industry and included liaisons from the Commission, the ''how'' working group, NARUC, and Canadian utilities. Major industry trade groups sent observers. On October 9, 1995, the ''what'' working group made a draft report available for public review. On October 16, 1995, it submitted a final report to the Commission.

Following the Technical Conference, the ''how'' working group used a similar open and representative process that included participation by all industry and customer segments. On October 16, 1995, the ''how'' working group submitted to the Commission its report on how a RIN should be implemented.

The two working group reports address both the issues on which the participants were able to reach consensus and the issues on which no consensus was reached. Additionally, nine sets of comments were filed by working group participants who wished to provide a fuller explanation of their views on particular issues. We will address the issues raised by the working group reports below.

B. Overview

In what follows we discuss first, in section C below, what types of information must be posted on the RIN. The Commission proposes to adopt most of the technical parameters agreed to by the ''what'' working group. Our final rule would include general regulations governing who must develop and maintain RINs and what information must be posted on the RIN. Next, in section D below, we discuss the technical issues surrounding the implementation and use of RINs. We propose to set out the details of these requirements in a publication that would be entitled *Standardized Data Sets and Communication Protocols* and that would be issued as part of our final RIN rule. We propose to implement the RINS in two phases, with the first phase (Phase I) being completed when the Open Access rule goes into effect. In the discussion below, we address the specific, and at times very technical, issues considered respectively by the ''what'' and ''how'' working groups.

In section E below, we consider proposed standards of conduct governing the separation of transmission and generation functions. These standards are, we believe, a necessary adjunct to the RINs to ensure non-discriminatory access. The proposed standards are drawn from those that have been developed in our regulation of the natural gas industry. Last, in section F, we discuss issues of applicability for the proposed RINS and standards of conduct.

In setting out proposed requirements for implementing RINs, our primary objective is to establish regulations that ensure the accessibility of all information necessary to the full and fair implementation of the requirements of the Open Access NOPR. The problem, of course, is that we do not now know the specifics of the final Open Access rule. Yet, the information that will be required to be posted depends upon what is required or permitted under the final Open Access rule. For example, what must be posted on the RIN regarding the resale of transmission depends upon whether, in the final Open Access Rule, resales are permitted and, if so, under what conditions. Similarly, what information must be posted regarding transmission pricing discounting will depend upon whether, in the final Open Access Rule, discounting is permitted and, if so, under what conditions. These are just two examples, and are not inclusive, of RINs information that may change depending on what is in the final open access rule.

The final RIN rule will be designed to accommodate whatever final open access rules the Commission adopts and whatever industry structures evolve to meet those rules. In the interim, the RIN proposal follows the Proposed Open Access Rule. For example, it assumes that resales will be permitted [8] Similarly, the proposed RIN standards are designed to accommodate the so called ''contract path'' approach presently used in today's electricity markets. However, the Commission is open to other approaches that may develop in the future under an Open Access regime. Consequently, commenters should consider how the proposed RINS and standards of conduct regulations can be designed to meet these needs.

Question 2. What issues associated with RIN standards would have to be addressed if in an open access transmission environment the electric power industry moves to regional pricing, flow-based pricing, or other pricing models that depart from the ''contract path'' approach presently used for pricing electric transmission service? How in structuring RIN standards can the Commission provide for this contingency?

C. What Types of Information Need To Be Posted on a RIN

1. Summary of the ''What'' Working Group Report

The ''what'' working group report (What Report), represents a broad consensus of all segments of the electric utility industry. It summarizes the functional requirements for Real-Time Information Networks to facilitate open access to the transmission system.

[8] In designing proposed RINs regulations dealing with what may be required in the Final Open Access rule, our assumptions should in no way be taken as prejudging the various issues involved in the Open Access rulemaking.

a. Introduction

The What Report starts with a number of general assumptions and definitions. They include phasing of RIN implementation (Phases I and II), functional separation, accessibility to the RIN and definitions for ''transmission provider'', ''transmission customer'', and ''transmission provider's tariff.'' The What Report for the most part only addresses recommended Phase I requirements.

The What Report states that the RIN will include viewing tools enabling equivalent, basic access to the data base for all RIN users. However, many users will desire to customize their access to the data base and have the information presented in a variety of ways tailored to their individual needs. The RIN itself will not seek to satisfy this need. Instead, private software developers will be permitted and encouraged to develop and market customized viewing tools for the RIN.

The What Report lists five objectives of the RIN which are discussed in section C.2.(a) below. It recommends that, at least initially, the RIN be used as a transmission service reservation system, and not as a transmission scheduling system. Scheduling involves actually implementing a service on control area computers. Thus, the RIN is separate from system operations, and system reliability is handled separately. The decision to include transmission service scheduling on the RIN is left to later development.

Finally, the report discusses the requirement that information posted on the RIN will be date and time stamped and automatically stored in downloadable log files so that audits can be performed as required.

b. Scope and Definitions

The second section of the report deals with scope and definitions. The What Report makes a distinction between ''near-term'' and ''far-term'' transmission service requests. ''Near-term'' requests can be responded to quickly without additional work. ''Far-term'' requests require off-line studies to determine if the request for service can be accommodated.

The What Report also states that it does not seem possible to post availability for Network Integration Service Transmission on the RIN. Therefore, only the available transmission capability (ATC) for point-to-point transmission service would be posted on the RIN.

The What Report discusses the concept of ATC and gives some consideration to calculating it. Although the What Report recognizes that a consistent methodology is needed, no such methodology is proposed in the report.

The What Report discusses the concept of ''transmission paths'' for which ATC is to be reported and provides some guidelines for calculating ATC. It appears from the discussion in the What Report that ATC calculations over transmission paths would reflect the impacts of parallel flows. Although a contract path can be the basis for a commercial transmission transaction, such a transaction will use a combination of one or more transmission paths. A transmission path may be a single path or sequence of contiguous paths that form a continuous electrical connection. In alternating current systems, electricity will not flow solely on the contract path, but will flow on the entire transmission system of the interconnection in accordance with the laws of physics. Transmission Providers are urged to develop regionally accepted methods of attributing all contributions of loading to each transmission path including the effects of the real flow contribution of all transactions.

A major concern for the ''what'' working group (What Group) is over potential differences between the ATC posted on the RIN and the capability actually available when requested. The What Report points out that ATC calculations are only engineering estimates. There is no guarantee that they are correct. It states that ''[t]he amount of ATC posted shall be that amount that the Responsible Party expects, in good faith, to be available on a specific interface or Path in a specific direction, based on engineering analysis and other information that is available to the Responsible Party at the time of the posting.'' [9] Also, conditions may change between the time the ATC is calculated and when service is requested.

Under the What Group's proposal, the posting of ATC is not to be required until a business need arises for a transmission path. ''A 'business need' is signified by a request from a Transmission Customer concerning information or a reservation on a Path which has the potential to be constrained.'' [10] The What Report proposes two new attributes for transmission service to replace the terms ''firm'' and ''non-firm'' that are believed to be causing confusion as to the basic nature of transmission services. The new attributes are recallability and curtailability. All transmission service is curtailable. Curtailment is made only in cases ''where system reliability is threatened and/or emergency conditions exist.'' [11] Recallability is ''the right of a Transmission Provider to interrupt all or part of a transmission service for any reason that is not unduly discriminatory * * * .'' [12] The What Report states that recallability distinguishes between firm and non-firm service. According to the What Report, firm service is not recallable.

The What Report defines a standard set of attributes for describing transmission products on the RIN.

The scope and definitions section concludes with discussions of several areas of non-consensus. The What Group could not agree on the following: whether and how to post information about ancillary services on the RIN; whether transmission customers not using transmission capability that they reserve must make it available to others; whether to post all discounts or only those provided to affiliates; and whether generator cost and status information to verify redispatch/opportunity cost charges must be available on the RIN.

c. Posting Transaction Information

The Posting Transaction Information section discusses four major types of information that are to be posted on the RIN:

1. Available Transmission Capability Information;

2. Transmission Providers' Product Offerings and Prices;

3. Specific Transmission Service Requests; and

4. Informal Transmission Communications.

The What Report itemizes the information that should be posted in each of these areas. A table identifies who is responsible for posting what on the RIN. The What Group was unable to reach consensus on whether to require the posting of additional information beyond ATC. Some believe that additional information is needed as a safeguard against anti-competitive behavior and provides valuable information about transmission constraints. This information includes the run status of generators that have a significant impact on ATC, information about constrained transmission lines, and the identity and status of facilities causing curtailments. Others believe that this additional information is unnecessary and burdensome. This

[9] What Report at 8.

[10] What Report at 10.

[11] What Report at 15.

[12] What Report at 14.

information also is believed to be commercially sensitive.

A second area of non-consensus was whether individual transmission requests and responses should be made known only to the Transmission Customer making the request, the Transmission Provider to whom the request was made and, to the extent necessary, the affected control area operators and/or security centers *or* to all users of the RIN on a same-time basis. Some argue that this information is commercially sensitive and should be limited just to the parties in a transaction. Others believe that full disclosure is important to safeguard against potential anti-competitive behavior. A compromise was proposed, but not agreed to, to delay release of this information for a certain time.

2. Discussion

The What Group assumed the task of developing recommended requirements for the information to be posted on a RIN that would meet the industry's need for customer access to information about wholesale transmission services. In the text that follows, we will discuss these recommendations and will identify those recommendations that at this stage we reject (as previously noted, further background is provided by the complete What Report, attached to this NOPR as Appendix ''A''). We also will discuss certain issues not addressed by the What Group.

a. RIN Objectives

The Commission proposes to modify slightly the five objectives listed in the What Report. The changes are intended to expand and better define the objectives. The revised objectives are:

1. Allow Transmission Customers to make requests for transmission services offered by Transmission Providers and the secondary market;

2. Allow Transmission Customers to view and download in standard formats, using standard protocols, necessary information regarding the transmission system to enable prudent business decision making;

3. Provide a mechanism for posting, viewing, uploading and downloading of information between customers and providers regarding available products and desired services;

4. Enable all Transmission Customers to clearly identify the extent to which their transmission service requests and/or schedules were denied or curtailed and how their treatment compares to that of their competitors; and

5. Allow Transmission Customers to access in electronic format information supporting ATC calculations and historical transmission service requests and schedules for various audit purposes.

The What Report states that ''[i]n instances where requests are denied or transactions are curtailed, the RIN should provide a mechanism for Transmission Providers to communicate to Transmission Customers (1) the reason those transactions could not be accommodated and (2) the options, if any, for adjusting operation of the system to increase transfer capability in order to accommodate those transactions.'' [13] The Commission wishes to clarify that since scheduling and the curtailment of schedules will not be done through the RIN initially, this curtailment information would be for information purposes only.

b. ATC for Network Integration Service

The What Report states that it is not possible to post the availability of Network Integration Service Transmission on a RIN. The Commission recognizes that before-the-fact measurement of the availability of network transmission service is difficult. Nonetheless, the Commission believes that it is important to give potential network customers an easy-to-understand indicator of service availability (*e.g.*, in MWs), in addition to power flow data and other studies used by utilities to support the calculation of ATC.

Question 3. The Commission requests comments on how best to post the availability of network transmission service on the RIN. Should Transmission Providers be required to post conservative estimates as a preliminary matter that could be improved with additional study? Is there an alternative service concept that is more suitable to measurement than the current version of network service?

As discussed in section C.2.(o) below, information supporting ''point-to-point'' service ATC calculations is required to be available for download. This information should help potential network customers assess the availability of network service capability.

c. ATC Calculation Methodology

The What Group notes that the proposed Open Access rule requires that the utility ''describe the method used to estimate ATC in sufficient detail to allow others to do the same analysis.'' [14] However, the proposed Open Access rule does not propose a methodology for calculating ATC. The What Report contains some useful guidelines for calculating ATC/Total Transmission Capability (TTC), but does not present specific methodologies.

In calculating ATC, public utilities will need to reserve enough capacity to ensure the reliable operation of the transmission system. Thus, the Transmission Provider (or its designated agent) will need to calculate the additional transfer capability that is available without violating reliability limits. Because of uncertainties in system conditions and utilities' reliance on interconnections to provide generation reserves during emergencies, the Transmission Provider must calculate an appropriate transmission margin. Transmission margin calculations should be based on the published standards, criteria and guides, and operating experience of the individual Transmission Provider (as filed with FERC as part of FERC Form 715 and as filed in transmission tariffs). These calculations must be consistent with industry standards, and these standards must be available for review on the RIN.

The Commission expects that an ATC/TTC calculation methodology can be developed on a consistent, industry-wide basis and encourages efforts to do so. We understand that some of the details may need to differ to reflect regional or utility- specific situations. Transmission Providers are expected to use prudent utility practice to determine ATC. The Commission understands that utilities have historically responded to requests for transmission service using prudent utility practice to determine if sufficient capacity is available to accommodate the request. These practices vary by region and even by utility. Determination of ATC has been made with computer software with a level of complexity that varies from one Transmission Provider to another or with simple formulas or graphical tools (nomograms) created with a mixture of engineering analysis and engineering judgment. The Commission requires the use of the best tools for determining ATC available to the Transmission Provider at the time. Our requirement to provide data and methods on the RIN is to be understood in this context; it may require, for example, posting of the nomograms, the data applied to them, a description of the procedure for applying the data to the nomogram, and an explanation of how the nomogram is derived.

However, the Transmission Provider must strictly adhere to the limits imposed by the resulting ATC determination in its own use of transmission. It must also provide adequate data for the Commission and other industry participants to monitor

[13] What Report at 6.

[14] What Report at 121.

any potential violations of the ATC limit by the Transmission Provider. Further, if the Transmission Provider revises its ATC calculation for any time period, the new availability of transmission capacity must be posted on the RIN in a manner that allows all transmission customers an equal opportunity to apply for its use.

The Commission urges Transmission Providers to improve and coordinate methods of estimating ATC. This will improve the efficiency of capacity utilization by all parties, including the Transmission Provider itself, while maintaining system reliability. We expect that such improved methods and prudent utility practice in the future will require cooperative regional calculation of ATC by all Transmission Providers in a region. We believe that all Transmission Providers should take the same approach to calculating ATC/TTC and use the same basic methodology.

Question 4. The Commission requests comment on how to develop a consistent, industry-wide method of calculating ATC/TTC.

d. Provisions for Unscheduled Flows

The What Report states that ''[a]ppropriate provision must be made to properly account for ''unscheduled flow'' through each Path resulting from each known transaction.'' [15] This should not be interpreted as making the requirements in this proposed rulemaking depend on resolution of this issue.

e. Paths for Which ATC Is Not Posted

The What Report states that ATC should be posted for paths as business needs arise. Some Paths are minor ties between utilities or control areas for which transfer capability calculations have not yet been performed and on which no constraint is anticipated because of the lack of commercial activity. A ''business need'' is defined, in part, by a transmission customer requesting information about a path.

The business need limitation is intended to limit the number of paths for which ATC must be posted. However, it is not clear that it does. For example, the Open Access rulemaking proposes that Transmission Providers must take wholesale transmission service under their own tariff. This makes them transmission customers. Any wholesale trade they do over these minor ties would appear to trigger the ''business need'' requirement for ATC posting.

Another approach to limiting the burden of ATC calculations is to allow Transmission Providers to adjust the amount of effort put into calculating ATC and the frequency of recalculating ATC based on the level of commercial interest in a path and how constrained the path is over time. For paths that are never constrained because of the lack of commercial activity, a rough estimate of capability could be posted and could be updated rarely. For constrained paths, a much more accurate calculation of capability is needed and it should be updated frequently.

Question 5. The Commission requests comments on ways to minimize the burden of ATC calculations, while ensuring that wholesale transmission customers have the information they need.

f. Differences in ATCs

Because parties on either side of an interface each may use different engineering assumptions, they may calculate different ATC values. The What Report says that the lower ATC must be used. The Commission expects that differences in ATCs will be small and will narrow over time as Transmission Providers work to develop consistent methods of calculating ATC.

g. Format for Transmission Tariffs

The Commission agrees with the recommendation of the What Group that providers must provide downloadable files of their complete tariffs on the RIN. However, the What Report says that the format of these files should be one generally accepted by all utilities in the region. The issue of the format for the transmission tariffs will be addressed in the Open Access rule. This format would also be the format for tariffs available on the RIN.

Question 6. The Commission requests comment on a standard format for electronic submission of transmission tariffs to the Commission.

h. Posting Requirements for Recallability and Curtailability

The What Report states that ''[o]ther elements of Recallable service which will be posted on an EIN include: permissible reasons for recall, recall procedures, reinstatement provisions and placement in the request queue as applicable.'' [16] Because the permissible reasons for recall, recall procedures, and reinstatement provisions are defined in the tariff and the tariff is available for download on the RIN, they do not need to be posted separately.

Similarly, the report says ''curtailment information which will be posted on the RIN as part of the product definition includes: permissible reasons for curtailment, notice required, curtailment procedures, and curtailment priority relative to other classes and other customers in the same class if necessary due to FERC curtailment queuing policy.'' [17] The Commission proposes that if the permissible reasons for curtailment, notice required, curtailment procedures, and curtailment priority are defined in the tariff and the tariff is available for download on the RIN, they do not need to be posted separately.

i. Communicating Curtailments and Denials of Requests for Service

The Commission proposes that when requests for service are denied, or when transactions are curtailed, Transmission Providers must communicate to transmission customers, through a mechanism that they must install into the RIN: (1) The reason(s) that the transaction(s) could not be accommodated; and (2) the available options, if any, for adjusting the operation of the Transmission Provider's system to increase transfer capability in order to accommodate the transaction(s).

Question 7. The Commission requests comments on what information about curtailments and denials of requests for service should be communicated on a RIN.

Question 8. What specifications would be needed for information about curtailments and denials of requests for service to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files? [18]

j. Posting Information About Ancillary Services

The What Group was unable to define requirements for the posting of information about ancillary services. Ancillary services are those services necessary to support the transmission of electric power from seller to purchaser at wholesale given the obligations of control areas and transmitting utilities within those control areas to maintain reliable operations of the interconnected transmission system. Basic wholesale transmission service without ancillary services may be of little or no value to prospective customers. A variety of ancillary services is needed in conjunction with providing basic wholesale transmission service to a customer. The following six ancillary services are identified in the Open Access NOPR: [19]

1. Loss Compensation Service;
2. Load Following Service;
3. System Protection Service;

[15] What Report at 8.

[16] What Report at 14.

[17] What Report at 15.

[18] HTLM stands for Hyper Text Markup Language.

[19] 60 FR at 17683–85.

4. Energy Imbalance Service;
5. Reactive Power/Voltage Control Service; and
6. Scheduling and Dispatching Service.

The Commission proposes that the Transmission Provider post offers for ancillary services on the RIN. Other entities offering the same ancillary services shall have a comparable right to post offers on the RIN.

Question 9. The Commission requests comment on where on the RIN offers by other entities to provide ancillary service should be placed. The What Report states that these offers should be posted in the ''Informal Transmission Communications'' section of the RIN. Would this place third-party providers at a disadvantage relative to the Transmission Provider?

The Commission proposes that entities that post offers to provide ancillary services on the RIN should pay the costs associated with posting this information.

Question 10. The Commission requests comments on how to determine the costs associated with posting ancillary services on the RIN.

Question 11. With regard to information about offers to provide ancillary services provided by an entity other than the Transmission Provider, what specifications would be needed for this information to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

The following information about ancillary services is important to wholesale transmission users and should be posted on the RIN:

- Ancillary services that are available from the Transmission Provider;
- Ancillary services that may be provided by the transmission customer or third parties;
- Price of each ancillary service;
- Which ancillary services, if any, are bundled with transmission service;
- Paths that the ancillary services information pertains to;
- Deviation band, if any;
- Whether the rates for any specific ancillary service would change if taken in combination with any other ancillary service, such as operating reserve and load following;
- Whether any technical limitations exist on who could provide specific ancillary services;
- Whether the rights of ancillary services are reassignable; and
- Identity of third party if ancillary services are being procured from a third party.

Question 12. The Commission requests comment on whether there is any additional information needed about ancillary services that is not included in the list. Is any information on the list not needed?

Although the ancillary service information on the RIN should be the most current information available to the Transmission Provider, the information on ancillary services will not change as frequently as the information on the capability availability. However, there is definitely a need to update ancillary services information on RIN on an ongoing basis.

Question 13. The Commission requests comment on how often ancillary services information should be updated.

Ancillary services information should be posted for each transmission path of the Transmission Provider for which ATC is posted. If there are exceptions to the general applicability of the ancillary services posting requirements because of technical limitations on a specific interface, it should be so stated.

k. Must Transmission Customers Resell Unused Capability?

The What Report raised the question of whether Transmission Customers should be required to make available to other wholesale customers unused transmission capability to which they have rights. This issue is not a RINs issue and will be addressed in the Open Access rule.

l. Posting Information About Resales

Although the What Report states that a Transmission Customer should be able to post its transmission capability rights for resale, it does not say where resale offers are to be posted on the RIN. This issue is addressed in section D.2(g)iv below.

m. Mechanism for Discounting Transmission Service Rates

The What Report raises a question about whether all transmission rate discounts should be posted on the RIN on the basis that a competitive market can be achieved only through non-discriminatory discounting. An alternative posed in the What Report is to post only discounts that a Transmission Provider provides to itself or its affiliates. This is to police self-dealing and affiliate favoritism which are not an issue in other transactions. It is important to distinguish between an offer of a discount and a discount already given. The Commission is proposing, in the proposed standards of conduct, to require a Transmission Provider that offers any discount to itself or to its merchant function or an affiliate to offer, at the same time, on the RIN, comparable discounts for similar service to all Transmission Customers. As to discounts that the Transmission Provider has agreed to give to any Transmission Customer (affiliated or unaffiliated), the Commission is proposing that these discounts must be posted on the RIN within 24 hours after the agreement is entered into (measured from when ATC is adjusted in response to the agreement), and that they remain posted for 30 days.

Question 14. The Commission seeks comment on whether all transmission discounts should be posted on the RIN, or only those provided to the Transmission Provider or its affiliates. If discounts are to be posted, when should this be done? Also, commenters should address whether requiring the Transmission Provider to offer ''comparable discounts for similar service to all transmission customers'' is necessary and/or sufficient to prevent unduly discriminatory pricing practices.

The Commission proposes that the information about discounts to affiliates should be posted on the RIN using HTML displays and as files that are available for download.

Question 15. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

n. Discussion of Generation Information Related To Redispatch/Opportunity Costs

Opportunity or redispatch costs are meant to compensate a party that gives up its right to wholesale transmission service so that another party can take service. The opportunity/redispatch costs associated with increasing the ATC of a constrained Transmission Path will depend upon the time, duration and nature of the requested transmission use because of the dynamics of system loads, economic dispatch, outages, loop flow, the types of generation resources involved, the availability and cost of energy storage, and other operating conditions expected during the time of use. The What Report raises the issue of whether the ability of the Transmission Provider to impose these costs on the Transmission Customer requires the posting of generator run status and cost information on the RIN.

Transmission Providers may charge only for legitimate and verifiable opportunity/redispatch costs. Information needed to verify these costs is required to be provided to the Transmission Customer charged on request. This information is not required to be posted on the RIN.

o. Discussion of Providing Additional Information Beyond ATC

The proposed rules on Open Access state that ''[t]he utility must make all data used in calculating the ATC

publicly available.'' [20] This information must be available for download on the RIN.

Question 16. The Commission requests comments on how the data used in calculating ATC should be formatted. Should it be in free form text, predefined tables, or comma delimited ASCII files? If in free form text, should it be in plain ASCII text or in a word processor format, such as WordPerfect or Word?

Question 17. The Commission requests comments on what is the appropriate time delay for making supporting information on ATC available. Should the Commission require specific formats for ATC supporting data? If so, what should the formats be?

Near-Term Transmission Information

The What Report provides arguments for and against providing additional information beyond ATC on the RIN. Those entities who are against providing additional information argue that this information is of little practical use, sufficiently voluminous to substantially reduce performance of the RIN, and burdensome to provide. They further argue that some of this information is competitive data. Those entities who are in favor of providing additional information beyond ATC on the RIN argue that the additional information will increase the confidence of transmission customers in the validity of the posted ATC and that this information will help the transmission customers anticipate with greater certainty whether to attempt to request and schedule resources that may be subject to curtailment due to projected loading trends on certain system components.

The Commission believes that the issue of customer confidence can be addressed through audits of posted ATC values or by raising the issue at regional forums or filing a complaint with the Commission. However, the Commission also believes that transmission customers should have as much pertinent information available as will enable them to make informed decisions about the relative quality of wholesale transmission services they intend to request and purchase.

The Commission therefore proposes to require that Transmission Providers post information about those system elements that have a direct and significant impact on ATC. Such elements could include generators, transmission lines, phase shifters, series and shunt capacitors, static VAR compensators, special protection systems or remedial action schemes, etc. In addition, the Commission proposes to require the posting of actual path loadings in addition to the path schedules.

Question 18. To keep the amount of information on the RIN manageable, the Commission requests comment on whether it is sufficient to provide information only about planned outages and return dates (for both planned and forced outages) for those system elements deemed to have a direct and significant impact on ATC and whether posting this information on the RIN would cause any confidentiality concerns.

Question 19. Since many system elements can impact the ATC of a path, how should ''significant and direct impact'' be defined? Is it acceptable to limit the additional information to those system elements for which nomograms, derating tables, and operating guides have been developed?

Question 20. Are there any difficulties, technical or otherwise, associated with posting actual path flows on the RIN?

The ATC of some transmission paths is a function of run status and/or megawatt output of certain generators. For example, the Southern California Import Transmission Nomogram is affected by the run status of units in the Palo Verde Generation Complex. When one or more of the Palo Verde units are not on line, the nomogram is reduced by several hundred megawatts.[21]

Question 21. In cases where ATC of a path is a function of run status of one or more generators, is it sufficient to post the expected amount and date of changes to ATC on the RIN, corresponding to the planned outage or return dates of generators?

Question 22. If operating guides, nomograms, operating studies, and similar information are to be made available on the RIN for download, would it be logical to expect that transmission customers will be able to deduce the run status of those generators which significantly and directly impact ATC by observing the changes to ATC?

Far-Term Transmission Information

The What Report proposes that for ''far-term'' transmission service (over one year), firm service (non-recallable) ATC should be posted ''seasonal[ly], by year, for years 1–10 (as available).'' [22] The caveat ''as available'' suggests that the What Group does not want utilities to have to perform additional transmission studies to calculate ''far-term'' ATCs beyond those done for normal planning and special requests.

The Commission agrees with this. However, we find the ''as available'' requirement vague. It appears to leave the posting of this information to the discretion of the Transmission Provider. For clarity, the Commission proposes to require that any planning or specifically requested studies of the transmission network performed by the Transmission Provider be provided on the RIN on a same-time basis. This would include only those parts of customer-specific interconnection studies that relate to network impacts.

Question 23. The Commission requests comments on how transmission studies should be formatted for download from the RIN. Should they be in free form ASCII text, or in a word processor format, such as WordPerfect or Word?

p. Requested Start and End Times/Dates

In the section in the What Report on ''Information Provided by Transmission Customer in Requesting Service'', under ''duration'' the report states that ''[t]his must correspond to full clock hour periods.'' [23] The Commission proposes to enhance flexibility by requiring instead that the duration must be a specific time as stated in the Transmission Provider's tariff.

q. Transaction Anonymity

The What Report raises a question about whether individual transmission requests and responses should be made known only to the Transmission Customer making the request, the Transmission Provider to whom the request is made and, to the extent necessary, the affected control area operators and/or security centers, or to all users of the RIN on a same-time basis. The Commission proposes to restrict information about the request and response process, while it is ongoing, to those parties directly involved.

We believe that this procedure will be adequate because we are proposing standards of conduct that would require Transmission Providers to separate the functions of their marketing employees and their system operations employees and that would restrict access by wholesale marketing employees to information available on the RIN. Information about a completed request and response process should be recorded in the audit file.

r. Auditing Transmission Service Information

The Commission proposes that RIN audit log files [24] must be downloadable from the RIN in a standard format and must be retained on a rolling basis for three years from entry on the RIN.

The Commission notes that transmission transaction prices are to be

[20] What Report at 121.

[21] A nomogram defines the interactive relationship of the transfer capability of a transmission path to other system conditions, especially power flows on one or more other transmission paths.

[22] What Report at 24.

[23] What Report at 26.

[24] *See* What Report at 31.

included in the information in the audit file proposed in the What Report.[25] We do not consider price information concerning cost-based transmission services to be commercially sensitive. With respect to information concerning negotiations on transmission requests, we propose that such information not be posted unless an agreement to provide the transmission is reached.[26] This information is to be available only in the audit file. In addition, if an agreement is reached, we propose that the identity of parties to transmission transactions be masked until a standard release period elapses. This release period should be a standard period after which it is commonly recognized that most information is no longer commercially sensitive. The Commission proposes that a reasonable standard release period is 30 days after the date when the Transmission Provider's ATC was adjusted in response to the transaction; after that date all transaction data will be made available.

Question 24. The Commission requests comment on what information should be considered commercially sensitive, the 30-day release period proposal, and on how and when commercially sensitive information should be released to concerned parties before the standard release period. Should affiliated transactions be treated differently?

D. Technical Issues Concerning the Development and Implementation of RINS

1. Summary of the ''How'' Working Group Report

After a review of the process used by the ''how'' working group (How Group) in formulating its views, and after consideration of the Group's efforts to invite input from a broad spectrum of industry segments, the Commission is satisfied that the How Group conducted its process in an inclusive and open manner. The How Group report (How Report) represents a broad agreement among all segments of the electric power industry. It presents the agreed minimum requirements for computer systems and associated communications facilities needed by public utilities to provide comparable access to transmission and ancillary services information by all wholesale transmission users.[27]

The How Group proposes a two-phase approach. It believes that the Phase I implementation provides the information needed for the Commission's open access program and works well enough to communicate this information to customers. Under the How Group proposal, RINs would become fully functional in Phase II. The How Report recommends that Phase II requirements be implemented 24 months after the effective date of the final rule establishing Phase I RIN requirements.

a. Phase I Recommendations

The How Group proposes that the required transmission service information be posted on RINs operated by the transmission-owning public utility, jointly with other utilities, or by a third party.[28] Each RIN implementation, whether on behalf of a single entity or a group of utilities, is referred to as a Node. A RIN operated jointly by several utilities would be considered one Node. RIN Nodes must be accessible through the Internet. By connecting each Node through the Internet, transmission service information from each utility becomes part of a network. With a single Internet connection, customers would be able to access information from any utility and would even be able to display information from several Nodes at the same time.[29]

Nodes must support the use of Internet tools. These inexpensive, widely available, and well-tested tools will permit customers to access RIN information easily and to download [30] it to available desk-top database programs, spreadsheets, and other applications.[31] Customers would also be able to upload [32] information to RIN Nodes. The specific tools for doing so are described in Appendix B.

RIN users would access Nodes using World Wide Web (WWW) browsers.[33] Each Node would display information using the HTML protocol required by World Wide Web browsers. Screen displays would consist of a series of pages that may be viewed by customers without requiring them to download the pages.[34] Under the standards that will accompany issuance of a final rule on RINs, the information on each page, but not the actual displays, must be standardized. Information would also be required to be made available for downloading, in a standardized ASCII [35] format, using the Internet's File Transfer Protocol (FTP).

In Phase I, customers would be able to use the RIN to purchase transmission from public utilities. They would be able to request capacity either by completing a standardized form contained in an on-line HTML page or by uploading a filled-out form using FTP.[36] Customers who want to resell transmission capacity would upload (post) the relevant information to the same RIN Node used by the primary provider from whom they purchased the ATC.[37] Customers would also be able to upload Want Ads containing such information as requests to purchase transmission capacity.[38]

In Phase I, transmission-owning public utilities may, but would not be required to, provide private connections at the request of a customer. These connections could include leased-lines or connections to a private network. These connections would have to use the same Internet tools as are required for the Internet connection.[39] Customers would pay for the cost of the connections. If a connection is made for one customer, the same type of private connection must be made available to all customers in a comparable manner. In Phase II, utilities would be *required* to provide these connections.

The How Report proposes that utilities may provide value-added services for a fee on a fair and non-discriminatory basis. Such services would include notifying customers of changes in available capacity, beyond simply posting a notice of the change.[40]

The How Group developed a model of the information requirements that the What Group identified as needed for comparable access. For Phase I, the model specifies the information that must be available at each RIN Node, how the information may be requested and the layout of the information received by customers. Customers would be limited to obtaining

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[25] *See* What Report at 31–32.

[26] An exception would be where the Transmission Provider offers discounts to its merchant function or an affiliate. As noted elsewhere, such information would need to be posted regardless of whether an agreement to provide transmission was reached.

[27] The version of this report attached to this proposal intentionally omits Appendix C (Workshop Participants), Appendix D (Survey Questionnaire and Results), and Appendix F (Correspondence with ''What'' Working Group). The How Report, in its entirety, is posted on CIPS.

[28] How Report at § 2.4.1 (a).

[29] How Report at § 2.4.1 (f).

[30] Download refers to the transfer of a file from a RIN Node to the user's computer system.

[31] How Report at § 2.4.1 (c).

[32] This is accomplished by transferring a file from the user's computer system to a RIN Node.

[33] The World Wide Web is a system of computer resources that are accessed through the Internet.

A Browser is a computer program for retrieving and reading hypermedia documents from the WWW. A hypermedia document can contain, text, graphics, video, sound or data. These documents are often linked to other documents.

[34] How Report at § 3.2.3

[35] ASCII refers to the American Standard Code for Information Interchange, a code for character representation.

[36] How Report at § 3.2.6.

[37] How Report at § 3.2.4

[38] How Report at § 3.2.3 (e).

[39] How Report at § 2.4.1 (g).

[40] How Report at §§ 3.1.2 (c) and 3.2.2.

information from HTML text displays and selecting from menus of downloadable files. Customers would receive the information either as HTML pages or as ASCII files in a predetermined form and layout.

The information model for Phase II, while not fully specified, would provide customers with much more flexibility in requesting and receiving information. Customers would be able to make complex queries of a data base and specify the order in which the information will be received.

For security purposes, and as an aid in auditing performance and transactions, customers would be required to register with the transmission-owning utility or its agent before they are permitted access to the utility's transmission service information on the RIN.[41]

The How Report provides a number of performance standards and a limited set of security precautions. Performance requirements include sizing RIN Nodes to handle the loading of registered subscribers, responding to subscriber requests, backing up the system, and other areas that are necessary for the system to function as desired. Security precautions include firewalls[42] between computer systems and the Internet, the use of passwords, the use of data encryption for uploads of sensitive or confidential information, and the use of ASCII text for uploads of other information.

b. Phase II Requirements

The specifications for Phase II are less detailed than those for Phase I, but the How Group anticipates that Phase II RINs would be an upgrade of Phase I and would not make Phase I investments obsolete. Phase I is envisioned as a prototype for Phase II. Once Phase I becomes operational, the full information and functional requirements needed to support open access transmission service will become clearer. The How Report recommends the formation of a RIN Management Organization to develop Phase II standards for submission to the Commission. The How Group proposes that Phase II be implemented two years after issuance of the final rule on Phase I RIN requirements.

The How Group foresees the need for several key additional requirements in Phase II.[43] In Phase II, they foresee that RIN Nodes must provide connections to private networks if requested by a customer, for a negotiated cost-based fee, whereas in Phase I public utilities would not be required to make these connections. In Phase II, RIN Nodes would have to offer the capability of informing customers immediately when information of interest to them is changed by the provider. RIN Nodes would be required to support search and select tools to access information in RIN Node data bases, and to meet a more complete set of performance requirements.

In Phase II, the information model would change, although the information in the data base would be the same. Customers would be able to receive information by querying a data base. The information would no longer be received in a predetermined fixed layout. Customers would be able to specify the exact information they want to receive and the layout they want to receive it in. For example, customers would be able to request available capacity by quantity of capacity, point of delivery, date of availability, and have it sorted by the name of the transmission-owning public utility. The customer also would be able to define the order in which the information is received in the file.

2. Discussion

The How Group assumed the task of specifying, in a very short period of time, a RIN that would meet the Commission's requirement for customer access to information about transmission services. It developed a proposed solution that places the RIN of each transmission-owning public utility on a network that can be accessed by all customers, using inexpensive tools with a single connection, with what the group believes to be a reasonable cost to both utilities and customers, sufficient security, and sufficient response time. The proposal to use the Internet to tie RIN Nodes together appears to be an inexpensive way for customers to access transmission services information and for transmission-owning public utilities to provide it to them.

The Commission proposes to adopt the proposals contained in the How Report, with the exceptions discussed below.[44] Except where noted, the issues discussed are Phase I issues.

a. Phasing

Because of the complexity of building RINs, and the need to begin the Commission's transmission open access program promptly, the Commission agrees with the How Report that a phased approach to implementation is warranted. The Commission proposes to require Phase I implementation as of the effective date of a final rule on non-discriminatory open access transmission and stranded costs.

At How Group meetings, many transmission-owning public utilities expressed the view that implementing Phase I within 90 days of the date of a final RIN Rule may not allow sufficient time to design, build, and test RINs. The How Report notes that a large risk exists that many RINs will not be fully functioning at that time. These transmission-owning public utilities request that the Commission permit a six-month implementation period.

Question 25. The Commission requests comments on how long the implementation schedule should be for Phase I.

Phase I would provide a good first step toward ensuring that sufficient information is available to utility customers to achieve the Commission's goal of comparable access to transmission information. It would not, however, provide all of the performance requirements or information needed for a long-term open access RIN.

Phase II would provide for more expanded services. The How Report addresses Phase II issues, but does not fully specify them. It proposes that Phase II be implemented within two years of a final rule on RINs. The Commission believes that the need for the additional functions and performance requirements proposed for Phase II requires expeditious implementation. Accordingly, the Commission requests that the industry continue the process of developing standards, and provide a consensus report to the Commission on Phase II recommendations by no later than January 1, 1997. We anticipate that this report would be the basis of supplemental RIN proceedings to implement Phase II RIN requirements.

b. Standards Issues

Based on our experience with implementing standards for natural gas pipeline electronic bulletin boards,[45] a

[41] How Report at § 3.2.1.

[42] A firewall increases security by blocking access to certain services on a private network from the Internet.

[43] How Report at § 2.4.2.

[44] The Report refers to Buy/Sell transactions. As used in the Report, the term refers to a request to purchase transmission capacity and the response to the request. The reader of the How Report should substitute Purchase request/Response for buy/sell whenever it is encountered.

[45] See Order No. 563, Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Final Rule, III FERC Stats. & Regs. ¶ 30,988 (1993); Order 563–A, Order on Reh'g, III FERC Stats. & Regs. ¶ 30,994 (1994); Order 563–B, Order Denying Reh'g, 68 FERC

Continued

major concern of the Commission is that the proposed standards be sufficiently unambiguous to provide consistent implementation of the standards on every RIN Node. Customers and other users of RINs should be able to use the same software to access all RIN Nodes and should be able to expect that procedures and data definitions will be the same on all Nodes. The Commission must ensure that every RIN Node would be presenting information that would be clearly understood.

i. Phase I Data Definitions for HTML Pages and File Transfers

The information model, data dictionary and various templates appearing in the How Report specify the name, definition and format of the data items to be communicated on the RIN. They are intended to be the basis for the standards specifying file uploads and downloads and HTML displays. Because of the importance of these standards to the usability and uniformity of RINs, the Commission must ensure that downloadable and uploadable files will have the same unambiguous structure, field formats, units and definitions, etc., no matter which RIN Node they come from or go to. The Commission is similarly concerned that all WWW page displays, while not necessarily having the same appearance, contain the same information and use the same definitions, etc.

Question 26. Does the How Report define HTML displays and downloadable files with sufficient clarity to permit public utilities to implement Phase I such that the downloaded files and HTML displays received by customers from each RIN have the same definitions, etc.? If not, what clarifications are needed? Similarly, are uploaded files sufficiently defined in the How Report?

With these goals in mind, the Commission has compiled a series of templates (tables) that show in one place the specifications that appear in various sections of the How Report. The templates contained in Appendix ''C,'' are intended to help produce a consistent implementation of RIN requirements and highlight problems that could hinder consistent implementation of RIN standards.

In Appendix ''C'', the Commission proposes to make changes to certain definitions, data formats, and specifications appearing in the How Report.

Question 27. The Commission invites comment on the issues discussed in Appendix ''C''.

The Commission proposes to add a price field to the templates that would specify available capacity and those templates associated with the purchase of capacity. The price field would allow primary providers to offer capacity to buyers at a discount. The price field in the available capacity templates would contain the initially offered price, whether this is the tariff price or a discount. Adding the price field to the templates for the purchase of capacity would allow buyers to offer a price for capacity below the posted price. Further discounts from any posted offered price could be negotiated. The price field in the purchase of capacity templates would permit customers to offer a price different than the offering price.

ii. Internet Browsers

There are a large number of Internet browsers available commercially and in the public domain. The How Report proposes that browsers support ''at least'' HTML version 3 and ''optionally'' support Secure Sockets Layer. The HTML standards used by browsers change from time to time, and, in addition, various browsers can support different extensions to the standards. The Commission does not want to stifle innovation, but at the same time it does not want chaos on the RIN. The Commission does not want customers to be forced to use different browsers for different RIN Nodes. The Commission wants to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

Question 28. The Commission requests comments on how to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

iii. Bandwidth of Node Connections to the Internet

The How Report proposes a formula to calculate the minimum bandwidth connection between a RIN Node and the Internet using the criteria of customers receiving data at the rate of 8,000 bits per second.[46] This speed may be adequate for customers reading HTML pages, which are about 8,000 bits in size, but it might be too slow for customers downloading many 100,000 byte files.[47] Eight thousand bits per second is much slower than the 28,800 bit per second telephone connections many private individuals use to connect to the Internet. Electric utilities will likely have even faster direct connections to the Internet. The Commission is concerned that the basis for the calculation in the Report will lead to connections that are too slow and proposes to use 28,800 bits per second instead of 8,000 bits per second in the bandwidth formula.

Question 29. The Commission requests comments on the use of 28,800 bits per second in the calculation of the minimum bandwidth connection between a RIN Node and the Internet in the formula appearing in the How Report.

iv. Common Codes

The How Report does not address a standardized method of uniquely identifying transmission-owning public utilities and customers, nor does it address a standardized method of identifying facilities.

(1) Company Codes

The Commission's experience with implementing standards for file transfers and electronic bulletin boards in the natural gas industry shows that the use of a common system of identifying companies enhances the efficiency of data transfers. The Commission is satisfied with the results of using DUNS numbers[48] as the standard to uniquely identify pipelines and shippers in the natural gas transactions.[49] The Commission proposes to require the use of DUNS numbers to identify transmission-owning utilities and customers on RIN Nodes.

Question 30. The Commission requests comments on the use of DUNs numbers to identify RIN participants.

(2) Common Location Codes

The Commission's experience in the natural gas industry also demonstrates that a common method of uniquely identifying location points will be needed to facilitate movement of power across the grid. The natural gas industry uses a sophisticated system of ''smart'' codes (PI–GRID Codes), developed by the Petroleum Information Corporation. This coding system uses ''smart'' codes, which identify each transaction point by such items as state, county, latitude, longitude and type of facility.[50] Thus, the code will tell RIN users where a posted receipt, delivery point or path is

¶ 61,002 (1994); Order 563–C, Order Accepting Modifications, 68 FERC ¶ 61,362 (1994); Order 563–D, Order Accepting Modifications, 69 FERC ¶ 61,418 (1994); Order 563–E, Order Granting Clarification, 70 FERC ¶ 61,188 (1995).

[46] How Report at § 3.4.3.

[47] A bit is the smallest unit of computer data and can have a value of zero or one. A byte is eight bits and is often used to represent a character of text.

[48] DUNS numbers refer to the Data Universal Numbering System, maintained by Dun and Bradstreet.

[49] See Standardized Data Sets and Communication Protocols for Electronic Bulletin Boards in Docket No. RM93–4, Order 563(a), supra n.45, Reg. Preambles at 31,034.

[50] See Order 563(c), supra n.45, 68 FERC at 62,462–65.

located, the function it performs, and whether there are multiple facilities at that location. The Commission proposes to use a smart code system to identify location, including paths, on the electric transmission grid.

Question 31. The Commission requests comments on how to develop common location codes for the electric power industry.

v. Data Compression Standards

The How Report recommends that RINs support data compression of downloadable and uploaded files, using standard, commonly available compression applications.[51] The Commission believes that data compression will speed up the transmission of files. However, it believes communication of the RIN information would be enhanced if every RIN Node used the same compression techniques.

Question 32. The Commission requests comments on what data compression technique or techniques should be made standard for all RIN Nodes.

vi. Templates for Upload and Download Header Information

The How Report does not completely specify how to use the upload and download header templates in Phase I.[52] The templates require a series of header fields specifying such information as: (1) who is sending the data; (2) the kind of data, such as Provider Hourly Capacity Available for Purchase; (3) the column headings of the data; and (4) the number of rows of data. This header information is followed by rows of actual data. The discussion of the template does not specify delimiters between rows of data. The result would be that an entire file of Provider Hourly Capacity Available for Purchase downloaded from a RIN Node would be received as one long record. However, customers downloading data into personal computer spreadsheets may have trouble using the information since spreadsheets cannot handle very long records. To remedy the problem the Commission proposes to require, at least for Phase I, the sending RIN Node to separate each row of data with carriage return and line feed characters. Similarly, customers uploading data to a RIN node would separate each row of data with carriage return and line feed characters.

Question 33. The Commission requests comments on whether the upload and download templates are sufficiently specified to be functional and whether they are sufficiently specified to permit all RIN Nodes to implement them in the same way.

[51] How Report at § 3.3.8 (c).

[52] How Report at § 3.3.8.

c. Costs

Transmission-owning public utilities will be entitled to recover reasonable expenses associated with developing and running RINs. The costs of developing and operating the system will generally be fixed and not attributable to individual users. The Commission, therefore, proposes to roll these costs into wholesale transmission rates. The Commission also proposes to permit costs that can be identified as dependent on usage to be charged as usage fees to individual customers.

Question 34. The Commission requests comments on whether it should allow the recovery of reasonable expenses associated with developing and running RINs by rolling these costs into wholesale transmission rates. How should fees associated with RIN usage be calculated and recovered?

d. Access to RIN Information by the Public

The Commission believes that the registration procedures described in the How Report are useful security tools.[53] The Commission also believes that the Commission, state regulators, and the public should have access to transmission services information consistent with the need to maintain the security of the system.[54] The Commission, therefore, proposes that once Commission Staff and members of the general public have complied with the requisite registration procedures, they be granted ''read only'' access to RINs.

e. The Number of RIN Nodes

The How Report does not put a limit on the number of RIN Nodes, but raises the issue of how many RIN Nodes there should be.[55] Public utilities would be permitted to combine the function of their RINs into a single Node. Consequently, there could be as many Nodes as there are transmission-owning public utilities or only a very small number of Nodes. The How Group sees merit in a small number of Nodes and goes on to suggest a small number of Nodes be actively encouraged in order to minimize the networking management requirements for the RIN and to help ensure seamlessness of access. On the other hand, it recognizes that the advantages of a small number of separate Nodes must be weighed against the complexity and size that each Node would have to be to handle the correspondingly large number of transmission-owning utilities.

[53] How Report at §§ 3.2.1 (b)-(f).

[54] cf. 16 U.S.C. 824l.

[55] How Report at § 3.1.2 (f).

Question 35. The Commission requests comments on whether it should encourage a small number of RIN Nodes.

f. Connections to Third Party Networks

The How Group proposes, in Phase I, to permit transmission owning utilities to provide connections to private networks, if requested to do so. In Phase II, the How Group proposes that public utilities be required to provide these connections. It proposes that customers be required to pay the cost of the connections and the connections would be required to use the same Internet tools as are required for the Internet connections.

The Commission believes that private networks and third party services can provide valuable contributions to the successful operation of RINs. The Commission, therefore, proposes to require utilities to provide private connections in Phase I. As proposed by the How Group, the cost of the connections would be paid for by the customers making the requests and the networks would be required to use Internet tools.

Question 36. The Commission requests comments on whether transmission owning utilities should be required, in Phase I, to provide connections to private networks.

g. Unresolved Issues

The How Group was unable to resolve a number of issues. Many of them concern issues covered by the What Group and are discussed elsewhere.[56] The Commission requests comments on the following unresolved issues.

i. Price Discrimination Issues

The How Report would permit public utilities to offer value-added RIN services above the basic level of service. The Commission proposes to allow these services. However, such services would remain cost based until the Commission is satisfied that market-based (value added) rates should be allowed for such services. Requests for market-based rates for such services will be addressed, initially, on a case-by-case basis.

Some customers are concerned that price could be used to discriminate between customers if public utilities are permitted to charge for different optional services, such as higher speed connections, value-added services, and automatic notification of changed data. If public utilities charge relatively high prices for these additional services, then some customers may not be able to afford them. These customers fear, for example, that they could be effectively

[56] Supra at 40–60.

locked out of the transmission market if they could rarely get timely access to the queue for purchasing transmission access.

These customers felt that the Commission should monitor and possibly regulate the prices charged for the services to ensure that they were non-discriminatory.

ii. Transmission Services Information Timing Requirements

The How Group proposes several timing requirements for posting transmission service information and suggests that the requirements be reviewed for reasonableness, possibly during Phase I. The Commission believes that some timing requirements should be operative during Phase I.

Question 37. The Commission requests comments on whether the following How Group Proposals are adequate:

(1) Transmission Service Information Availability: The most recent Provider transmission service information, including updates reflecting power system changes, shall be available to all Customers within 5 minutes of its scheduled posting time at least 98 percent of the time. The remaining 2 percent of the time the transmission service information shall be available within 10 minutes of its scheduled posting time;

(2) Notification of Posted or Changed Transmission Service Information: Notification of transmission service information posted or changed by a Provider shall be made available within 60 seconds to all subscribed Customers who are currently connected; and

(3) Acknowledgment by the Transmission Service Information Provider: Acknowledgment by the transmission service information provider of the receipt of Customer purchase request/response requests shall occur within 1 minute for Phase I. The actual negotiations and agreements on purchase request/response requests do not have time constraints. For Phase II, acknowledgment shall occur within 30 seconds.

iii. The Posting of Capacity Available for Resale

The How Report also raises issues concerning posting of capacity to be resold.[57] The report requires the reseller to post the relevant information on the Node of the facility owner.[58]

The Commission is concerned that unless primary capacity and secondary capacity appear in the same location on the Node and require the same forms to be filled out and the same procedures followed, the capacity for sale by the facility owner will be easier to find and purchase, thereby giving the facility owner a competitive advantage. Therefore, the Commission proposes that secondary capacity be posted on the same page, using the same tables as similar capacity being sold by the facility owner.

Question 38. The Commission requests comments on how to redesign the download templates in Appendix C so that primary and secondary capacity can be offered through downloadable files that have the same format. The Commission also requests comments on how primary and secondary capacity can be displayed in the same tables on a RIN Node.

Question 39. What is the best way to handle the purchase request and response process when primary and secondary capacity appear in the same RIN displays and files?

The Commission proposes that resellers pay the costs associated with posting this information on the RIN.

Question 40. The Commission requests comments on how to determine the costs associated with posting resales on the RIN?

E. Standards of Conduct

The What Group and the How Group both focused on the specific issues that the participants at the Technical Conference agreed that they should address. Nevertheless, other important RINS-related issues must also be decided. One such issue is whether the Commission needs to promulgate generic standards of conduct for jurisdictional utilities in the electric industry akin to the ones that we promulgated for the natural gas industry,[59] or whether this issue should be decided on a case-by case basis. For the reasons explained below, we propose to address this issue on a generic basis by issuing Standards of Conduct patterned on those we promulgated for the natural gas industry.

As we stated in the RIN Notice,

> Any requirement we establish must have safeguards to ensure that public utilities owning and/or controlling transmission facilities use the same procedures and meet the same substantive requirements when they arrange transmission to support their wholesale sales and purchases as are required for third parties. Further, we expect that each public utility (or a control area operator acting as its agent) that provides transmission service must, at a minimum, give its customers electronic access in real time to information on transmission capacity availability, ancillary services, scheduling of power transfers, economic dispatch, current operating and economic conditions, system reliability, and responses to system conditions * * *
>
> This means that public utilities or their agents must give competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time. Moreover, this information cannot be declared privileged (and kept from competitors) if it is available to the company's own employees who trade wholesale power. Thus, if a utility wishes to keep this information confidential, it must assign control over this information to employees whose duties do not involve trading in wholesale power, and it must implement procedures to ensure that the traders do not get access to the information unless and until that information becomes public. The Commission invites parties to comment on the best way to implement these requirements * * *

In response to this discussion and the accompanying request for comments, the comments (in preparation for the technical conference) debated how the control room could be functionally unbundled. Currently, marketing and transmission functions are performed in the same control room and sometimes these functions are performed by the same people. However, same-time access to transmission information means that, somehow, these functions must be separated. A related matter that we are concerned about is the potential for informal communication among colleagues if utility traders have preferred access to limited access control rooms and buildings.

In discussing this issue, the commenters asked—how much separation is enough? They wondered whether the Commission would set requirements for separating marketing and transmission functions and, if so, what those requirements would be. Commenters came down on both sides of this issue. The East Texas Cooperatives and the Ohio PUC believe that separation is essential. American Electric Power points out that requiring the transmitting utility's marketing personnel to use only that transmission information posted on a RIN would be a powerful incentive for utilities to provide adequate disclosure on the RINs (or else the marketing employees couldn't properly do their jobs). El Paso Electric and Houston L&P are concerned about the reliability consequences of separating control room functions. NYSEG and Sierra Pacific do not believe

[57] How Report at § 6.6.

[58] How Report at § 3.2.4.

[59] See 18 CFR Part 161. *See also* the primary Commission orders addressing natural gas pipeline marketing affiliate regulation, and the other cases cited therein: Order No. 497, 53 FR 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52,781 (December 22, 1989), III FERC Stats. & Regs. ¶ 30,868 (1989); Order Nos. 566, 59 FR 32,885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (1994); Order No. 566–A, *order on rehearing,* 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (1994); Order No. 566–B, *order on rehearing,* 59 FR 65,707 (December 21, 1994), 69 FERC ¶ 61,334 (1994); *appeal docketed,* Conoco, Inc. v. FERC, D.C. Cir. No. 94–1745 (December 13, 1994).

that separating control room functions is needed.

Additionally, this issue was renewed by the power marketers, in the discussion of non-consensus issues in the What Report and in separate comments, where they argued that a lack of organizational separation and the absence of formal standards of conduct similar to those the Commission imposed on natural gas pipelines undermines their confidence in functional unbundling and the RIN. In the absence of such standards, the marketers request that voluminous supplemental information about transactions be posted on the RINs.

To help ensure non-discriminatory access to information, the Commission believes it is appropriate to impose standards of conduct for Transmission Providers. Therefore, we are proposing standards that would require Transmission Providers to separate their wholesale merchant functions (*i.e.,* purchases or sales for resale of electric energy in interstate commerce) from their wholesale transmission system operations and reliability functions, and that would further require employees performing merchant functions to obtain access to information on wholesale transmission services through the RIN, on the same basis available to all other RIN users.

In deciding this issue, we have been influenced by the differing views expressed by interested persons as to what conduct should be deemed proper or improper, our experience in the gas industry, and the generic nature of these issues. We have concluded that the industry needs explicit guidelines on separating transmission and power trading functions. In formulating proposed standards of conduct, our goal is to prevent employees of the Transmission Provider that perform merchant functions from having *preferential* access to any relevant information about the Transmission Provider's wholesale transmission availability and costs. In other words, those employees should not have access to any relevant information that is not also available to all wholesale transmission customers and potential wholesale transmission customers, regardless of whether this information is obtained through access to the control center, access to other locations or files, or through informal communications.

Question 41. Are the standards of conduct proposed herein sufficient? Should they be modified in any way?

Question 42. In particular, if the Commission in its final rule requires functional unbundling of all transmission from generation, how would these standards of conduct need to be modified? Would any other organizational changes need to be made? Would any modifications be needed with regard to ancillary services?

We note that, although formal rules prescribing standards of conduct were deemed necessary in the natural gas industry, the potential for improper communications between transmission and trading personnel is even more of a concern for electric utilities than for gas pipelines. Absent divestiture, transmission and power trading jobs will be performed by individuals working for the same company (or corporate group). These tasks have traditionally been done in the same control room and, in some cases, are now being performed by the same person.

We believe that explicit guidance would be helpful to all concerned. Transmission Providers will have a better idea of what conduct is permissible and what is impermissible. Customer complaints on preferential access should be minimized. Enforcement efforts by the Commission will be easier when specific guidelines are available. Additionally, to the extent this standard of conduct allays concerns about improper conduct, it could reduce what information needs to be posted on the RIN.

In the event that Transmission Providers are concerned that this proposal somehow will impede system reliability, we invite them to articulate their concerns in their comments by addressing the question below.

Question 43. Would the Commission's proposed separation of functions jeopardize system reliability? If so, what other mechanism would provide wholesale transmission customers and potential customers with assurance that they would be obtaining access to the same information, at the same time, as that used by transmission providers in making their own wholesale transmission purchasing decisions?

F. Applicability

1. Non-Public Utility Transmission Providers

As with the requirements in the Open Access NOPR, the RINs requirement applies only to public utilities. Issues relating to potential gaps in the provision of comparable open access to wholesale transmission services or access to transmission information due to the fact that the requirements do not apply to non-public utilities will be addressed in the Open Access rulemaking proceeding. Although the RINs requirements would not apply to non-public utilities, the Commission expects non-public utilities to provide comparable access to wholesale transmission information under the reciprocity provision in the Open Access rule *pro forma* tariffs.

In this regard, we also note our general authority under section 311 of the Federal Power Act, 16 USC § 825j (1994), to secure information (and conduct appropriate investigations) concerning, among other things, the transmission of electric energy throughout the United States, regardless of whether such transmission is otherwise subject to our jurisdiction.

Question 45. The Commission requests comments on whether and to what extent the Commission should exercise this statutory authority to extend the RINs requirements to non-public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce.

Question 46. Should reciprocity require that a non-public utility (such as a co-op or publicly-owned utility) have a RIN?

2. Public Utilities Having No Transmission Facilities With Commercial Value

Some public utilities claim that none of their transmission facilities that could be used to provide wholesale service has commercial value that would justify the burden and expense of developing and maintaining a RIN. Although the Commission would still require same-time access to wholesale transmission and ancillary service information, simpler means of satisfying this requirement may be considered for utilities with wholesale transmission of little commercial value.

Question 47. In light of the proposal in the How Report to use a low cost Internet-based approach, the Commission requests specific comments on circumstances in which the RINs requirements are believed to be an unnecessary burden. Are there less burdensome ways to meet the same-time access requirement in circumstances where the utility's wholesale transmission facilities have little commercial value? What criteria should the Commission use in determining whether and when to relax the RINs requirements?

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[60] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The entities that would have to comply with the proposed rule are public utilities and transmitting utilities that do not fall within RFA's definition of

[60] 5 U.S.C. 601–612.

small entities.[61] Therefore, under section 605(b) of RFA, the Commission hereby certifies that this proposed rule will not, if promulgated, have a significant economic impact on small entities within the meaning of RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of RFA.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[62] Although this regulation does not directly affect any physical transmission facilities, but merely proposes the electronic posting by computers of certain information about transmission availability and prices, it nevertheless is being covered by the environmental impact statement being prepared in the Open Access NOPR proceeding in Docket Nos. RM95–8–000 and RM94–7–001. Thus, no separate environmental assessment or environmental impact statement is being prepared for this proposed rule.

VI. Information Collection Statement

There are approximately 328 public utilities, including marketers and wholesale generation entities. The Commission estimates that approximately 166 of these utilities own and/or control facilities used for the transmission of electric energy in interstate commerce and thus are subject to this proposal. However, since the operation of a RIN will be closely associated with control areas, we assume that RINs will be developed at the control area level and not by each public utility that owns and/or controls interstate transmission facilities. We estimate, therefore, that 84 respondents will be required to collect information. We believe that this estimate is conservative because some regions are likely to develop a region-wide RIN that will cover more than one control area.

Information Collection Statement

Title: FERC–717, Real-Time Information Network Standards.

Action: Proposed Collection.

OMB Control No: None.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On Occasion.

Necessity of the information: The Notice of Proposed rulemaking solicits public comments to respond to the uniform requirements for a Real-time information network (RIN) established by the Commission to ensure simultaneous access to information on transmission service. The proposed requirements were developed after technical conferences with industry to ensure that safeguards are installed to provide procedures and substantive requirements for all parties seeking transmission service. These requirements would support arrangements made for wholesale sales and purchases for third parties. Public utilities and/or their agents would give competitors and other users of the transmission system access to same information available to the public utility personnel who initiate the acquisition or disposition of power in the wholesale market and at the same time. The Commission would use the information to monitor the networks to ensure that potential purchasers of transmission services obtain the services on a non-discriminatory basis.

The Office of Management and Budget's (OMB) regulations,[63] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in the proposed rule will be reported directly to transmission users and will be subject to subsequent audit by the Commission. The distribution of these data will help the Commission carry out its responsibilities under Part II of the FPA.

The Commission is submitting notification of this proposed rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087].

VII. Public Comment Procedure

This NOPR gives notice of our intention to add Part 37 to the Commission's Regulations. As described in the discussion above, under this proposal each Transmission Provider would be required to create and participate in a RIN, to ensure that potential purchasers of transmission services have access to information to enable them to obtain open access transmission services on a non-discriminatory basis from the Transmission Provider. Additionally, the proposal would require public utilities to comply with standards of conduct designed to prevent discriminatory practices and affiliate abuse.

Prior to taking final action on this proposed rulemaking, we are inviting comments from interested persons on 47 specific questions enumerated in the body of this order (and compiled in Attachment ''1''), on the proposed templates in Appendix ''C'' and, more generally, on whether the Commission should proceed to promulgate this proposal as a final rule. Additionally, the Commission invites comments on any suggested changes or modifications to the proposal that would, in the view of the commenter, improve the proposal, and if so, why. Moreover, the Commission is not intending to allow the filing of reply comments in this proceeding and, therefore, we also invite parties to discuss why policy options advocated by other parties (as described in the comments in preparation for the Technical Conference, the working group reports, and in comments in response to the working group reports), should not be adopted by the Commission.

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking and the issues identified above. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM95–9–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before [insert date 45 days from the date of publication in the Federal Register]. Additionally, a copy of the comments also should be submitted to the Commission on computer diskette in Wordperfect 5.1 or ASCII format.

All written submissions to this NOPR will be placed in the public file and will be available for public inspection in the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 37

Real-Time Information Networks.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Title

[61] *See* 5 U.S.C. 601(3) and 601(6) and 15 U.S.C. 632(a).

[62] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); 1986–90 Regs. Preambles FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

[63] 5 CFR 1320.11.

18, *Code of Federal Regulations,* to add a new Part 37, as set forth below.

PART 37—REAL-TIME INFORMATION NETWORKS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

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

§ 37.1 Applicability.

This part applies to any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce.

§ 37.2 Purpose.

The purpose of this part is to ensure that potential customers of transmission service receive access to information that will enable them to obtain open access transmission service on a non-discriminatory basis from public utilities that own and/or control facilities used for the transmission of wholesale electric energy in interstate commerce. These rules require public utilities (or their agents) to create and operate a real-time information network (RIN) that gives competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time, so that potential customers may obtain open access transmission service that is comparable to that provided by transmission owning public utilities to themselves.

§ 37.3 Definitions.

(a) *Transmission Provider* means any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce.

(b) *Transmission Customer* means any eligible customer (or its designated agent) that executes a service agreement and/or receives transmission service.

(c) *Responsible Party* means the Transmission Provider or a third party to whom the Transmission Provider has delegated the responsibility of meeting the requirements of this Part.

(d) *Resellers* means Transmission Customers who offer to sell transmission capability they have purchased to other Transmission Customers.

(e) *Wholesale Merchant Function* means the sale for resale or purchase of electric energy in interstate commerce.

(f) *Affiliate* means:

(1) for any non-exempt wholesale generator public utility, another person which controls, is controlled by, or is under common control with such person;

(2) for any public utility that is an exempt wholesale generator, as defined in section 2(a)(11) of the Public Utility Holding Company Act of 1935, as amended.

§ 37.4 Standardization of data sets and communication protocols.

(a) A public utility subject to this Part must provide access on a RIN to standardized information relevant to the availability of transmission capability, prices, and other information (as described elsewhere in this Part) pertaining to its transmission system; it must also provide the ability to display, download and upload the standardized information in compliance with standardized procedures and protocols.

(b) The standardized information, procedures and protocols are found in ''Standardized Data Sets and Communication Protocols,'' which can be obtained from the Office of Public Information, Federal Energy Regulatory Commission, 888 North Capitol Street NE, Washington, DC 20426.

§ 37.5 Obligations of Transmission Providers.

Each Transmission Provider is required to provide for the operation of a RIN, either individually or jointly with other Transmission Providers, in accordance with the requirements of this Part.

§ 37.6 Standards of conduct.

A public utility subject to this Part must conduct its business to conform with the following standards:

(a) The employees of the public utility that are engaged in wholesale merchant functions (*i.e.,* wholesale purchases and sales for resale of electric energy in interstate commerce) are prohibited from also conducting transmission system operations and/or reliability functions. The employees of the public utility that are engaged in merchant functions also are prohibited from having preferential access to the system control center and other facilities of the public utility that differs from the access available to other wholesale transmission customers or potential wholesale transmission customers. To the maximum extent practicable, the employees of the public utility engaged in transmission system operations must function independently of the employees engaged in wholesale merchant functions and of the employees of any affiliate of the public utility. Employees are not precluded from transferring between departments as long as they do not conduct both transmission system operations functions and wholesale merchant functions or functions on behalf of any affiliate, and as long as these standards of conduct are observed. Notices of any employee transfers to or from transmission system operations must be posted on the RIN.

(b) When buying or selling power, employees of the public utility that are engaged in wholesale merchant functions and employees of any affiliate of the public utility must rely upon the same information relied upon by the public utility's wholesale transmission customers (*i.e.,* the information posted on the RIN), and must not have preferential access to any information about the public utility's transmission system that is not available to all users of the RIN.

(c) Employees of the public utility that are engaged in wholesale merchant functions and employees of any affiliate of the public utility are prohibited from obtaining information about the public utility's transmission system (including information about available transmission capability, price, curtailments, ancillary services, etc.) through communications conducted off the RIN or through access to information not posted on the RIN.

(d) Employees of the public utility that are engaged in transmission system operations or reliability functions may not disclose to employees engaged in the wholesale merchant function or to employees of any affiliate of the public utility any information concerning the public utility's transmission system (including information received from non-affiliates or information about available transmission capability, price, curtailments, ancillary services, etc.) through communications conducted off the RIN or through access to information not posted on the RIN.

(e) If a public utility employee that is engaged in transmission system

operations or reliability functions provides information not contained on the RIN to an employee of the public utility that is engaged in the merchant function or to an employee of an affiliate of the public utility, the public utility must immediately post such information on the RIN.

(f)(1) The employees of the public utility that are engaged in transmission system operations must apply all tariff provisions relating to the sale or purchase of wholesale transmission service in a fair and impartial manner that treats all customers (including the public utility's employees conducting wholesale merchant functions and employees of any affiliate) alike, if these provisions involve discretion.

(2) The public utility must keep a log, available for after-the-fact Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff.

(g) The employees of the public utility that are engaged in transmission system operations must strictly enforce all tariff provisions relating to the sale or purchase of wholesale transmission service, if these provisions do not provide for the use of discretion.

(h) The public utility may not, through its tariffs or otherwise, give preference to wholesale purchases or sales made for itself or any affiliate over the interests of any other wholesale customer in matters relating to the sale or purchase of transmission service (including issues of price, curtailments, scheduling, priority, etc.).

(i) If the public utility offers discounts to purchases made for itself or for any affiliate, then it must, at the same time, offer on the RIN comparable discounts for similar service to all transmission customers.

(j) A public utility must maintain its books of account and records separately from those of its affiliates.

(k) Within 60 days of publication of the final rule in the Federal Register, the public utility must file with the Commission procedures that will enable customers and the Commission to determine that the public utility is in compliance with the requirements in this section.

§ 37.7 RIN uses.

The information posted on the RIN must allow transmission customers to:

(a) make requests for transmission services offered by Transmission Providers and the secondary market;

(b) view and download in standard formats, using standard protocols, necessary information regarding the transmission system to enable prudent business decision making;

(c) post, view, upload and download information regarding available products and desired services;

(d) clearly identify the degree to which their transmission service requests and/or schedules were denied or curtailed relative to those of their competitors; and

(e) obtain access in electronic format information to support available transmission capability calculations and historical transmission service requests and schedules for various audit purposes.

§ 37.8 Information requirements for transmission service.

(a) The RIN must support the posting of available transmission capability and the processing of requests electronically.

(b) The RIN must provide a mechanism to enable Transmission Providers and Customers to promptly communicate requests and responses to buy and sell available transmission capability offered under the Transmission Providers' tariffs.

(c) For requests for transmission service to begin more than one year from the date of the request, transmission studies need not be performed to calculate ATCs, *see* § 37.9(a)(1), until a request for service is made. However, any planning or specifically requested studies of the transmission network performed by the Transmission Provider are to be available for download on the RIN. (This applies only to those parts of customer-specific interconnection studies that relate to network impacts).

§ 37.9 Information to be posted on a RIN.

(a) Five major types of information must be posted on the RIN: (1) Available Transfer Capability (ATC) and Total Transfer Capability (TTC);

(2) Transmission Providers' and Resellers' Transmission Service Product Offerings and Prices;

(3) Transmission Providers' and Third Parties' Ancillary Service Product Offerings and Prices;

(4) Specific Transmission Service Requests/Responses; and

(5) Informal Transmission Communications.

(b) Information on ATC and TTC shall be posted on the RIN in accordance with the following: (1) The Transmission Provider must inform all participants simultaneously in the wholesale market of the transfer capability that is expected to be available on transmission paths of the Transmission Provider's system and each paths' total transfer capability. The Transmission Provider may delegate this responsibility to a suitable third party who maintains that Transmission Providers' RIN, such as an Independent System Operator, a Regional Transmission Group, or a Regional Reliability Council.

(2) The ATC/TTC shall be calculated by the Responsible Party (the Transmission Provider or its designated agent) according to consistently applied industry practices, standards and criteria, or criteria referenced in the Transmission Provider's transmission tariff.

(3) The amount of ATC posted shall be that amount that the Responsible Party expects, in good faith, to be available on a specific interface or Path in a specific direction, based on engineering analysis and other information that is available to the Responsible Party at the time of the posting. ATCs and TTCs as required in the Posting Schedule must be posted in megawatts.

(4) Curtailment provisions associated with ATC must be incorporated in the posting and must be made available to all Transmission Customers.

(5) Transmission tariffs provide an application procedure for Transmission Customers to request transmission service. At the time of the application, and in accordance with the provisions of those tariffs, the Transmission Provider (or its designated agent) must inform the requester if the Transmission Provider can honor the request. If not, the Transmission Provider must provide an explanation of additional information that is needed to evaluate the request, or identify prior pending requests that prevent acceptance of the full request, regardless of the posted ATC/TTC values.

(6) The public utility must make all data used to calculate ATC/TTC publicly available. This information must be available for download on the RIN. The Transmission Provider must identify in its information supporting its ATC calculations the limiting element and the cause of the limit (*e.g.*, thermal, voltage, stability). Whatever method is used to determine capability must be applied consistently.

(c) Information on Transmission Providers' and Resellers' Transmission Service Product Offerings and Prices must be posted on the RIN in accordance with the following: (1) Transmission Providers and Resellers must post the prices, terms and conditions associated with the transmission products that they offer to Transmission Customers. Transmission Providers must also provide a downloadable file of their complete tariff in the format required in the Open Access rule.

(2) Customers who desire to resell capability must post the relevant information to the same RIN node used by the primary provider from whom the customer purchased the transmission capability.

(3) If the Transmission Customer resells its rights, in whole or in part, it must promptly notify the Transmission Provider, or the Transmission Provider's agent, of the new owner of the rights, any subdivision of these rights that may have occurred, and any changes in the terms and conditions of these rights, subject to the terms and conditions of the tariff.

(d) Information on Transmission Providers' and Third Parties' Ancillary Service Product Offerings and Prices must be posted on the RIN in accordance with the following: (1) To the extent that the final Open Access rule requires that a Transmission Provider offer ancillary services, the Transmission Provider will post such offers on the RIN.

(2) Other entities offering the same ancillary services shall have a comparable right to post offers on the RIN.

(e) All requests for transmission service must be made on the RIN. Requests for transmission service and the responses to such requests must be consistent with the Transmission Provider's tariff, the Federal Power Act, and FERC regulations.

(f) RINs must permit the posting of informal communications related to transmission services. Postings made in this section carry no obligation to respond on the part of any market participant. These communications include ''want ads'' and ''other communications'' (including using the RIN as a conference space or to provide messaging services between RIN users).

§ 37.10 Posting and Updating Information on the RIN.

(a) Information about ATC/TTC posted on the RIN must be updated when transactions are scheduled or end or as other system conditions change that significantly affect TTC/ATC.

(b) Information must be posted in accordance with the following procedures:

(1) All information will be date/time stamped;

(2) Firm (Non-Recallable) ATC/TTC must be posted:

(i) 24 hours per day for the next seven days, updating the next six days and adding day seven at a reasonable pre-specified time daily;

(ii) On-peak and off-peak each day, for days 8–30, updating the next 29 days and adding day 30 at a reasonable pre-specified time daily;

(iii) By month, both on and off peak, for next 12 months updating the next 11 months and adding month 12 on the 15th of each month;

(iv) Seasonal, by year, for years 1–10 (when planning and specially requested transmission planning studies have been done).

(3) Non-Firm (Recallable) ATC/TTC must be posted:

(i) 24 hours per day for the next seven days, updating the next six days and adding day seven at a reasonable pre-specified time daily;

(ii) On-peak and off-peak each day, for days 8–30, updating the next 29 days and adding day 30 at a reasonable pre-specified time daily;

(iii) Longer term by request.

(4) Daily updates must be posted at the same universal time for each RIN.

§ 37.11 Posting of discounts.

A public utility, within 24 hours of agreeing to a discount (as measured from when ATC must be adjusted in response to the transaction), must post on the RIN and make available for download, information describing the transaction (including price, quantity, and any other relevant terms and conditions) and shall keep such information posted on the RIN for at least 30 days. Thereafter, records of the transaction must be retained and kept available for after-the-fact Commission audit as part of the audit log required in section 37.14(e).

§ 37.12 Procedure for transmission providers to respond to customer requests for transmission service.

The following steps must be followed in processing a transmission service request, with the time for each step specified in the service tariff:

(a) Requester: Submits request, including all information, as required by the tariff.

(b) Provider: Places request in queue and posts applicable information to the RIN. Posts request status and provides time/date stamps throughout the process.

(c) Provider: Approves or denies request and provides reason, if denied. Posts result to the RIN. Tenders service offer.

(d) Requester: Accepts service or withdraws request.

(e) Provider: If service accepted by Customer, adjusts ATC on the RIN.

(f) Requester: Holds for scheduling, arranges scheduling, or arranges for resale.

§ 37.13 Communicating denials of requests for service and curtailments.

When requests for service are denied or transactions are curtailed, the RIN must provide a mechanism for Transmission Providers to communicate to transmission customers:

(a) the reason those transactions could not be accommodated; and

(b) the options, if any, for adjusting operation of the system to increase transfer capability in order to accommodate those transactions.

§ 37.14 Auditing Transmission Service Information.

(a) All RIN database transactions must be automatically copied, recorded in a log file, and date/time stamped. If there is a question concerning a transmission transaction, the log file may be downloaded to identify the sequence of events concerning the transaction.

(b) Information on scheduling transmission service must be recorded in a log file by the entity scheduling the transmission service and must be available for download on the RIN by interested parties.

(c) Transmission Service Schedules must be posted to the RIN within one week of the start of the transmission service schedule agreed upon by the parties, unless otherwise reasonably requested by a party with a legitimate concern.

(d) With the exception of discounted prices to its merchant functions or to its affiliates, information about negotiations for transmission do not have to be posted on the RIN unless an agreement for transmission is reached. If an agreement is reached, the identity of the parties, to a transmission transaction may be masked for 30 days from the date when the transaction was agreed upon by the parties.

(e) Audit logs must be available for download on RINs for 90 days and retained and available upon request for three years from the date when they are first posted on a RIN.

§ 37.15 Implementation schedule for RIN requirements; phases.

The RIN(s) established under this part may be constructed in phases, with the initial phase consisting of core requirements and later phases increasing the number of functions, efficiency, and/or effectiveness of the RIN. The first phase requirements must be implemented as of the effective date of the Open Access rule.

Note: The following attachment will not appear in the Code of Federal Regulations.

Attachment 1—(Questions for Comment)

Question 1. We seek comment on whether to continue to call the information network

a ''RIN'' and, if not, what name should be used in its place.

Question 2. What issues associated with RIN standards would have to be addressed if in an open access transmission environment the electric power industry transitions to regional pricing, flow-based pricing, or other pricing models that depart from the ''contract path'' approach presently used for pricing electric transmission service? How in structuring RIN standards can the Commission provide for this contingency?

Question 3. The Commission requests comments on how best to post the availability of network transmission service on the RIN. Should Transmission Providers be required to post conservative estimates as a preliminary matter that could be improved with additional study? Is there an alternative service concept that is more suitable to measurement than the current version of network service?

Question 4. The Commission requests comment on how to develop a consistent, industry-wide method of calculating ATC/TTC.

Question 5. The Commission requests comments on ways to minimize the burden of ATC calculations, while ensuring that wholesale transmission customers have the information they need.

Question 6. The Commission requests comment on a standard format for electronic submission of transmission tariffs to the Commission.

Question 7. The Commission requests comments on what information about curtailments and denials of requests for service should be communicated on a RIN.

Question 8. What specifications would be needed for information about curtailments and denials of requests for service to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

Question 9. The Commission requests comment on where on the RIN offers by other entities to provide ancillary service should be placed. The What Report states that these offers should be posted in the ''Informal Transmission Communications'' section of the RIN. Would this place third party providers at a disadvantage relative to the Transmission Provider?

Question 10. The Commission requests comments on how to determine the costs associated with posting ancillary services on the RIN.

Question 11. With regard to information about offers to provide ancillary services provided by an entity other than the Transmission Provider, what specifications would be needed for this information to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

Question 12. The Commission requests comment on whether there is any additional information needed about ancillary services that is not included in the list. Is any information on the list not needed?

Question 13. The Commission requests comment on how often ancillary services information should be updated.

Question 14. The Commission seeks comment on whether all transmission discounts should be posted on the RIN, or only those provided to the Transmission Provider or its affiliates. Also, if discounts are to be posted, when should this be done?

Question 15. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

Question 16. The Commission requests comments on how the data used in calculating ATC should be formatted. Should it be in free form text, predefined tables, or comma delimited ASCII files? If in free form text, should it be in plain ASCII text or in a word processor format, such as WordPerfect or Word?

Question 17. The Commission requests comments on what is the appropriate time delay for making supporting information on ATC available. Should the Commission require specific formats for ATC supporting data? If so, what should the formats be?

Question 18. To keep the amount of information on the RIN manageable, the Commission requests comment on whether it is sufficient to provide information only about planned outages and return dates (for both planned and forced outages) for those system elements deemed to have a direct and significant impact on ATC and whether posting this information on the RIN would cause any confidentiality concerns.

Question 19. Since many system elements can impact the ATC of a path, how should ''significant and direct impact'' be defined? Is it acceptable to limit the additional information to those system elements for which nomograms, derating tables, and operating guides have been developed?

Question 20. Are there any difficulties, technical or otherwise, associated with posting actual path flows on the RIN?

Question 21. In cases where ATC of a path is a function of run status of one or more generators, is it sufficient to post the expected amount and date of changes to ATC on the RIN, corresponding to the planned outage or return dates of generators.

Question 22. If operating guides, nomograms, operating studies, and similar information are to be made available on the RIN for download, would it be logical to expect that transmission customers will be able to deduce the run status of those generators which significantly and directly impact ATC by observing the changes to ATC?

Question 23. The Commission requests comments on how transmission studies should be formatted for download from the RIN. Should they be in free form ASCII text, or in a word processor format, such as WordPerfect or Word?

Question 24. The Commission requests comment on what information should be considered commercially sensitive, the 30-day release period proposal, and on how and when commercially sensitive information should be released to concerned parties before the standard release period? Should affiliated transactions be treated differently?

Question 25. The Commission requests comments on how long the implementation schedule should be for Phase I.

Question 26. Does the How Report define HTML displays and downloadable files with sufficient clarity to permit public utilities to implement Phase I such that the downloaded files and HTML displays received by customers from each RIN have the same definitions, etc.? If not, what clarifications are needed? Similarly, are uploaded files sufficiently defined in the How Report?

Question 27. The Commission invites comment generally, on the issues discussed in Appendix ''C''.

Question 28. The Commission requests comments on how to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

Question 29. The Commission requests comments on the use of 28,800 bits per second in the calculation of the minimum bandwidth connection between a RIN Node and the Internet in the formula appearing in the How Report.

Question 30. The Commission requests comments on the use of DUNs numbers to identify RIN participants.

Question 31. The Commission requests comments on how to develop common location codes for the electric power industry.

Question 32. The Commission requests comments on what data compression technique or techniques should be made standard for all RIN Nodes.

Question 33. The Commission requests comments on whether the upload and download templates are sufficiently specified to be functional and whether they are sufficiently specified to permit all RIN Nodes to implement them in the same way.

Question 34. The Commission requests comments on whether it should allow the recovery of reasonable expenses associated with developing and running RINs by rolling these costs into wholesale transmission rates. How should fees associated with RIN usage be calculated and recovered?

Question 35. The Commission requests comments on whether it should encourage a small number of RIN Nodes.

Question 36. The Commission requests comments on whether transmission owning utilities should be required, in Phase I, to provide connections to private networks.

Question 37. The Commission requests comments on whether the following How Group Proposals are adequate:

(1) Transmission Service Information Availability: The most recent Provider transmission service information, including updates reflecting power system changes, shall be available to all Customers within 5 minutes of its scheduled posting time at least 98 percent of the time. The remaining 2 percent of the time the transmission service information shall be available within 10 minutes of its scheduled posting time;

(2) Notification of Posted or Changed Transmission Service Information: Notification of transmission service information posted or changed by a Provider shall be made available within 60 seconds to all subscribed Customers who are currently connected; and

(3) Acknowledgment by the Transmission Service Information Provider: Acknowledgment by the transmission service

information provider of the receipt of Customer purchase request/response requests shall occur within 1 minute for Phase I. The actual negotiations and agreements on purchase request/response requests do not have time constraints. For Phase II, acknowledgment shall occur within 30 seconds.

Question 38. The Commission requests comments on how to redesign the download templates in Appeat primary and secondary capacity can be offered through downloadable files that have the same format. The Commission also requests comments on how primary and secondary capacity can be displayed in the same tables on a RIN Node.

Question 39. What is the best way to handle the purchase request and response process when primary and secondary capacity appear in the same RIN displays and files?

Question 40. The Commission requests comments on how to determine the costs associated with posting resales on the RIN?

Question 41. Are the standards of conduct proposed herein sufficient? Should they be modified in any way?

Question 42. In particular, if the Commission in its final rule requires functional unbundling of all transmission from generation, how would these standards of conduct need to be modified? Would any other organizational changes need to be made? Would any modifications be needed with regard to ancillary services?

Question 43. Would the Commission's proposed separation of functions jeopardize system reliability? If so, what other mechanism would provide wholesale transmission customers and potential customers with assurance that they would be obtaining access to the same information, at the same time, as that used by Transmission Providers in making their own wholesale transmission purchasing decisions?

Question 44. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

Question 45. The Commission requests comments on whether and to what extent the Commission should exercise this statutory authority to extend the RINs requirements to non-public utilities' that own and/or control facilities used for the transmission of electric energy in interstate commerce.

Question 46. Should reciprocity require that a non-public utility (such as a co-op or publicly owned utility) have a RIN?

Question 47. In light of the proposal in the How Report to use a low cost Internet-based approach, the Commission requests specific comments on circumstances in which the RINs requirements are believed to be an unnecessary burden. Are there less burdensome ways to meet the same-time access requirement in circumstances where the utility's wholesale transmission facilities have little commercial value? What criteria should the Commission use in determining whether and when to relax the RINs requirements?

[FR Doc. 95–30884 Filed 12–20–95; 8:45 am]

BILLING CODE 6717–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 261

RIN 3220–AB15

Finality of Decisions Regarding Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to adopt regulations pertaining to the finality of decisions under the Railroad Retirement Act of 1974 (Act).

DATES: Comments must be received on or before February 20, 1996.

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

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality of decisions are presently contained in Board Orders, which are not readily available to the public. The Board Order regarding finality of decisions provides that finality of certain decisions is based on a number of factors; adjudication based on these factors is difficult to administer. Also the Board Order does not contain any time limits on reopening.

The proposed regulation addresses the finality of benefit decisions. This proposed rule is similar to the regulation of the Social Security Administration (SSA) entitled ''Reopening and Revising Determinations and Decisions'' (20 CFR 404.987–404.996).

Proposed § 261.1 describes who may open a final decision issued by the agency. Proposed § 261.2 describes when a final decision may be reopened. All final decisions, except decisions awarding separation allowance lump sum payments, may be reopened within 12 months of the date of notice of such decision; within 3 years of the date of notice if new and material evidence is furnished or if there was an adjudicative error not consistent with the evidence of record at the time of adjudication; or at any time under the conditions set forth in proposed § 261.2(c).

Proposed § 261.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Proposed § 261.4 provides that the annuity beginning date will not be changed if the annuitant was later found to be engaged in compensated service for an employer, as defined in part 202 of the Board's regulations, and the annuitant had no basis for knowing that he was engaged in such service. This section also provides that the award of an annuity would not be withdrawn if based upon incorrect records of service where the erroneously credited service months do not exceed 6 months and the annuitant was not at fault in causing the error.

Proposed § 261.5 provides that a decision may be reopened after the 1 year and 3 year time limits set forth in § 261.2 of this part if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation it will not reopen the decision if the decision was favorable to the annuitant.

Proposed §§ 261.6–261.8 are procedural and provide that if a decision is reopened, the annuitant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 260 of the Board's regulations (20 CFR part 260).

Proposed § 261.9 provides that if a decision on a claim is reopened it may also cause a reopening of a decision on a previous claim based upon the same compensation record, even though the time limits for reopening a decision on the first claim have passed.

Proposed § 261.10 provides that where new evidence shows that the date of birth used in the initial decision was incorrect or where the record of compensation has been changed a decision may be revised even beyond the time limits of § 261.2 of this part if such reopening is favorable to the annuitant, but any increase in benefits payable as the result of the reopening shall be paid prospectively only.

Finally, proposed § 261.11 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

The Labor Member of the Board dissented from the action of the majority of the Board approving this proposed rule. The Labor Member's reasons for dissenting from this action are set out below.

Views of the Labor Member of the Board

Proposed § 261.2 would allow unlimited retroactivity for reopening where an overpayment resulted from the Board's failure to apply a proper reduction to the tier I component of an annuity. This same section would allow unlimited retroactivity in cases where an incorrect decision results in entitlement to an annuity where if the decision were correct there would be no entitlement.

The Labor Member contends that failure to consider these cases final after a reasonable period of time clearly defeats the purpose of developing an administrative finality policy. He agrees that, where an individual through fraudulent or similar means causes an incorrect benefit to be paid, the Board should promptly take steps to correct the payment and collect the overpayment. However, in cases where an overpayment has been made due to an error on the part of the Board or the beneficiary and there was no intent at deception, he feels that a reasonable ''statute of limitations'' should be set. He feels a more reasonable approach would be to borrow a policy from the Social Security Administration and allow unlimited retroactivity for reopening decision that were unfavorable to a party, but only to correct clerical error or error that appears on the face of the evidence that was considered when the determination or decision was originally made. In most other cases, reopening should be limited.

The Labor Member points out that in November 1985 the Board published a proposed rule in the Federal Register dealing with administrative finality (50 FR 48602, November 26, 1985). Several months later, the Office of Management and Budget submitted a letter to the then Chairman of the Board expressing dissatisfaction with the proposed rule comparing it unfavorably with SSA's.

The Labor Member interprets this as a clear message that the Board should tailor its administrative finality policy to that of SSA's to the extent possible.

The Labor Member wants our beneficiaries to have the security of knowing that benefits that they have come to rely on will not be suddenly taken away and argues that conforming our administrative finality regulations to those of SSA's where appropriate, lends itself to a true administrative finality, while still maintaining the integrity of the railroad retirement system. He thinks the proposed rule approved by the majority of the Board fails to do this, and for this reason he cannot endorse it.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 261

Pensions, Railroad employees, Railroad retirement.

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

1. Part 261, Administrative Finality, is added to read as follows:

PART 261—ADMINISTRATIVE FINALITY

Sec.

Authority: 45 U.S.C. 231f.

§ 261.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions. After the expiration of the time limits for review as set forth in part 260 of this chapter, decisions of the agency may be reopened and revised under the conditions described in this part, by the bureau, office, or entity that made the earlier decision or by a bureau, office, or other entity at a higher level, which has the claim properly before it.

(b) A *final decision* as that term is used in this part means any decision of the type listed in § 260.1 of this chapter where the time limits for review as set forth in part 260 of this chapter or in the Railroad Retirement Act have expired.

(c) Reopening a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence* as that phrase is used in this part means evidence that may reasonably be expected to affect a final decision, which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

§ 261.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date or the notice of such decision, for any reason;

(b) Within three years of the date of the notice of such decision, if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication; or

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) Another person files a claim on the same record of compensation and allowance of the claim adversely affects the first claim;

(3) A person previously determined to be dead on whose earnings record a survivor annuity is based is found to be alive;

(4) A claim was denied because of the absence of proof of death of the employee, and the death is later established:

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

(5) The Social Security Administration has awarded duplicate benefits on the same record of compensation;

(6) The decision was that the claimant did not have an insured status, and compensation has been credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To enter items transferred by the Social Security Administration which were credited under the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(ii) To correct an error made in the allocation of earnings to an individual which, if properly allocated, would have given him or her an insured status at the time of the decision and the evidence of these earnings was in the possession of the Railroad Retirement Board or the Social Security Administration at the time of the decision;

(7) The decision found the claimant entitled to an annuity or to a lump sum payment based on the earnings record of

a deceased person, and it is later established that:

(i) the claimant was convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or

(ii) If the claimant was subject to the juvenile justice system, he or she was found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony;

(8) The claimant shows that it is to his or her advantage to select a later annuity beginning date and refunds, by cash payment or setoff, past payments applying to the period prior to the later beginning date, subject, however, to the provisions of subpart D of part 217 and § 218.9 of this chapter;

(9) The decision is incorrect because of a failure to apply a reduction, or the proper reduction, to the tier I component of an annuity;

(10) Except as is provided in § 261.4 of this part, the decision is incorrect for any reason and results in entitlement to an annuity in a case where if the decision were correct there would be no entitlement.

(d) Revision of the amount or payment of a separation allowance lump sum amount pursuant to section 6(e) of the Railroad Retirement Act is limited to 60 days from the date of notification of the award of the separation allowance lump sum payment.

§ 261.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

§ 261.4 Decisions which shall not be reopened.

The following decisions shall not be reopened:

(a) An award of an annuity beginning date to an applicant later found to have been in compensated service to an employer under part 202 of this chapter on that annuity beginning date and who is found not to be at fault in causing the erroneous award; provided, however, that this exception shall not operate to permit payment of benefits for any month in which the claimant is found to be engaged in compensated service.

(b) An award of an annuity based on a subsequently discovered erroneous crediting of months of service and compensation to a claimant where:

(1) The loss of such months of service and compensation will cause the applicant to lose his or her eligibility for an annuity previously awarded;

(2) The erroneously credited months of service do not exceed six months; and

(3) The annuitant is found not to be at fault in causing the erroneous crediting.

(c) An erroneous award of an annuity where the error is no greater than one dollar per month per annuity affected.

(d) An erroneous award of a lump sum or accrued annuity payment where the error is no greater than $25.00.

§ 261.5 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in § 261.2(a) or § 261.2(b) of this part expires if the Railroad Retirement Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Railroad Retirement Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within 6 months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

§ 261.6 Notice of revised decision.

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

§ 261.7 Effect of revised decision.

A revised decision is binding unless:

(a) The revised decision is reconsidered or appealed in accord with part 260 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

§ 261.8 Time and place to request review of a revised decision.

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 260 of this chapter.

§ 261.9 Finality of findings when later claim is filed on same earnings record.

If two claims for benefits are filed on the same record of compensation, findings of fact made in a decision in the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the fist claim has passed. However, a finding in connection with a claim that a person was fully or currently insured at the time of filing an application, at the time of death, or any other pertinent time, may be revised only under the conditions stated in § 261.2 of this part.

§ 261.10 Increase in future benefits where time period for reopening has expired.

If, after the time period for reopening under § 261.2(b) of this part has expired, new evidence is furnished showing a different date of birth or new evidence is furnished which would cause a correction in a record of compensation as provided for in part 211 of this chapter and, as a result of the new evidence, increased benefits would be payable, the Board will pay increased benefits, but only for the months following the month the new evidence is received.

§ 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: December 14, 1995.

By authority of the Board.

For the Board

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–31059 Filed 12–20–95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 94P–0390 and 95P–0241]

Food Labeling: Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations on nutrient content claims and health claims to provide additional flexibility in the use of these claims on food products. These changes are intended to benefit public health by encouraging manufacturers to use health claims and nutrient content claims that will assist consumers in maintaining a healthy diet. The agency's current regulations were issued in January of 1993 to implement the Nutrition Labeling and Education Act of 1990. This document proposes refinements to those regulations to allow additional synonyms for nutrient content claims without specific preclearance by the agency, permit health claims on certain foods that do not currently qualify because they do not contain 10 percent of certain required nutrients, permit the use of shortened versions of authorized health claims under certain circumstances, eliminate some of the required elements for health claims, and provide additional guidance for petitioners seeking exemption from the disqualification of some foods from bearing a health claim because they contain high levels of certain nutrients. FDA is proposing these amendments in response to petitions submitted by the National Food Processors Association (NFPA) and the American Bakers Association (ABA).

DATES: Written comments by March 20, 1996. The agency is proposing that any final rules that may issue based upon this proposal become effective on the date of publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, 301–443–1751.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS–2), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Nutrition Labeling and Education Act of 1990

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. Among the more notable aspects of the 1990 amendments were that they confirmed FDA's authority to regulate nutrient content and health claims on food labels and in food labeling.

Section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), which was added by the 1990 amendments, provides that a product is misbranded if it bears a claim that characterizes the level of a nutrient of the type required to be included in nutrition labeling unless the claim uses terms that are defined and designated in regulations adopted by FDA and is made in accordance with all other regulatory requirements. Similarly, section 403(r)(1)(B) of the act provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition unless the claim is made in accordance with the requirements of the act.

The 1990 amendments instruct the Secretary of Health and Human Services (the Secretary) (and, by delegation, FDA) to issue regulations defining nutrient content claims that characterize levels of nutrients in food. The 1990 amendments also instruct the Secretary (and, by delegation, FDA) to issue regulations authorizing health claims only if he or she determines,

> ''based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence'' (section 403(r)(3)(B)(i) of the act).

Section 403(r)(3)(B)(ii) and (r)(3)(B)(iii) of the act describe the information that must be included in any health claim authorized under the act. The act provides that the claim shall be an accurate representation of the significance of the substance in affecting the disease or health-related condition, and that it shall enable the public to comprehend the information and understand its significance in the context of the total daily diet. Section 403(r)(4)(A)(i) of the act also provides that any person may petition FDA to issue a regulation authorizing a nutrient content or health claim.

In addition, the 1990 amendments directed FDA to consider 10 disease-nutrient relationships as possible subjects for health claims.

B. FDA's Implementation of the 1990 Amendments

In the Federal Register of January 6, 1993 (58 FR 2066–2941), FDA adopted final rules that implemented the 1990 amendments to the act. Among those final rules, § 101.13 sets out general principles for nutrient content claims and provides for their use on food labels. Other regulations in subpart D of part 101 (21 CFR part 101) establish specific requirements for nutrient content claims. These regulations define specific terms such as ''free,'' ''low,'' ''good source,'' ''high,'' ''reduced,'' ''less (or fewer),'' ''more,'' and ''light'' or ''lite,'' and establish values for these terms for various nutrients. They also designate certain synonyms that can be used in place of these defined terms (58 FR 2302). In addition, § 101.69 establishes procedures for petitioning the agency to authorize additional nutrient content claims and provide for additional synonyms which, if authorized, will be listed in the relevant regulations (§ 101.69) (e.g., ''extra'' as a synonym for ''more'').

FDA also adopted final rules that implemented the health claims provisions of the act (58 FR 2478). Section 101.14 establishes general principles for health claims. This regulation prescribes the circumstances in which a substance is eligible to be the subject of a health claim (§ 101.14(b)), sets forth the standard in section 403(r)(3)(B)(i) of the act as the standard that the agency will apply in deciding whether to authorize a claim about a substance-disease relationship (101.14(c)), sets forth general rules on how authorized claims are to be made in food labeling (§ 101.14(d)), and establishes limitations on the circumstances in which claims can be made (§ 101.14(e)). The agency also adopted § 101.70, which established a process for petitioning the agency to authorize health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(f)).

At the same time, the agency announced its decisions regarding health claims on the 10 disease-nutrient

relationships specified in the 1990 amendments. Of the 10, FDA authorized health claims for calcium and osteoporosis (58 FR 2665); dietary lipids and cancer (58 FR 2787); sodium and hypertension (58 FR 2820); dietary saturated fat and cholesterol and risk of coronary heart disease (58 FR 2739); fiber-containing grain products, fruits, and vegetables and cancer (58 FR 2537); fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease (58 FR 2552); and fruits and vegetables and cancer (58 FR 2622). The regulations on general requirements for health claims and on the claims specified above became effective May 8, 1993.

In the Federal Register of January 6, 1993 (58 FR 2066), FDA also issued ''Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments,'' (the implementation final rule). The implementation final rule provided 30 days for interested persons to comment on technical issues arising in any of the final rules implementing the 1990 amendments. In the Federal Register of August 18, 1993 (58 FR 44020 to 44096), FDA published technical amendments to the final rules in response to the comments it received.

In the Federal Register of October 14, 1993 (58 FR 53254), FDA proposed to authorize the use of a health claim about the relationship between folate and the risk of neural tube defects on the labels or in labeling of foods in conventional food form and dietary supplements. This action was in response to provisions of the 1990 amendments and the Dietary Supplement Act of 1992 (Pub. L. 102–571). In the Federal Register of January 4, 1994 (59 FR 395), FDA announced that the proposed regulation to authorize use of the health claim about the association between folate and neural tube defects in food labeling was considered a final regulation for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances.

II. The Petition of the National Food Processors Association

The National Food Processors Association (NFPA) submitted a citizen petition dated October 25, 1994, requesting initiation of rulemaking for the adoption of amendments to the regulations governing nutrient content and health claims. This petition was assigned FDA Docket No. 94P–0390.

For nutrient content claims, NFPA requested specific amendments to §§ 101.13 and 101.65 allowing use of synonyms and implied nutrient content claims, without FDA preclearance, that are understood by consumers to have the same meaning as a defined term, where such claims are made in accordance with the requirements for the defined term, and the defined term also appears in the product's labeling.

NFPA also requested several amendments to the health claim regulations. Among other changes, NFPA requested that FDA permit the use of an abbreviated or implied health claim with a referral statement directing consumers to the complete claim elsewhere in labeling. Currently, all required information must appear in one place without other intervening material.

It also requested that health claims be permitted for foods with levels of nutrients that FDA had determined increase the risk of other diseases to the general population. Among the general requirements for health claims, FDA established in § 101.14(a)(5) levels of total fat, saturated fat, cholesterol, and sodium in a food above which the food is disqualified from making a health claim. These are identified as ''disqualifying nutrient levels.'' In its petition, NFPA suggested that FDA amend the regulation so that a food with a nutrient at a disqualifying level would be prohibited from making a health claim only if the nutrient is directly and adversely associated with the disease to which the claim refers. Absent such an association, NFPA requested that the presence of a nutrient above a threshold level not disqualify a product from bearing a health claim but instead require disclosure of that fact in labeling.

Finally, NFPA requested an amendment to § 101.14(e)(6), which prohibits a food in conventional food form from bearing a health claim unless the food contains 10 percent or more of the Reference Daily Intake or Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed before any nutrient addition (the ''10 percent nutrient contribution requirement''). NFPA requested that this prohibition be replaced by a requirement that any food bearing a health claim that refers to an added nutrient disclose the fact of that nutrient addition in labeling.

FDA issued a letter on May 11, 1995, granting most of the requests to initiate rulemaking on the foregoing aspects of the petition (hereinafter referred to as the May 11, 1995, letter). However, the agency denied certain aspects of NFPA's petition, including NFPA's request that FDA change the levels in § 101.14(a)(5) from disqualification levels to disclosure levels. Although the agency recognized that it has the authority under section 403(r)(3)(A)(ii) of the act to exempt any claim from the disqualifying nutrient levels if it finds that the claim would ''assist consumers in maintaining healthy dietary practices,'' the agency concluded that a generic change in its regulations would not be consistent with the underlying goals of the NLEA.

FDA acknowledged, however, that disclosure rather than disqualification may be appropriate under certain circumstances. The agency said it will seek more limited criteria to define the conditions under which disclosure rather than disqualification could be permitted.

III. The Petition of the American Bakers Association

A citizen petition, dated July 27, 1995, was submitted to FDA by the ABA (Docket No. 95P–0241/CP 1), requesting that FDA amend, among other things, the regulatory provision in § 101.14(e)(6) to permit enriched cereal-grain products that conform to the standards of identity in part 136, 137, or 139 (21 CFR part 136, 137, or 139), and bread that conforms to the standard of identity for enriched bread in § 136.115, except that it contains whole wheat or other grain products not permitted under that standard, to bear health claims. The petition specifically requested that FDA amend § 101.14(e)(6) to read:

> Except for dietary supplements, enriched grain products that conform to a standard of identity in part 136, 137, or 139, and bread that conforms to the standard of identity for enriched bread in § 136.115, except that it contains whole wheat or other grain products not permitted under that standard, or where provided for in other regulations in part 101, subpart E.

In the alternative, ABA suggested that the agency expand the list of qualifying nutrients to include complex carbohydrates, niacin, or thiamin or allow the 10 percent nutrient contribution requirement to apply to all foods for which the summation of the Daily Value of the applicable nutrients is 10 percent rather than requiring that the 10 percent be based on a single serving.

Because of the similarities in the NFPA and ABA petitions regarding the 10 percent nutrient contribution and health claims, FDA is responding to part of the ABA petition in this document, which implements FDA's May 11, 1995, letter response to the NFPA petition. Other issues raised in the ABA petition will be handled separately.

IV. The Proposals

As the petitioners have requested, the agency is reconsidering its position on several of the issues raised in the NFPA and ABA petitions. The agency is well within its legal authority to reconsider the issues in the NFPA petition and propose changes to the current food labeling regulations. ''An agency may always change its mind and alter its policies.'' (See *Conference of State Bank Examiners* v. *Office of Thrift Supervision*, 792 F. Supp. 837, 845 (D.D.C. 1992)). While the burden is on the agency to justify the change from the status quo, that justification need not consist of an affirmative demonstration that the status quo is wrong. The agency need only supply ''a reasoned analysis for the change.'' (See *Center for Auto Safety* v. *Peck*, 751 F.2d 1336, 1349 (D.C. Cir 1985) (citing Motor *Vehicle Mfrs. Ass'n* v. *State Farm Mutual*, 463 U.S. 29, 41, 103 S.Ct. 2856, 2865–2866 (1983))). The agency can justify its departure from past policy ''with reference to the objectives underlying statutory scheme it purports to construe.'' (See *Simmons* v. *I.C.C.*, 829 F.2d 150, 156 (D.C. 1987)).

One of the primary purposes of the 1990 amendments was to educate consumers about healthful dietary practices. The legislative history states, ''Health claims supported by significant scientific agreement can reinforce the Surgeon General's recommendations and help Americans to maintain a balanced and healthful diet'' (Ref. 1).

If the current regulations hinder food companies who want to use one of the FDA-authorized claims, as NFPA has alleged, this public health objective will be frustrated. As the agency has stated, if valid health claims are not being used, ''there is a cost imposed on society in that some valuable information may not be conveyed to consumers'' (58 FR 2927 at 2940). Consumers cannot change their dietary practices if they do not have the necessary information.

The agency is pleased that many food companies are using the health claims on the labels of their products. While the agency has not done an extensive survey, FDA notes that dozens of health claims have appeared on products such as cereal, cookies, frozen dessert bars, egg products, and frozen vegetables. Nonetheless, the agency is concerned that health claims are not being used as extensively as they could be, despite the fact that many foods qualify for such claims.

FDA also notes that food companies are submitting petitions seeking approval of new claims. Since the final regulations have been published, the agency has received two such petitions, one regarding sugar alcohols and dental caries and one regarding oat products and coronary heart disease. A proposed regulation to authorize a health claim regarding sugar alcohols and dental caries was published in the Federal Register on July 20, 1995 (60 FR 37502) (hereinafter referred to as the sugar alcohols proposal). The agency expects to complete in the very near future its evaluation of the petition regarding oat products and coronary heart disease.

Accordingly, the agency is proposing changes to the regulations regarding the use of synonyms for nutrient content claims, the 10 percent nutrient contribution requirement for health claims, the use of abbreviated health claims, the specific requirements for individual health claims, and disqualifying levels for health claims to facilitate additional use of these claims.

A. Synonyms in Nutrient Content Claims

Section 403(r)(1)(A) and (r)(2) of the act state that claims that either expressly or by implication characterize the level of a nutrient (nutrient content claims) may be made in the label or labeling of a food only if the characterization of the level made in the claim uses terms that are defined in regulations of the agency. Based on these provisions, the agency has defined expressed claims as any direct statement about the level (or range) of a nutrient in the food (§ 101.13(b)(1)). In addition, it has defined implied claims as nutrient content claims that describe the food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (e.g., ''high in oat bran'') (§ 101.13(b)(2)(i)) or that suggests that the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an expressed claim or statement about a nutrient (e.g., ''healthy, contains 3 grams of fat'') (§ 101.13(b)(2)(ii)).

The agency has specifically defined a number of expressed nutrient content claims (''free,'' ''low,'' ''reduced,'' ''light,'' ''good source,'' ''high,'' and ''more'') and provided for their synonyms, e.g., ''no,'' ''little,'' ''contains,'' and ''rich in.'' The agency also provided for certain implied nutrient content claims (§ 101.65(c) and (d)). Finally, the agency has defined the implied nutrient content claim ''healthy'' (§ 101.65(d)(2)).

The agency considered the use of additional synonyms for the defined terms in the 1993 nutrient content claims final rule (58 FR 2302 at 2320). At that time the agency provided for a limited number of specific synonyms and declined to provide for either long lists of synonyms or conditions for use of unevaluated terms. The agency concluded that permitting additional synonyms to be used in conjunction with either a defined claim or a disclosure statement explaining the synonym's intended meaning would not assist consumers in maintaining healthy dietary practices (58 FR 2302 at 2320). The agency stated that there is no provision in the act that allows for the use of undefined synonyms in the absence of action by the agency. Because of time constraints, in developing the final regulations FDA was unable to fully study the suggested schemes for use of terms without preclearance to determine whether a scheme could be devised that would constitute approval by the agency without preclearance of each term.

The agency also considered but rejected (58 FR 2302 at 2373) the suggestion that implied claims that are defined on the label be permitted. The agency did provide for certain implied claims on products that meet the definition for certain expressed claims and gave specific examples of some of these claims in the preamble (58 FR 2302 at 2374) and in the regulations (§ 101.65(c)(3)) (e.g., ''high in oat bran'' for foods that are a good source of fiber; ''no oil'' for fat free foods).

In the October 25, 1994, petition, as stated above, NFPA requested that the agency reconsider allowing synonyms and implied nutrient content claims to be used without FDA preclearance under certain circumstances. NFPA maintained that FDA's strict interpretation and application of the 1990 amendments totally frustrated the achievement of the various statutory goals of improving consumer education about diet and health and thereby reducing the incidence of diet-related diseases.

NFPA argued that, because the regulations sharply limit the terminology that can be used to make nutrient content claims for food products and require ''premarket clearance'' of terminology that FDA has not specifically authorized by regulation, the regulations ban a host of truthful and nonmisleading labeling statements. The petitioner requested that FDA propose amendments that would permit nonmisleading terms or statements that are reasonably understood by consumers to be synonyms of a term defined in subpart D of part 101 to be used in product labeling when the defined term also is used in the labeling. Requesting similar amendments for implied claims, NFPA

stated that such amendments would ensure that claims characterizing the level of a nutrient in a food are truthful and nonmisleading but would give manufacturers greater freedom to construct such labeling messages creatively.

In its May 11, 1995, response, FDA recognized that there may be some merit to the argument that more latitude in the use of truthful, nonmisleading nutrient content claims may assist consumers in maintaining healthy dietary practices because greater flexibility would provide the food industry with an increased incentive to develop more healthful products. Permitting synonyms for defined terms to be used on product labels without specific authorization for the particular synonyms has the potential to provide the industry with a greater variety of ways to convey nutrient information to the consumer because the nutrient content claims on the label would not be restricted to a finite list of terms that can only be expanded by filing an appropriate petition. This approach could facilitate the industry's efforts to arrive at terms that not only appropriately describe the nutrient level in a food but also effectively catch the attention of the consumer.

In its May 11, 1995, letter, the agency noted that while a plethora of uncontrolled terms would confuse consumers by diminishing the usefulness of clearly defined and limited terms, NFPA's ''anchoring'' concept, if properly implemented, could offer the possibility of increasing the available terms without confusing consumers. The agency stated that it was granting NFPA's petition to initiate rulemaking on the use of additional synonyms anchored to specifically authorized terms.

Consequently, the agency is proposing to add new paragraph (r) to § 101.13, which provides that synonyms may be used in labeling in accordance with one of two provisions. First, proposed § 101.13(r)(1) reflects the fact that a term may be used as a synonym when the agency has specifically listed it as a synonym for a defined term in one of the regulations listing authorized nutrient content claims in subpart D of part 101 (''listed synonym''). FDA included a number of synonyms in the regulation that it adopted as part of the 1993 nutrient content claims final rule. It has also adopted synonyms as a result of a petition filed in accordance with § 101.69(n). Additional synonyms may be added to FDA's regulations following this procedure. Second, FDA is proposing in § 101.13(r)(2) to authorize the use of synonyms that are not specifically listed by name in the regulations in subpart D of part 101, part 105, or part 107 (21 CFR part 105 or part 107) (''unlisted synonyms'') but are used in labeling in accordance with the labeling requirements set out in this provision.

Specifically, in § 101.13(r)(2), the agency is proposing a number of requirements to ensure that the use of unlisted synonyms will not confuse or mislead consumers. In particular, FDA is proposing in § 101.13(r)(2)(i) to require that an unlisted term be reasonably understood by consumers to be a synonym of a term defined in subpart D of part 101, part 105, or part 107. Such an understanding is necessary because the agency has, for example, defined the terms ''high'' and ''good source'' to represent two different levels of a nutrient.

Consumers can reasonably be expected to understand that ''without any [nutrient]'' is the same as ''free of [nutrient],'' and that ''not much'' of a nutrient is, in common usage, synonymous with ''low'' for that nutrient since ''not much'' implies that some but not a lot of the nutrient is present. Other ''synonyms'' however, may not be so clear. It is important, therefore, that the use of unlisted synonyms that FDA is proposing to authorize under § 101.13(r)(2) be clear and unambiguous to consumers regarding the levels to which they apply. Without such clarity, consumers may be confused as to the nutrient content of the food bearing the claim. Thus, regardless of the prominent use of a listed term or other explanatory information discussed below, terms that are not clearly understood by consumers to be synonymous with specific listed terms may still be misleading and misbrand the food under both section 403(a) and section 403(r)(1)(A) of the act.

Further, the agency is concerned that different manufacturers might use the same term but anchor it to different nutrient content claims. For example ''plenty of fiber'' might be anchored to ''good source'' on one product label and ''high'' on another. In this event, the agency reserves the right to call for petitions to define the term by regulation or to define the term on its own initiative.

The agency agrees with NFPA that, in addition to considering the words of the individual claim, it is important to consider the meaning of the unlisted synonym in the context of the entire product label. It is possible, for instance, that other statements such as other nutrient content claims on the label or in labeling could establish a context in which the unlisted synonym would be misleading. Section 403(a) of the act states that a food is misbranded if it bears any labeling statement that is false or misleading in any particular. Therefore, proposed § 101.13(r)(2)(i) requires that the unlisted synonym not be misleading in the context of the entire label.

The agency seeks comments as to whether further requirements should be imposed to ensure that an unlisted term is truly synonymous with a listed term. For example, FDA seeks comments as to whether it should require companies to have data in their files demonstrating that consumers understand the unlisted term to be synonymous with the listed term in question as a condition for the use of the unlisted terms. In addition, the agency seeks comments on why, if it includes such a requirement, it should not also require that such data be available for review by regulatory officials.

As stated above, for any term used as a synonym authorized under proposed § 101.13(r)(2) not to be misleading, the defined term for which it purports to be a synonym would have to be clear to the consumer. Proposed § 101.13(r)(2)(ii)(A) will require that the listed term appear prominently and conspicuously on the label.

Proposed § 101.13(r)(2)(ii)(A)(*1*) requires the listed term appear immediately adjacent to (with no intervening material) the most prominent (as defined in § 101.13(j)(2)(iii)) use of the unlisted synonym. The agency tentatively concludes that having a listed term immediately adjacent to the most prominent use of each such unlisted synonym will help to ensure that consumers understand the claim that is being made and thus to ascertain the level of the nutrient that the food purports to contain.

The agency tentatively concludes that it is not sufficient for the listed term to appear anywhere on the label, as suggested in the NFPA petition. Such a scheme would not guarantee that the unlisted synonym is read in conjunction with a listed term and would hinder the consumer from ascertaining the level of the nutrient that the food purports to have. For example, with such a provision, the unlisted synonym authorized under § 101.13(r)(2) could be very large and prominent, and the listed term could be a part of the fine print (i.e., in small print that is in sentence or paragraph form elsewhere on the label). Although such defining information may be read by consumers at some point, it would be unlikely to be fully read and comprehended at the same

time as the unlisted term and thus would not make clear to the consumer that the two statements are synonymous.

The agency's proposal is consistent with section 403(f) of the act which deems a food to be misbranded if any word, statement, or other information required by the act to appear on the label or labeling is not prominently placed with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Section 403(f) of the act necessitates placement of the listed term on the label so that it is likely to be read and understood, and thereby to eliminate any ambiguity as to the meaning of the unlisted synonym. Allowing the listed term to be anywhere on the label that the manufacturer chooses would not ensure that this requirement is met.

There are a number of precedents for requiring clarifying information in labeling to be adjacent to the text that it clarifies. For example, § 101.3(e) requires that the word ''imitation'' precede the name of the food imitated; the term ''artificial'' is required by § 101.22(i)(1)(i), (i)(1)(ii), and (i)(3) to be adjacent to the name of the flavor; and § 102.5(b)(2) (21 CFR 102.5(b)(2)) requires that if the percentage of a characterizing ingredient is required to be included in the common or usual name of the food, it must be adjacent to the name of the food. Further, several aspects of the nutrient content claims regulations require that clarifying statements such as the referral statement, ''See [side] panel for nutrition information'' (§ 101.13(g)); the disclosure statement, ''See [side] panel for information about [sodium] and other nutrients'' (§ 101.13(h)); the percentage reduction and identity of the reference food for a relative claim (§ 101.14(j)(2)(ii)); and other clarifying information about the food in relation to the claim, e.g., § 101.13(i)(2) and (p)(2), be immediately adjacent to the claim to which the statement pertains.

As with accompanying information for relative claims (i.e., percent reduction in the nutrient and identity of the reference food (§ 101.13(j)(2)(i) through (j)(2)(iii)), the agency considers the presence of a listed term to be necessary to ensure that the claim is understood by, and is not misleading to, consumers. However, as with accompanying information, it recognizes that to require that this information be included each time an unlisted synonym is used may overburden the label. Consequently, as with relative claims, the agency is proposing to require only that the defined term or listed synonym be placed immediately adjacent to the most prominent declaration of each unlisted synonym. Because of the similar purposes of the two requirements, the agency believes that the provisions in § 101.1(j)(2)(iii) for determining the order of prominence of relative claims are also appropriate for determining the order of prominence of presentations of an unlisted synonym. The order of prominence for relative claims is: (1) A claim on the principal display panel adjacent to the statement of identity, (2) a claim elsewhere on the principal display panel, (3) a claim on the information panel, or (4) a claim elsewhere on the label or labeling.

The agency is proposing in § 101.13(r)(2)(ii)(A)(2) that the listed term be at least half as prominent as the unlisted synonym. If it adopts these changes, FDA will evaluate prominence using type size, style, and color. In the past, FDA has required certain clarifying information to be in type at least half the size of that of the statement it is clarifying. For example, when the term ''light'' is used to describe a physical or organoleptic property of a food (e.g., ''light in color''), the clarifying information ''in color'' is required to be at least half the type size as the word ''light'' (§ 101.56(e)(2)). Similarly, when the term ''light'' is used on a meal type product to describe a nutrient reduction, a clarifying statement as to whether the food is ''low in calories'' or ''low in fat'' is required and must be at least half the size of the term ''light'' (§ 101.56(d)(1)(ii)). Further, § 102.5 requires that the percentage declaration of a characterizing ingredient or component be no less than half the height of the largest type appearing in the common or usual name when it has a material bearing on the nature of the product. Further, this information must appear in bold-faced type. As a final example, § 101.13(f) requires that any nutrient content claim not be more than two times larger than, and not unduly prominent in type style compared to, the statement of identity. All of these provisions are examples of requirements where clarifying information must be at least half as large or prominent as the statement that it is clarifying.

FDA is proposing section 101.13(r)(2)(ii)(A)(*1*) and r)(2)(ii)(A)(*2*) to ensure that the combination of unlisted and listed terms that appear on a food label are understood by consumers to be making a single claim. This understanding is crucial because the act requires that a nutrient content claim be made ''only if the characterization of the level made in the claim *uses terms which are defined in regulations* * * *.'' (Section 403(r)(2)(A)(i) of the act (emphasis added).) In its petition, NFPA argues that there is nothing in the act that defines a claim to mean individual label statements—as opposed to the overall message conveyed by labeling for a product. The petition stated that, in NFPA's view, a ''claim'' is properly viewed under the statute as referring to the message about the level of a particular nutrient in the food conveyed in the context of the entire product labeling. NFPA maintained that, while the labeling should include terms defined by FDA, other synonyms or implied statements concerning the nutrient should be viewed as components of the single labeling claim. FDA tentatively concludes that the use of unlisted synonyms in the manner proposed will ensure that consumers understand them to be part of a single nutrient content claim that uses terms defined by regulation. As stated in its May 11, 1995, letter to NFPA, however, the agency cannot finalize this rule unless it receives evidence demonstrating that consumers understand the terms used in this way.

FDA also recognizes that there may be some labels on which the listed term is significantly more prominent than an unlisted synonym. This would be the case, for example, if the listed term was made in a ''burst'' or in the statement of identity and the unlisted synonym was used in a paragraph in smaller sized type. Such usage might occur if a manufacturer wanted to use a variety of ways to express the level of a nutrient in a discussion about the food. The agency tentatively finds that, in this case, the level of the nutrient described by the listed term would be clearly understood, and additional clarification next to the smaller print on the same label would not be necessary. Therefore, FDA is proposing in § 101.13(r)(2)(ii)(B) that if the listed term is more than twice as prominent on a label as the listed synonym, such that the claimed nutrient level is clearly understood, e.g., a bold faced listed term versus an unlisted synonym used only in a paragraph in smaller sized type, the listed need not be placed adjacent to the unlisted synonym. The agency requests comment on whether this approach is consistent with a nonmisleading label.

The agency is also providing in proposed § 101.13(r)(2)(iv) that a listed term may not be used with an unlisted synonym to form a new term, e.g., extra low, extra high, especially good source, or great source. In its review of food

labels before the passage of the 1990 amendments, the Institute of Medicine (IOM) stated that consumers were confused by the plethora of terms on food labels and recommended that definitions of nutrient levels for label claims be severely restricted (Ref. 2). The IOM recommended that four levels be defined for explicit claims: Low, very low, high and very high or their equivalents. The agency has essentially done just that in defining, ''low,'' ''free,'' ''good source'' and ''high.'' With the use of unlisted synonyms, the agency is concerned that there may be instances when the use of unapproved modifiers for these terms (e.g., ''extra low,'' ''extra high,'' ''especially good source,'' ''great source'') would confuse consumers by unjustifiably suggesting that there is a distinction between the listed term with and without the modifier. To avoid this confusion, the agency tentatively concludes that it is necessary to prohibit the use of claims that consist of a term that modifies an existing listed term.

In the course of developing the definitions and other requirements for the use of nutrient content claims, the agency made a diligent effort to determine the various meanings and requirements of the nutrient content claims it defined. In some cases the agency determined that, in order for the label not to be misleading, it was necessary for certain additional information to be conveyed to consumers along with the claim. This information included referral or disclosure statements (required by the statute), additional label statements such as accompanying information for foods bearing relative claims (§ 101.13(j)(2)), and other statements such as ''not a sodium free food'' on a food bearing an ''unsalted'' claim that was not ''sodium free'' (§ 101.61(c)(2)(iii)). Just as this information is necessary for a listed term not to be misleading and for a label bearing such a claim to provide full and relevant information to the consumer, the agency tentatively concludes that such additional information is equally important and necessary when unlisted synonyms are used. Consequently, the agency is proposing in § 101.13(r)(2)(iii) to require that unlisted synonyms be used in conformance with all of the requirements for the use of the listed terms.

The petitioners also requested that the agency permit the use of unlisted synonyms with implied claims such as terms, statements, or symbols. As with unlisted synonyms, FDA tentatively finds that this concept may have some merit. However, the agency points out that implied claims that are consistent with a listed term may currently be used on a label. Therefore, the agency is not proposing further provisions for the use of implied nutrient content claims.

B. Section 101.14(e)(6): The 10 Percent Nutrient Contribution Requirement

In the Federal Register of January 6, 1993, FDA published a final rule entitled ''Food Labeling: General Requirements for Health Claims for Food'' (58 FR 2478) (hereinafter referred to as the 1993 health claims final rule). Among other things, this rule requires that, to be eligible to bear a health claim, a food other than a dietary supplement contain 10 percent or more of the Daily Value (DV) for vitamin A, vitamin C, iron, calcium, protein, or fiber, before any nutrient addition (§ 101.14(e)(6)). As explained in that document, FDA concluded that such a requirement was necessary to assure that the value of health claims would not be trivialized or compromised by their use on foods of little or no nutritional value. Furthermore, such a requirement responded to Congress's intent that health claim provisions consider the role of the nutrients in food in a way that will enhance the chances of consumers constructing total daily diets that meet dietary guidelines. Thus, foods bearing health claims should be consistent with current dietary guidelines. Furthermore, the agency concluded that fortification of foods of little or no nutritional value for the sole purpose of qualifying that food for a health claim is misleading, especially if foods such as confections, soda, and sweet desserts are fortified to qualify for a health claim, because such foods have been cited in dietary guidance as those that should be used sparingly.

In the Federal Register of August 18, 1993 (58 FR 44036), FDA published technical amendments to the health claim regulations in response to comments that the agency received on the implementation final rule (hereinafter referred to as the 1993 health claims technical amendment). One of the comments stated that if a health claim petition were submitted for the claim ''useful only in not promoting tooth decay,'' virtually none of the sugar-free products on the market would be eligible to bear the claim because of the 10 percent nutrient contribution requirement.

In the 1993 health claims technical amendments, FDA acknowledged that certain food products of limited nutritional value that have been specially formulated relative to a specific disease condition, such as dental caries, may be determined to be appropriate foods to bear a health claim. The agency commented that its intention was to deal with such situations within the regulations authorizing specific health claims. Therefore, FDA amended § 101.14(e)(6) to state that:

> Except for dietary supplements not in conventional food form or where provided for in other regulations in part 101, subpart E, the food contains 10 percent or more of the Reference Daily Intake or Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

The terminology ''not in conventional food form'' was subsequently deleted in the final rules pertaining to health claims for dietary supplements published in the Federal Register on January 4, 1994 (59 FR 395).

The sugar alcohols proposal proposes such an exemption from the 10 percent nutrient contribution requirement.

Following publication of the health claims final rule, two trade associations—NFPA and the ABA—submitted petitions to FDA requesting that the agency revise the general requirements for health claims and reconsider its decision regarding the 10 percent nutrient contribution requirement. The NFPA petition argued that the 10 percent nutrient contribution requirement precludes truthful, nonmisleading health claims because it sets an arbitrary nutritional contribution a food must make to the diet to qualify for any claim. Consequently, NFPA argued, the 10 percent nutrient contribution requirement prohibits some common fruits, vegetables, and other wholesome and nutritious foods from making health claims. While NFPA agreed that a food bearing a health claim should contain levels of the nutrient consistent with the health claim, it contended that the lack of significant levels of other nutrients should not prevent a food from bearing a health claim. NFPA argued that if other nutrient levels are deemed to be material with respect to consumers' understanding of a health claim, then such levels should be disclosed in the Nutrition Facts panel.

Furthermore, NFPA contended that the 1993 health claims final rule precludes truthful, nonmisleading claims because it prohibits a food from satisfying the 10 percent nutrient contribution requirement through fortification. NFPA stressed that even though fortification of a food to support a health claim is material information that should be disclosed in labeling, added and indigenous nutrients are equally nutritious, and, therefore,

prohibiting fortified foods from bearing a health claim is not justified.

NFPA requested that FDA amend § 101.14(e) by revoking the requirement that foods bearing a health claim contain 10 percent of the DV of vitamin A, vitamin C, calcium, protein, iron, or fiber before any nutrient addition, so that fruits, vegetables, and other nutritious foods could bear health claims.

The ABA petition did not request that the agency revoke the 10 percent nutrient contribution requirement. Rather, it requested that FDA modify the 10 percent nutrient contribution requirement to permit health claims on certain enriched grain products. ABA contended that while some enriched breads might meet the 10 percent nutrient contribution requirement for fiber, most enriched grain products cannot meet the 10 percent nutrient contribution requirement for any of the six listed nutrients because they are precluded by the standards of identity from containing 10 percent of the six listed nutrients. ABA also stated that the standards of identity require specific nutrient addition at levels that were established by FDA as optimal for reducing the risk of certain diet-related diseases. These foods, in fact, have been used for many years to improve the nutrition of U.S. consumers and to reduce the risk of diet-related diseases. Therefore, ABA contended that these foods are precisely the kinds of foods that should be permitted to bear health claims.

ABA argued that the 10 percent nutrient contribution requirement was obviously not intended to apply to foods that conform to the standards of identity for enriched grain products because it precludes virtually all enriched grain products from bearing health claims. It contended that this exclusion is inconsistent with the basis of the health claims because these foods are not only beneficial in reducing the risk of diet-related diseases but, more importantly, are also recommended in current dietary guidelines as foods whose consumption should be increased to maintain a balanced and healthful diet. The petition noted that the Food Guide Pyramid recommends that 6 to 11 servings of grain products be consumed per day. ABA contended that this recommendation demonstrates the importance of including these foods in the diet. ABA argued that the 10 percent nutrient contribution requirement has had the unintended effect of precluding foods that FDA concluded could appropriately bear a health claim from bearing the claim. Thus, ABA requested that the agency amend § 101.14(e) to exempt from the 10 percent nutrient contribution requirement enriched grain products that conform to a standard of identity in part 136, 137, or 139, and bread that conforms to the standard of identity for enriched bread in § 136.115, except that it contains whole wheat or other grain products not permitted under that standard.

In the alternative, ABA suggested that the agency expand the list of nutrients that must be present at 10 percent to include complex carbohydrates, niacin, or thiamin. Such action, the petition explained, would permit enriched grain products to bear health claims because these products are a significant source of such nutrients.

As a second alternative, ABA suggested that FDA amend the 10 percent nutrient contribution requirement to allow it to apply to a daily consumption of grain products rather than to the nutrient profile of a specific food.

FDA has fully evaluated and considered the arguments raised in both petitions. FDA recognizes that the 10 percent nutrient contribution requirement may have had the unintended effect of prohibiting health claims on certain foods that could be beneficial for consumers and help them to maintain a balanced and healthful diet. The agency is concerned, however, that eliminating the 10 percent nutrient contribution requirement will permit misleading health claims on foods with little or no nutritional value such as candies and soft drinks or will encourage overfortification of the food supply (e.g., vitamin or mineral addition to soft drinks). The appearance of health claims on such foods would be inconsistent with Congress's intent when it enacted the health claims provisions. As discussed in the 1993 health claims final rule, Congress enacted the health claims provisions of the 1990 amendments to not only protect consumers from health claims that are not scientifically valid but also to help consumers maintain healthy dietary practices by providing information that would be useful in constructing total daily diets that meet current dietary guidelines. Thus, an important part of the significance and benefit of health claims is that they appear on foods that are compatible with current dietary recommendations. (See H. Rept. 101–538, 101st Cong., 2d sess. pp. 9–10 (1990).)

During the development of the health claims final rule, FDA considered other alternatives that would ensure that health claims are not trivialized or rendered meaningless by appearing on foods of little or no nutritional value. For example, the agency considered prohibiting health claims on specific foods, such as confections, soda, and snack foods, based on the foods' categorization or characteristic use. However, as fully discussed in the 1993 health claims final rule (58 FR 2478 at 2521), the agency was not persuaded that such action was in keeping with the intent of the statute. The agency concluded that Congress did not intend that specific foods that could be in general use be prohibited from bearing a health claim. Thus, the agency concluded that a prohibition on health claims for specific categories of foods was not a viable option.

However, given the requirement in section 403(r)(3)(B)(iii) of the act that a claim should enable the public to comprehend the information in a claim and understand the relative significance of that information in the context of a total daily diet, FDA concluded (as discussed in the 1993 health claims final rule (58 FR 2478 at 2521–2522)) that it is appropriate to provide a basis for health claims that takes into account the nutritional contribution of the food beyond its role as a source of calories. The agency noted that ''Congress intended that FDA establish provisions of health claims regulations by considering the role of the nutrients in food in a way that will enhance the chances of consumers constructing total daily diets that meet dietary guidelines'' (Id. at 2521). Without such provisions, foods that are not compatible with dietary guidelines could bear health claims. In addition to being inconsistent with Congress's intent when it established the health claim provisions, and section 403(r) of the act, claims intended to promote the consumption of a food that is incompatible with dietary guidelines would be misleading to consumers and, therefore, would be in violation of section 403(a) (id.). Such claims would be misleading because consumers would be purchasing the food, in part, to achieve a more healthful diet, when, in fact, such foods are inconsistent with dietary guidelines. Further, such claims could be damaging if consumers are encouraged to replace wholesome and nutritious foods that are recommended in dietary guidelines with these foods.

Thus, the agency concluded then, and reiterates now, that the 10 percent nutrient contribution requirement is a necessary component of the health claims provisions to ensure that such claims appear on foods that make a nutritional contribution to the diet and are consistent with dietary guidelines. If the agency were to revoke this requirement, it would have to establish

an alternative mechanism to ensure that health claims are not made on inappropriate foods. The NFPA petition did not suggest any alternatives to the 10 percent nutrient contribution requirement to preclude misleading health claims on inappropriate foods.

The agency also tentatively concludes that the alternatives suggested in the ABA petition would not ensure that health claims were made only on foods that are consistent with dietary guidelines. Relying on either of the two alternatives suggested in the ABA petition would not adequately assist consumers in placing foods that bear health claims in their proper dietary context.

The ABA's suggestion that the nutrients required to be present at 10 percent be expanded to include thiamin, niacin, or carbohydrates would not encourage consumers to increase their intake of vitamins and minerals that have been identified as those of continuing public health significance. Public health concerns for deficient intakes of thiamin, niacin, or carbohydrates have lessened considerably in the last 20 years, whereas the inadequate intakes of vitamin A, vitamin C, calcium, and iron remain a public health concern especially because of the possible association between several of these nutrients and the risk of chronic disease. Furthermore, expanding the list of nutrients required to be at 10 percent to include thiamin, niacin, or carbohydrates would permit only certain foods to bear health claims, such as enriched cereal grain products. Certain fruit and vegetable products that are promoted in dietary guidelines but that are currently prohibited from bearing health claims would still not be able to bear a health claim. Consequently, the agency tentatively concludes that expanding the list of nutrients would not sufficiently address the concern that the current regulation precludes certain foods that contribute to a healthful diet, and whose consumption is encouraged by the dietary guidelines, from bearing health claims.

Likewise, permitting the 10 percent nutrient contribution requirement to be based on the daily consumption of a food group would not enhance the likelihood of consumers achieving dietary goals. In fact, such a requirement would be contrary to dietary goals because it would reduce the likelihood that a consumer would reach 100 percent of the DV if daily consumption of an entire food group only supplies 10 percent of one of the listed nutrients. One reason for requiring that a serving of the food provide 10 percent of one or more of the listed nutrients is to assist the consumer in achieving daily intakes recommended in current dietary guidelines. Permitting a food that does not meet the 10 percent nutrient requirement to bear a claim on the basis that the total daily consumption of foods from that category would provide 10 percent of the nutrient would be inconsistent with one of the basic principles of the requirement. Accordingly, the agency has not been persuaded by the arguments raised in the petitions to propose to eliminate the 10 percent nutrient contribution requirement, to expand the list of nutrients that will qualify a food to bear a health claim, or to allow the 10 percent nutrient requirement to apply to a daily consumption of grain products rather than to the nutrient profile of a specific food.

Regarding the request that FDA permit fortification to meet the 10 percent nutrient contribution requirement, the agency is concerned that fortification of foods solely to bear a health claim could result in deceptive or misleading labeling and, thereby, be in violation of section 403(a) of the act. As fully addressed in the 1993 health claims final rule (58 FR 2478 at 2522), fortification of a food of little or no nutritional value for the purpose of bearing a health claim has the great potential of misleading and confusing consumers if foods like confections, soda, and sweet desserts are fortified to qualify for a health claim when, at the same time, dietary guidance as contained in the Food Guide Pyramid, for example, states that ''[T]hese foods provide calories and little else nutritionally. Most people should use them sparingly'' (Ref. 3). Indiscriminate fortification of such foods with one nutrient would not make such foods consistent with dietary guidelines. Consequently, FDA has not been persuaded that foods should be permitted to be fortified to qualify to bear a health claim. Accordingly, FDA is denying NFPA's request to permit fortification to specifically qualify a food to bear a health claim.

The agency notes, as discussed in the 1993 health claims technical amendments (58 FR 44036 at 44037), that some foods either have been traditionally formulated in accordance with the fortification policy or to meet standards of identity that include fortification and, in that form, contain 10 percent or more of one of the six nutrients listed. In such cases, the agency notes that the food would not be precluded by § 101.14(e)(6) from being fortified to qualify for a health claim.

Although the agency has not been persuaded that elimination of the 10 percent nutrient contribution requirement is in order, or that it should permit fortification so that a food could qualify to bear a health claim, the agency has been persuaded by the arguments raised in the petitions that it should act to modify the 10 percent nutrient contribution requirement. As stated above, the agency acknowledges that the 10 percent nutrient contribution requirement has had the unintended effect of precluding some foods that contribute to a healthful diet, and whose consumption is encouraged by the dietary guidelines, from bearing health claims. As discussed above, the agency's primary goals in establishing the 10 percent nutrient contribution requirement were to preclude foods of little or no nutritional value from bearing health claims and, at the same time, to enhance the likelihood of consumers constructing overall daily diets that conform to current dietary guidelines.

FDA recognizes that precluding certain fruits, vegetables, and grain products from bearing health claims because of the 10 percent nutrient contribution requirement is contrary to that goal. The agency agrees with the arguments raised in the petitions that certain fruits, vegetables, and grain products that otherwise meet the requirements of the specific health claim should be able to bear the claim even though they do not contain 10 percent of one of the six listed nutrients because these foods comprise a major part of a balanced and healthful diet, and because current dietary guidance promotes consumption of these foods. Moreover, diets high in fruits, vegetables, and grain products have been associated with various specific health benefits, including lower occurrence of coronary heart disease and of some cancers (Refs. 4 and 5) and therefore, are exactly the types of foods that should be included in the diet to reduce the risk of specific diet-related diseases. Precluding such foods from bearing health claims could confuse consumers and undermine the utility of health claims.

Furthermore, the foods described in the petitions are not the types of foods FDA intended to preclude from bearing health claims when it established the 10 percent nutrient contribution requirement. In fact, these foods can contribute significantly to a balanced and healthful diet and to achieving compliance with dietary guidelines even though they do not meet the 10 percent nutrient contribution requirement. Consequently, the agency

tentatively concludes that fruit and vegetable products comprised solely of fruits and vegetables, enriched grain products that conform to a standard of identity, and bread that conforms to the standard of identity for enriched bread except that it contains whole wheat or other grain products not permitted under that standard, that do not meet the 10 percent nutrient contribution requirement but that meet all other aspects of the health claim should be permitted to bear a health claim. Accordingly, the agency is proposing to amend § 101.14(e)(6) to exempt these products from the 10 percent nutrient contribution requirement.

The agency is proposing to limit the exemption for fruit and vegetable products to those products comprised solely of fruits and vegetables because it is concerned that permitting health claims on fruit and vegetable products that do not contain 10 percent of one of the six listed nutrients, but that contain ingredients that may raise the level of certain other nutrients, such as fat, cholesterol, and sodium, would be inconsistent with the purpose of the health claim and incompatible with current dietary guidelines. While the agency recognizes that fruit and vegetable products with added syrups, sauces, and other ingredients that have increased levels of fat, cholesterol, or sodium have an appropriate place in the diet, the agency tentatively concludes that to exempt these products from the 10 percent nutrient contribution requirement would be to promote the consumption of foods that do not fall within the recommendations in dietary guidelines. Accordingly, the agency is not prepared to extend the exemption to these products. However, FDA requests comment on whether the exemption proposed in this document should be extended to include fruit and vegetable products with added oils, sodium, sauces, syrups, or other ingredients.

The agency also requests comment on whether other foods, for example, other types of grain products such as breakfast cereals, should be exempt from the 10 percent nutrient contribution requirement. The agency advises that comments submitted in support of extending this exemption to other foods should provide valid data and sound justification for exempting such foods from the 10 percent nutrient contribution requirement. If the comments persuade the agency that such foods are being unfairly precluded from bearing health claims, and that the foods are consistent with the intent of the health claims, the agency will consider including such foods in the exemption provided in any final regulation based on this proposal.

C. Abbreviated Health Claims

Current § 101.14(d)(2)(iv) mandates that all information required to be included in the claim appear in one place without other intervening material. The current rule, however, does permit a reference statement ''See———— for information about the relationship between———— and————,'' with the blanks filled in with the location of the labeling containing the health claim, the name of the substance, and the disease or health-related condition (e.g., ''See attached pamphlet for information about calcium and osteoporosis'') with the complete health claim appearing elsewhere on the other labeling. The current rule also permits the use of graphic material, such as a symbol that constitutes an expressed or implied health claim, to be used on the label or labeling of the product provided that it is accompanied by the complete claim, an abbreviated claim, or a referral statement (§ 101.14(d)(2)(iv)).

In the preamble to its 1993 health claims final rule, the agency stated that it did not believe that it is appropriate to use abbreviated health claims as referral statements (58 FR 2478 at 2512). The agency was concerned that an abbreviated claim did not include facts that are material in light of the representation that is made and that are necessary to understand the claim in the context of the daily diet. The agency was concerned that such confusion is possible ''whenever the full health claim information appears in a location different from that of the reference statement and is especially likely to occur when a multiplicity of labeling is associated with a product'' (Id.). The agency then described the situation where the grocer displays an abbreviated claim on a display (labeling) near the product but only puts the full claim on a billboard in a far corner of the store (labeling) (id.).

In its petition, NFPA requested that the agency reconsider this position and permit greater latitude in constructing and presenting health claims. More specifically, the petition requested that FDA permit abbreviated health claims that are accompanied by a referral statement directing the consumer to the label panel where the complete health claim appears.

The agency has no desire for its regulations to unnecessarily stand in the way of the use of health claims and the presentation of the important information contained therein. While health claims are currently being used on the label and in labeling, the agency would like to see them used more extensively. Consequently, the agency agreed to initiate rulemaking in this area. The agency stated, however, that it must have assurance that the claims will be presented in a scientifically valid, truthful, and nonmisleading manner.

FDA notes that in this document the agency is proposing to provide the basis for shorter health claims by making optional some of the elements that it has required to be included in claims. If those changes are finalized, many of the complete claims will be brief enough to permit their use on the principal display panel. For example, a claim for sodium and hypertension could be made in 12 words: ''Diets low in sodium may reduce the risk of high blood pressure.'' Most other claims would be of a similar length. The agency believes that these shortened claims will, for the most part make this issue moot. Nevertheless, the agency recognized that some claims may still remain somewhat complex.

In those cases where the complete health claim remains long and somewhat complex, the agency recognizes that there may be a need to permit a shortened version of the claim on the principal display panel. Although the entire health claim contains important information necessary for consumers to fully understand the subject substance-disease relationship, the agency recognizes that a short message that captures the consumer's attention will facilitate use of the claim. As a result, the communication of formation will assist consumers in achieving healthful dietary practices.

The agency tentatively concludes that the use of an abbreviated health claim on the principal display panel is consistent with the act. The full health claim includes information required under section 403(a) and 403(r)(3)(B)(iii) of the act. Section 403(r)(3)(B)(iii) requires that the complete health claim ''enable[] the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet.'' Section 403(a) of the act requires only that a claim not be false and misleading. FDA has long required that all information that is necessary to make the claim truthful and not misleading appear in one place, without any intervening material. (See, e.g., *United States* v. *An Article of Food * * * ''Manischewitz * * * Diet Thins*'', 377 F. Supp. 746 (E.D. New York 1974)). However, there is nothing in the act that would require that information required under section 403(r)(3)(B)(iii) appear as

part of the claim each time it is presented on the label.

Thus, an abbreviated health claim that is a scientifically valid representation of the relationship between a substance and a diet-related disease may be permissible under section 403(a) of the act if it is truthful and not misleading. If such an abbreviated claim includes a prominent and immediately adjacent reference to the full claim elsewhere on the label, the requirements of section 403(a) and (r)(3)(B)(iii) of the act would be fulfilled. Consequently, the agency is proposing to amend § 101.14(d)(2)(iv). In addition to permitting the current reference statement to the full claim (§ 101.14(d)(2)(iv)(A)), the agency is proposing to permit an abbreviated health claim to be used on the principal display panel of the label provided that it is accompanied by a reference statement to the complete health claim on the same label or in the same labeling (proposed § 101.14(d)(2)(iv)(B)).

It is vital to compliance with the act that the complete claim appear elsewhere on the same label or in the same labeling as the abbreviated claim. For example, as discussed below for the calcium and osteoporosis health claim, the agency is concerned that consumers might be less likely to read the full health claim if an abbreviated claim appears on the principal display panel of a label, and the full health claim appears in a separate brochure that accompanies the product.

The agency is also proposing to require that the reference statement be prominent and in immediate proximity to the abbreviated claim. The agency notes, of course, that if the proposed provision is adopted, an abbreviated claim could not be used unless the food meets the criteria necessary to make the complete health claim.

As stated above, in the section D.IV. of this document, the agency is proposing to amend the regulations in subpart E of part 101, where appropriate, to set forth the elements that are required to ensure that an abbreviated health claim complies with section 403(a) of the act. As stated above, provision for an abbreviated claim will not be needed for most of the nutrient-disease relationships about which FDA has authorized claims if the revisions proposed in this document are adopted. Consumers may benefit, however, from abbreviated claims for a few of the longer, more complicated claims, such as those for calcium/osteoporosis and folic acid/neural tube defects.

The agency strongly emphasizes that the diet-disease relationship may not be overstated. Even with a prominent referral to the full claim, the abbreviated claim must not overemphasize the importance of the substance in the diet-disease relationship or in the total daily diet. The concept of risk reduction must be accurately conveyed.

The agency notes that some of the diet-disease relationships may already be well-known by consumers. Therefore, nutrient content claims such as ''low sodium'' and ''reduced cholesterol'' on the principal display panel and elsewhere on the label may serve as a reminder of the diet-disease relationship and provide a way to market a product for its contribution to a healthy diet.

FDA encourages the use of all authorized claims by the food industry in order to educate consumers about the importance of a healthy diet. The agency believes that the proposed changes to § 101.14(d)(2)(iv) will result in increased use of the authorized health claims and, consequently, will fulfill the legislative intent to educate the public about diet-disease relationships.

D. Specific Requirements for Health Claims

To date, FDA has authorized eight health claims that are codified in the Code of Federal Regulations, Title 21, subpart E of part 101 (§§ 101.72 to 101.79). Among the actions requested by NFPA in its petition is one to ''* * * modify the regulations in subpart E of part 101 prescribing the content of authorized health claims so that they constitute 'safe harbors' rather than requirements for claims; * * *.'' To accomplish this request, NFPA requested that the health claims regulations be modified to permit simplified, nondeceptive claims that are likely to be more easily understood. NFPA contended that the specific health claims regulations contained in subpart E of part 101 include several provisions that prescribe the content and form of health claims to an extent that far exceeds that necessary to ensure that claims are truthful and not misleading. Mentioned as an example was that some regulations require claims to include references to specific nondietary factors even though, in NFPA's view, this information is unnecessary to ensure a claim is stated in a truthful, nonmisleading manner. Cited as illustrative of the nature of the problem was the model claim from the calcium/osteoporosis regulation (§ 101.72(e)) containing all required elements:

> Regular exercise and a healthy diet with enough calcium helps teen and young adult white and Asian women maintain good bone health and may reduce their high risk of osteoporosis later in life.

Each of the other regulations authorizing claims in subpart E of part 101 was identified as requiring similar information.

NFPA requested that the regulations in subpart E of part 101 governing the specific information that must appear in a health claim, and the circumstances in which a claim could be used, be amended. Where, for example, § 101.14(d)(2)(i) requires that labeling statements about a health claim be based on, and consistent with, the conclusions set forth in the regulations in subpart E of part 101, NFPA recommended amending § 101.14(d)(2)(i), along with § 101.14(d)(1) and the rest of (d)(2), so that such statements are objective and either consistent with applicable guidelines set forth in subpart E of part 101, or a reasonable basis for the claim is otherwise substantiated. The petitioner contended that such changes would operate to allow truthful, nonmisleading health claims that either omit information currently required under the regulations (e.g., nondietary information) or that include other useful information not expressly authorized by the regulations.

Responding to NFPA in the May 11, 1995, letter, FDA acknowledged that, although use of health claims in food labeling has increased over the period of time that they have been in effect, the number of products bearing such claims is not as great as the agency had anticipated. Because of the importance of the information conveyed to consumers by health claims, the agency stated that it would review the authorizing regulations to determine whether they contain any unnecessary barriers to the use of the claims and, if so, take steps to remove those barriers. FDA stated that, as part of this assessment, it would conduct a review of what are referred to as ''required elements'' in each of the eight authorized health claims to determine whether any of them are unnecessary or can be made optional and initiate rulemaking to propose any changes identified in its internal review.

The eight authorized health claims in subpart E of part 101 are codified following the same format. Thus the ''required elements'' for each claim are contained in paragraph (c) of the respective regulation under the heading ''Requirements.'' For example, specific requirements that apply to the calcium/osteoporosis health claim are contained in § 101.72(c)(2)(i)(A) through (c)(2)(i)(E).

The agency has reviewed all of the required elements in the eight authorized claims codified in subpart E of part 101. This document presents the results of this review for the following seven claims: § 101.72 on calcium and osteoporosis; § 101.73 on dietary lipids and cancer; § 101.74 on sodium and hypertension; § 101.75 on dietary saturated fat and cholesterol and risk of coronary heart disease; § 101.76 on fiber-containing grain products, fruits, and vegetables and cancer; § 101.77 on fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease; and § 101.78 on fruits and vegetables and cancer. The health claim on folate and neural tube defects (§ 101.79) will be dealt with separately but in a manner consistent with the review of the other health claims.

Since the final rules on the seven claims addressed in this document were published on January 6, 1993 (58 FR 2537 to 2849), new data have become available allowing FDA to reconsider the need for some information that, at the time the specific health claim regulations were issued, was considered necessary to preclude a claim from being misleading. Most notable among these data are two documents, one a National Institutes of Health (NIH) consensus statement on optimal calcium intake (hereinafter referred to as the 1994 consensus statement) and the other an FDA report on consumer understanding of health claims (hereinafter referred to as the 1995 consumer report) (Refs. 6 and 7, respectively).

1. The Calcium/Osteoporosis Health Claim

The 1994 consensus statement is the result of the Consensus Development Conference on Optimal Calcium Intake convened by NIH on June 6 through 8, 1994, which brought together experts in public education and different biomedical sciences dealing with osteoporosis and bone and dental health. Directly relevant to the calcium/osteoporosis health claim, this conference addressed questions and provided recommendations on optimal calcium intake for various population segments, on important cofactors for achieving optimal intake, on the risks associated with increased intake, on the best ways to attain optimal intake, and on the public health strategies that are available or are needed to implement optimal calcium intake recommendations.

The 1995 consumer report is part of FDA's ongoing review of its regulations governing health claims. The report evaluated consumer understanding of four health claims (dietary lipids and cancer, fruits and vegetables and cancer, calcium and osteoporosis, and folate and neural tube defects) and consumer reaction to possible variations on the messages. The report describes the content, the manner of presentation, and the results of a consumer survey of knowledge about the four health claims mentioned above among consumer groups at eastern, central, and western locations in the United States.

For the calcium/osteoporosis health claim, the first required element is contained in § 101.72(c)(2)(i)(A) and provides that:

> The claim makes clear that adequate calcium intake throughout life is not the only recognized risk factor in this multifactorial bone disease by listing specific factors, including sex, race, and age that place persons at risk of developing osteoporosis and stating that an adequate level of exercise and a healthful diet are also needed.

The effect of presenting the information required by this element is to convey the message that, for any individual, several factors define the disease risk.

The focus of the 1994 consensus statement is, as stated in its title, optimal calcium intake for promotion of public health. The first of several significant conclusions in the report is that a large percentage of Americans fail to meet currently recommended guidelines for optimal calcium intake. Because of the need to correct this public health shortfall and to improve bone health in the United States, thereby reducing the risk of osteoporosis, FDA tentatively concludes that a singular focus on achieving and maintaining adequate calcium intake as a required element in the calcium/osteoporosis health claim is important.

Accordingly, FDA is proposing to simplify § 101.72(c)(2)(i)(A) by limiting the requirement to a balanced statement that reflects the importance of the essential nutrient calcium over a lifetime in a healthful diet to reduce osteoporosis risk, but that does not imply that calcium is the only risk factor for the development of osteoporosis. To this end, proposed § 101.72(c)(2)(i)(A) states that the claim must make clear that adequate calcium intake as part of a healthful diet throughout life is essential to reduce the risk of osteoporosis.

FDA has included the reference to a ''healthful diet'' in proposed § 101.72(c)(2)(i)(A) for consistency with the general requirement in § 101.14(d)(2)(v) that ''the claim enable[ ] the public * * * to understand the relative significance of such information [in this case, the relationship between calcium and osteoporosis] in the context of a total daily diet.'' The effect of adequate calcium intake can only be realized if the calcium is a part of a healthy diet that provides all essential and other nutrients to optimize nutritional health status.

The proposed revision of § 101.72(c)(2)(i)(A) emphasizes the most important risk factor in the development of osteoporosis on the label of a food product, i.e., adequacy of dietary calcium intake. Nevertheless, the agency is concerned that such a claim could lead consumers to believe that adequacy of dietary calcium intake is the only risk factor for the disease. In the proposal to authorize the calcium/osteoporosis health claim, the following was stated:

> Calcium intake is not the only recognized risk factor in the development of osteoporosis. Other factors include a person's sex, race, hormonal status, family history, body stature, level of exercise, general diet, and specific life style choices, such as smoking and excess alcohol consumption.

(56 FR 60689 at 60698, November 27, 1991). Based on that information in part, § 101.72(c)(2)(i)(A) requires a listing of several specific risk factors, in addition to dietary calcium intake, in the calcium/osteoporosis health claim.

As stated above, however, FDA acknowledges that the number of food products bearing health claims is not as great as the agency had anticipated. FDA is concerned that manufacturers have been disinclined to use lengthy health claims on food labels, and that too many words will detract from the central consumer message of the claim. As a result, FDA is concerned that health claims like the calcium/osteoporosis claim will continue to be infrequently used, and that the benefits of communicating information on diet-disease relationships through such claims will not be realized.

Because of these concerns, the agency has reevaluated the requirement in § 101.72(c)(2)(i)(A) that a calcium/osteoporosis health claim ''* * * list[ ] specific factors, including sex, race, and age that place persons at risk of developing osteoporosis and stat[e] that an adequate level of exercise * * * [is] also needed.'' Given the consensus statement's central focus on optimal calcium intake and the agency's desire to make health claims as useful and useable as possible, FDA is proposing to replace the requirement in § 101.72(c)(2)(i)(A) that specific risk factors and the need for an adequate level of exercise be stated in any claim with the more simple requirement that the claim not imply that adequate dietary calcium intake is the only recognized risk factor for a reduced risk

of osteoporosis. This revision will ensure that the scientific validity of claims about osteoporosis is preserved by recognizing the multifactorial nature of this disease without adding words to the claim.

In concert with the proposed change in § 101.72(c)(2), the agency is proposing to redesignate § 101.72(d)(2) as paragraph (d)(5) and to add a new paragraph (d)(2) that provides for the provision of the following information from current § 101.72(c)(2)(i)(A) as optional information:

> The claim may list specific risk factors for osteoporosis, identifying them among the multifactorial risks for the disease. Such factors include a person's sex, age, and race. The claim may state that an adequate amount of exercise is also needed to reduce risk for the disease.

The 1995 consumer report identified the calcium/osteoporosis model health claim as the one most actively disliked (Ref. 7). This dislike most likely arises primarily from a misunderstanding one of the concepts required in § 101.72(c)(2)(i)(B), specific identification of the populations at particular risk for the disease. The current regulation states:

> The claim does not state or imply that the risk of osteoporosis is equally applicable to the general United States population. The claim shall identify the populations at particular risk for the development of osteoporosis. These populations include white (or the term ''Caucasian'') women and Asian women in their bone forming years (approximately 11 to 35 years of age or the phrase ''during teen or early adult years'' may be used). The claim may also identify menopausal (or the term ''middle-aged'') women, persons with a family history of the disease, and elderly (or ''older'') men and women as being at risk.

The 1995 consumer report states that minority women were unanimous in objecting to the inference that black American women do not need calcium. Accordingly, minority participants questioned the accuracy of the information. All of the survey participants recognized that calcium is essential for everyone. Although there was some recognition based on prior knowledge that younger women need to be concerned about osteoporosis, no participant thought the model claim communicated that concept very well. For these and other reasons, older women tended to dismiss the model claim as incorrect.

The agency did not intend that the calcium/osteoporosis health claim imply that calcium is not needed by any individual or specific population. Given that calcium is essential for every person, the agency attempted to craft requirements for presenting this disease claim in a truthful, nonmisleading, and scientifically valid manner. In reviewing the scientific data supporting the claim, including the incidence of low-trauma bone fracture in the elderly, FDA stated in the preambles to the calcium/osteoporosis proposed and final rules (56 FR 60689 and 58 FR 2665, respectively) that those individuals in the general population at greatest risk of developing osteoporosis, and for whom the health claim would have greatest benefit, include Caucasian and possibly Asian women and adolescent girls and young adult women between 11 and 35 years of age. For this and other reasons, a requirement for identifying these high risk groups was included in § 101.72(c)(2)(i)(B). In identifying those at highest risk, there was no intent by the agency to imply that other consumers are risk free.

The 1994 consensus statement is silent in ascribing relative risk for osteoporosis on the basis of race or ethnicity of population groups. For adolescents and young adults of both sexes, 11 through 24 years of age, the optimal calcium requirement is given as a range of 1,200 to 1,500 milligrams (mg) of calcium daily. The report says the following about a subset of this population, 12 to 19 year old females:

> Importantly, population surveys of girls and young women 12–19 years of age show their average calcium intake to be less than 900 mg/day, which is well below the calcium intake threshold. The consequences of low calcium intake during this crucial period of rapid skeletal accrual raise concerns that achievement of optimal peak adult peak bone mass may be seriously compromised. Special education and public measures aimed at improving dietary calcium intake in this age group are essential.

(Ref. 6.)

FDA tentatively concludes that greater use in food labeling of the calcium/osteoporosis health claim, articulated in a manner that will be accepted and followed by consumers, can help support significant strides in improving calcium intake in all segments of the U.S. population. Accordingly, the agency is proposing to revise § 101.72(c)(2)(i)(B) in several ways.

First, it is proposing to revise § 101.72(c)(2)(i)(B) by removing the requirement to identify by race those populations at particular risk for the development of osteoporosis. In neither the statement cited above nor elsewhere in the 1994 consensus statement is any racial or ethnic segment among girls and young women 12 to 19 years of age identified as being more at risk for the consequences of a less than optimal calcium intake. The 1994 NIH consensus statement found that the recommendation for optimal nutrient requirements for any particular age/sex population segment to forestall the impact of a degenerative disease applies to all members of that segment, although not necessarily to the same degree for everyone. Thus, the agency is proposing not to require mention of race or ethnicity as a required element but to permit such information as an option since it is useful and important to those to whom it applies.

Nevertheless, retention of teen and young adult women, irrespective of race or ethnicity, as the focus of the claim is important because, as stated succinctly in the 1994 consensus statement:

> Two important factors that influence the occurrence of osteoporosis are optimal bone mass attained in the first two or three decades of life and the rate at which bone is lost in later years.

Failure to attain optimal bone mass during the bone-forming years of adolescence and early adulthood is a loss that cannot be recovered during middle age or later in life (Ref. 6). Once peak adult bone mass is reached at about age 25, bone turnover is stable in men and women such that bone formation and bone resorption (breakdown) are balanced. In women, resorption rates increase, and bone mass declines, beginning with the fall in estrogen production that is associated with the onset of menopause. Unlike hormone replacement therapy, supplemental calcium during this initial phase will not slow the decline in bone mass attributable to estrogen deficiency. The effects of calcium in reducing the rate of bone loss can be shown more clearly in postmenopausal women after the period when the effects of estrogen deficiency are no longer dominant (i.e., about 10 years after menopause).

Osteoporosis affects more than 25 million people in the United States and is the major underlying cause of bone fractures in postmenopausal women and the elderly (Ref. 6). Given this tremendous cost to public health, it is essential that the health claim on calcium and osteoporosis inform consumers, particularly those at great risk for the disease, of the importance of adequate calcium intake throughout life for attaining peak adult bone mass and for reducing the rate of bone resorption or loss, two processes that occur at different periods over a lifetime.

Thus, FDA is proposing to retain the requirement in § 101.72(c)(2)(i)(B) that the claim not suggest that the risk of osteoporosis applies equally to the general U.S. population. However, it is proposing to remove the required

reference to any racial or ethnic group in identifying the at-risk population. The agency is proposing to identify this population in the following way:

> * * * The claim shall identify the population at particular risk for the development of osteoporosis as women in their bone forming years from approximately 11 to 35 years of age. An optional statement that further characterizes this and other populations at risk for developing osteoporosis may be made in accordance with paragraph (d)(3) of this section.

FDA is proposing to permit identification of Caucasian women and Asian women as among those at particular risk for the disease as optional information, along with other information from § 101.72(c)(2)(i)(B), in new § 101.72(d)(3). While the 1995 consumer report (Ref. 7) found evidence that some consumers could be misled by references in the calcium/osteoporosis health claim to Caucasian and Asian women, FDA tentatively concludes that, if properly qualified, this information could be helpful in informing such women who may be unaware of their risk of developing this disease. By providing for this information as an optional element in § 101.72(d), the agency is attempting to encourage manufacturers to use this information in formats where the message can be phrased in enough detail to clarify its meaning. For example, ''while all women may be at risk of osteoporosis, Caucasian and Asian women are particularly at risk,'' may be understood and not rejected by consumers. While this statement provides more detail than seems to be necessary in the basic health claim, this information could be useful in a longer discussion of calcium and osteoporosis, for example in a paragraph format on a large label or in a pamphlet. The agency requests comment, and is particularly interested in data, on whether its tentative view that consumer understanding would be helped is correct.

Section 101.72(c)(2)(i)(C) established a requirement for identifying the mechanism whereby adequate dietary calcium over a lifetime should reduce the risk of osteoporosis:

> The claim states that adequate calcium intake throughout life is linked to reduced risk of osteoporosis through the mechanism of optimizing peak bone mass during adolescence and early adulthood. The phrase ''build and maintain good bone health'' may be used to convey the concept of optimizing peak bone mass. When reference is made to persons with a family history of the disease, menopausal women, and elderly men and women, the claim may also state that adequate calcium intake is linked to reduced risk of osteoporosis through the mechanism of slowing the rate of bone loss.

The agency concluded in developing this requirement that it is important for consumers to have a basic understanding of the biological and physiological mechanisms by which adequate dietary intake of calcium achieves a reduced risk of osteoporosis. However, information developed since the regulation was published indicates that a health claim may not be the best way to provide this information. The 1995 consumer survey (Ref. 7) found that, because participants had learned elsewhere that calcium intake is related to general bone health, they thought the food label was not the right means for conveying this information. In addition, this awareness by consumers that calcium's ability to ''build and maintain good bone health'' is the mechanism whereby risk of osteoporosis is reduced, raises a question as to whether there is a need to state that fact in a health claim. In the interest of streamlining the claim, therefore, FDA is proposing to make the statement of the mechanism by which calcium intake affects the risk of osteoporosis optional information. The agency is proposing to move § 101.72(c)(2)(i)(C) to § 101.72(d)(4), changing only the word ''shall'' to ''may''.

Section 101.72(c)(2)(i)(D) requires that:

> The claim does not attribute any degree of reduction in risk of osteoporosis to maintaining an adequate calcium intake throughout life;

This paragraph is consistent with requirements in regulations for all other authorized claims that no attribution to degree of risk reduction for the respective disease or health-related condition be made in reference to the nutrient or substance that is the subject of the claim (see, for example: §§ 101.73(c)(2)(i)(E), 101.74(c)(2)(i)(D), 101.75(c)(2)(i)(D), 101.76(c)(2)(i)(E), 101.77(c)(2)(i)(G), 101.78(c)(2)(i)(E), and 101.79(c)(2)(i)(F).

Unlike these other regulations, § 101.72 does not contain an express requirement that the claim state that adequate calcium intake throughout life ''may'' or ''might'' reduce the risk of osteoporosis (see, for example, paragraphs (c)(2)(i)(A) in §§ 101.73 through 101.79). However, it is clear that FDA also intended that this requirement apply to the calcium/osteoporosis health claim. This intention may be inferred from the two model health claims that use the term ''may'' in relating calcium intake with a reduction in risk of osteoporosis. Accordingly, the agency is proposing to revise § 101.72(c)(2)(i)(D) and redesignate it as § 101.72(c)(2)(i)(C) to read as follows:

> The claim does not attribute any degree to which maintaining adequate calcium intake throughout life may reduce the risk of osteoporosis;

This proposed revision retains the prohibition against attributing the degree to which adequate calcium intake is associated with a reduced risk for osteoporosis while introducing the concept that, because of the multifactorial nature of the disease, maintenance of an adequate calcium intake throughout life may reduce risk of developing the disease.

Section 101.72(c)(2)(i)(E) contains the conditional requirement that a calcium/osteoporosis health claim include a statement that reflects the limit on the benefit derived from dietary calcium intake as follows:

> The claim states that a total dietary intake greater than 200 percent of the recommended daily intake (2,000 milligrams (mg) of calcium) has no further known benefit to bone health. This requirement does not apply to foods that contain less than 40 percent of the recommended daily intake of 1,000 mg of calcium per day or 400 mg of calcium per reference amount customarily consumed as defined in § 101.12(b) or per total daily recommended supplement intake.

Most conventional foods and many calcium-fortified foods do not exceed the threshold of 40 percent of the DV for calcium for adults and children 4 or more years of age and, therefore, do not trigger the required use of the statement in § 101.72(c)(2)(i)(E). Dietary supplements containing calcium, particularly single nutrient supplements containing 500 or 600 mg of calcium per tablet, exceed the threshold and are therefore required to bear the statement as part of a health claim. The Dietary Supplement Health and Education Act of 1994 (the DSHEA) (Pub. L. 103–417) was enacted on October 25, 1994, and amends the act (Ref. 8). Among the findings of Congress for this new law regarding the benefits of dietary supplements to health promotion and disease prevention is one that identifies a link between ingestion of certain nutrients or dietary supplements and reduced risk for several chronic diseases including osteoporosis. Another finding states that the Federal Government should not take any actions to impose unreasonable regulatory barriers limiting or slowing the flow of safe products and accurate information to consumers.

Among the issues addressed in the 1994 consensus statement is the question of the ways by which optimal calcium intake may be attained. The

document draws the following conclusion:

> The preferred source of calcium is through calcium-rich foods such as dairy products. Calcium-fortified foods and calcium supplements are other means by which optimal calcium intake can be reached in those who cannot meet this need by ingesting conventional foods.

The agency has taken into consideration the expressed intent of the DSHEA and this finding from the 1994 consensus statement and tentatively concludes that revision of § 101.72(c)(2)(i)(E) is in order. The agency is proposing to raise the threshold for the required statement from 400 to 1,500 mg of calcium, along with other changes.

With regard to adverse effects and the risks associated with increased levels of calcium intake, the 1994 consensus statement states the following:

> Even at intake levels of less than 4 g/day, certain otherwise healthy persons may be more susceptible to developing hypercalcemia or hypercalciuria. Likewise, subjects with mild or subclinical illnesses marked by dysregulation of 1,25-dihydroxyvitamin D synthesis (e.g., primary hyperparathyroidism, sarcoidosis) may be at increased risk from higher calcium intakes. Nevertheless, in intervention studies (albeit of relatively short duration--less than 4 years), no adverse effects of moderate supplementation up to 1500 mg/day have been reported.

(Ref. 6.)

The same document concludes that daily calcium intake, up to a total of 2,000 mg, appears to be safe in most individuals (Ref. 6). For major segments of the U.S. population the 1994 consensus statement identifies an optimal calcium requirement of either 1,500 mg or a range of 1,200 to 1,500 mg of calcium per day. These population groups include adolescents and young adults 11 to 24 years of age, pregnant and lactating women, women over 50 (postmenopausal) who are not on estrogens, and men over 65 years of age (Ref. 6). Therefore, the agency tentatively finds that a level of 1,500 mg of calcium as the proposed threshold for the statement in § 101.72(c)(2)(i)(E) is not only consistent with current recommendations for dietary calcium intake but is also well within a range that is not known to cause adverse effects.

The agency is consequently proposing to require that the statement of limited benefit appear only on foods that provide more than 1,500 mg of calcium per day. FDA has expressed this proposed threshold level as a percentage of the Daily Values (DV's) for adults and children 4 or more years of age and for pregnant or lactating women. The agency notes that the calcium DV's for adults and children 4 or more years of age and for pregnant or lactating women have not changed and are 1,000 and 1,300 mg, respectively. (See § 101.9(c)(8)(iv) and 58 FR 2206 at 2213.) The agency intends to redesignate this requirement as § 101.72(c)(2)(i)(D).

A common form of a calcium dietary supplement in the marketplace is as a tablet containing either 500 or 600 mg of calcium as the sole nutrient with directions for use in labeling that recommend an intake of one or two tablets per day. A health claim in the labeling of such a product would not require the additional statement in proposed § 101.72(c)(2)(i)(D). FDA tentatively concludes that this proposed change is consistent with the recommendation from the 1994 consensus statement on dietary sources for this nutrient.

For consistency with the proposed revisions in § 101.72(c) and (d), FDA has revised the model health claims in proposed § 101.72(e). FDA has used the phrase ''Especially for teen and young adult women'' in example 1, which sets out how a claim that conforms with § 101.72(c) might look to reflect the effects on the risk of developing osteoporosis that may be realized by this population segment without implying that adequate calcium intake is without benefit for others.

The agency solicits comment on the proposed revisions to the calcium/osteoporosis health claim and is particularly interested in data on consumer understanding of this claim, and how such understanding can be improved.

2. Other Health Claims

A common requirement in the authorized claims for dietary fat and cancer (§ 101.73); sodium and hypertension (§ 101.74); dietary saturated fat and cholesterol and risk of coronary heart disease (§ 101.75); fiber-containing grain products, fruits, and vegetables and cancer (§ 101.76); fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease (§ 101.77); and fruits and vegetables and cancer (§ 101.78) is a statement that development of the particular disease depends on many factors.

It is well documented over the past 10 years that consumers are generally aware that development of major chronic diseases, such as cancer and coronary heart disease, is dependent on a number of different factors such as smoking, excess body weight, family history of the disease, exposure to environmental chemicals, and dietary and other factors (Refs. 9 and 10). Additionally, the requirement that authorized claims use the term ''may'' or ''might'' to relate the ability of the substance that is the subject of the claim to reduce the risk of the corresponding disease or health-related condition is an indication to consumers of the multifactorial nature of the disease or health-related condition. In responding to comments on the scientific standard for health claims as to whether or not a claim based on preliminary scientific data would be consistent with that standard, the agency said:

> * * * Further, absolute claims about diseases affected by diet are generally not possible because such diseases are almost always multifactorial. Diet is only one factor that influences whether a person will get such a disease. For example, in the case of calcium and osteoporosis, genetic predisposition (e.g., where there is a family history of fragile bones with aging) can play a major role in whether an individual will develop the disease. Because of factors other than diet, some individuals may develop the disease regardless of how they change their dietary patterns to avoid the disease. For those individuals, a claim that changes in dietary patterns will reduce the risk of disease would be false. Thus, health claims must be free to use the term ''may'' with respect to the potential to reduce the risk of disease. However, use of this term would not be appropriate for health claims on food labeling where significant scientific agreement does not exist that there is a high probability that a reduction in disease risk will occur.

(58 FR 2478 at 2505.)

Given these facts, as part of its review of required elements for all health claims the agency has reconsidered the need to remind consumers of the multifactorial nature of hypertension, heart disease, and cancer. Based on its review, FDA tentatively concludes that the statement of that fact in each claim can be made optional. In place of the requirement for stating the multifactorial nature of the disease, the agency proposes to substitute a requirement that the claim not imply that the substance that is the subject of the health claim is the only recognized risk factor for the corresponding disease or health-related condition. Thus, the agency tentatively concludes that the concept of the multifactorial nature of the disease or health-related condition for each health claim will be preserved without adding additional words to the claim. The agency requests comment on whether consumers will be misled to believe reduction of risk will be achieved if the multifactorial nature of

the disease or health-related condition is not stated in the claim.

Accordingly, the agency is proposing to revise §§ 101.73(c)(2)(i)(F), 101.74(c)(2)(i)(E), 101.75(c)(2)(i)(E), 101.76(c)(2)(i)(D), 101.77(c)(2)(i)(F), and 101.78(c)(2)(i)(I) in similar fashion to ensure that the health claim not imply that there is only one recognized risk factor for the development of the corresponding disease or health-related condition. The agency is also proposing to revise §§ 101.73(d)(1), 101.74(d)(1), 101.75(d)(1), 101.76(d)(2), 101.77(d)(1), and 101.78(d)(2) to state that development of the disease in question depends on many factors and to list the relevant factors for each disease. For consistency, the agency is also proposing to revise the model claims to reflect the proposed revisions to §§ 101.73, 101.74, 101.75, 101.76, 101.77, and 101.78.

In addition, the agency is proposing to correct § 101.77(e) by adding the phrase ''and the risk of coronary heart disease'' which was inadvertently omitted in the final rule.

The health claim for fruits and vegetables and cancer (§ 101.78) contains one additional element that FDA tentatively concludes could be optional instead of a mandatory part of the claim. In § 101.78(c)(2)(i)(D) the regulation states:

> The claim characterizes the food bearing the claim as containing one or more of the following, for which the food is a good source under § 101.54: dietary fiber, vitamin A, or vitamin C.

This required statement is very similar to the one required by § 101.78(c)(2)(i)(C):

> The claim characterizes fruits and vegetables as foods that are low in fat and may contain vitamin A, vitamin C, and dietary fiber.

The agency believes that the statement required by § 101.78(c)(2)(i)(C) is necessary to describe the relationship between the food and the disease. In the 1993 health claims final rule, FDA stated that by requiring that all characterizing nutrients be identified as characteristic of dietary patterns rich in fruits and vegetables without specifically attributing reduced cancer risk to a single nutrient, the claim is consistent with current scientific knowledge. However, the requirement in § 101.78(c)(2)(i)(D) identifies for the consumer which of the characterizing nutrients is contributed by the labeled food. FDA tentatively concludes that this information need not be a required element of the claim because it is available as part of the nutrition label.

Therefore, the agency has tentatively concluded that the information in § 101.78(c)(2)(i)(D) can be made optional. Accordingly, the agency is proposing to remove § 101.78(c)(2)(i)(D); redesignate § 101.78(d)(3) through (d)(5) as § 101.78(d)(4) through (d)(6), and add new § 101.78(d)(3) which reads:

> The claim may characterize fruits and vegetables that meet the requirements described in paragraph (c)(2)(ii) of this section as foods that are low in fat and that contain (or are a good source of) one or more of vitamin A, vitamin C, or dietary fiber.

FDA is also proposing to revise the model health claims in § 101.78(e) to reflect these changes.

3. Abbreviated Health Claims

In addition to eliminating some of the requirements for a full health claim, as stated above, NFPA requested that FDA permit the use of abbreviated health claims in labeling, such as on the principal display panel. FDA has reviewed the health claims as it is proposing to revise them to determine whether the required elements can be reorganized in accordance with proposed § 101.14(d)(2)(iv) to facilitate their use on the food label.

With the revisions to §§ 101.73, 101.74, 101.75, 101.76, 101.77, and 101.78 proposed in this document, the agency tentatively finds that all of the required elements for each of the claims are required under section 403(a) of the act to ensure that the claims are truthful and not misleading as well as under section 403(r) to ensure that they are scientifically valid. Accordingly, the agency tentatively concludes that there is no basis upon which it can propose to permit the splitting of these required elements between the principal display panel and another part of the food label.

Using the health claim for dietary fat and cancer as an example, the agency is proposing to remove the requirement that the claim state that cancer is a multifactorial disease. The remaining specific requirements in § 101.73(c)(2)(i)(A) through (c)(2)(i)(E) are necessary so that claims on the relationship between dietary fat and cancer are truthful, not misleading, and scientifically valid. A claim consistent with these requirements can be expressed in 11 or fewer words (e.g., ''A low fat diet may reduce the risk of some cancers''). These requirements also ensure that consumers will be able to understand the relative significance of the information presented in the claim in the context of a total daily diet. Accordingly, the agency tentatively finds that there is no need to divide the required elements of § 101.73 into those that must be included whenever the claim is presented and those that need only be included as part of the full claim. Based on the same reasoning, FDA has reached the same judgment about the elements of the claims authorized by §§ 101.74 through 101.78.

The agency tentatively concludes, however, that such a split is appropriate among the required elements of health claims on calcium and osteoporosis (§ 101.72). The various proposed revisions for the specific requirements in § 101.72(c)(2)(i) would produce a claim that is shorter than is provided for in the current regulation. Nonetheless, even with the proposed revisions, the length of the claim that would be required under § 101.72 is such that, to facilitate use of the claim, FDA is proposing to distinguish between those elements necessary to ensure that the claim is truthful and not misleading, and those elements that are necessary to understand the significance of the claim in the context of the total daily diet.

Section 101.72(c)(2)(i)(A), which the agency is proposing to revise, sets forth the most important requirement. It establishes the essence of the calcium/osteoporosis claim in that it requires clarity in a statement that associates adequacy of dietary calcium intake over a lifetime with a reduced risk of osteoporosis, a degenerative disease that affects more than 25 million Americans, particularly postmenopausal women and the elderly, and that is manifested by an incidence of 1.5 million bone fractures annually (Ref. 6). This provision sets out information that is fundamental if a claim associating calcium and osteoporosis is to be truthful and not misleading.

Section 101.72(c)(2)(i)(C), which requires that the claim not attribute any particular degree of risk reduction to adequate calcium intake is also necessary to ensure that claims are truthful, not misleading, and scientifically valid. Compliance with this requirement, however, does not add any words to the claim.

For the remaining requirements, § 101.72(c)(2)(i)(B) prohibits the implication that risk for the disease applies equally across the U.S. population. Instead, it requires identification of that segment of the population that is most at risk for developing the disease later in life, women in their bone forming years. The agency requires this information in response to section 403(r)(3)(b)(iii) of the act, which as stated above, requires that the claim accurately represent the relationship between calcium and osteoporosis in a manner that is comprehensible to the public. It is also under section 403(r)(3)(b)(iii) of the act

that FDA is requiring in § 101.72(c)(2)(i)(D) that the claim disclose that further benefit does not derive from a daily dietary intake of calcium that exceeds 2,000 mg.

Given these bases for the calcium/osteoporosis claim, an abbreviated claim consistent with the principles proposed earlier in this document may be developed that sets out the information required under § 101.72(c)(2)(i)(A) and (c)(2)(i)(C). To reflect this fact, the agency is proposing to renumber current § 101.72(c)(2)(ii), which deals with the nature of a food bearing a calcium/osteoporosis health claim, as § 101.72(c)(2)(iii), and it is proposing a new § 101.72(c)(2)(ii) that describes how the health claim is to be presented on the label or in labeling. This proposed new paragraph states that all of the elements listed in § 101.72(c)(2)(i) must be included in one presentation of the claim on the label or labeling. However, it also provides that a short, simple statement of the claim that includes the elements in § 101.72(c)(2)(i)(A) and (c)(2)(i)(C), and thus that is truthful, not misleading, and scientifically valid, may be used on the principal display panel as long as the full claim appears on the label or in the labeling, and, there is a referral statement to the full claim in immediate proximity to the abbreviated statement.

The referral statement that FDA is proposing accompany the abbreviated claim is consistent with that provided for in the general requirements for nutrient content claims (§ 101.13) and health claims (§ 101.14(d)(2)(iv)). Because this referral statement is short, it is also consistent with the use of an abbreviated claim.

In the 1993 health claims final rule, the agency stated that it did not believe that it is appropriate to use abbreviated health claims as referral statements (58 FR 2478 at 2512). The agency was concerned that an abbreviated claim did not include facts that are material in light of the representation that is made and that are necessary to understand the claim in the context of the daily diet. The agency was concerned that such confusion is possible whenever the full health claim information is in a location different from that of the reference statement, and that such confusion is especially likely to occur when a multiplicity of labeling is associated with a product. If these concerns can be addressed, however, the use of an abbreviated claim on the principal display panel would facilitate use of the claim and, as a result, the communication of information that will assist consumers in achieving healthful dietary practices.

The agency has tentatively concluded that this proposed rule addresses these concerns. It is providing for an abbreviated statement that reflects the facts that are material under section 201(n) of the act (21 U.S.C. 321(n)) and that are necessary to ensure that the claim is scientifically valid. It is also providing for an accompanying referral statement to additional information that is necessary for a full understanding of the claim. The agency is concerned, however, about the possibility that consumers may not read the complete claim, and thus that they will not have all the facts necessary to fully understand the significance of the claim being made and to comprehend the claim in the context of the daily diet. For this reason, the agency is asking for data to demonstrate that permitting an abbreviated claim in the manner that FDA has proposed will not significantly decrease the likelihood that consumers will read the full claim.

In § 101.72(c)(2)(ii)(A) and (c)(2)(ii)(B), the agency is proposing requirements for the type size and location of the referral statement that are consistent with those for nutrient content claims in § 101.13(g)(1) and (g)(2).

FDA has long held that accompanying information should be in a size reasonably related to that of the information that it modifies. Section 403(f) of the act requires that information required under the act be placed on the label with such conspicuousness as to render it likely to be read. Section 403(r)(2)(B) of the act requires that a referral statement for nutrient content claims appear prominently, although it does not specify requirements such as to type size or style.

For nutrient content claims, FDA established type size requirements for referral and disclosure statements that are related to the area of the surface bearing the principal display panel rather than to the type size used for the nutrient content claim. The proportionality between size of the referral statement and the size of the label panel ensures that the referral statement is presented with appropriate prominence. However, when the claim is less than twice what the minimum size of the referral statement would be, given the size of the label and § 101.105(i), the type size of the referral statement may be less than that required under § 101.105 for net quantity of contents. In such circumstances, the referral statement is of appropriate prominence if it is at least one-half the size of the claim and not less than one-sixteenth of an inch. This approach to the type size requirement for the referral statement provides additional flexibility to firms in utilizing label space but still ensures adequate prominence for this statement.

Because, under this proposal, health claim referral statements are to be used in a manner that is similar to how nutrient content claim referral statements are used, and because they are likely to appear on the principal display panel, the agency tentatively concludes that a health claim referral statement should be subject to the same type size requirements as those for nutrient content claims. Therefore, the agency tentatively concludes that the requirements for the referral statement set forth in § 101.72(c)(2)(ii)(A) and (c)(2)(ii)(B) are appropriate when an abbreviated health claim is used, and it is including them in this proposed rule.

In concert with the proposed requirements for an abbreviated health claim, the agency is including an abbreviated health claim among the examples of other model claims in proposed § 101.72(e).

E. Disclosure Versus Disqualifying Nutrient Levels for Health Claims

Section 403(r)(3)(A)(ii) of the act provides that a health claim may only be made for a food that ''does not contain, as determined * * * by regulation, any nutrient in an amount which increases to persons in the general population the risk of a disease or health-related condition which is diet related, taking into account the significance of the food in the total daily diet.'' This section helps to ensure that consumers who rely on health claims will be consuming foods that will assist them in structuring a healthful diet that meets dietary guidelines.

As discussed more fully in the preamble to the 1993 health claims final rule, the agency implemented this provision by considering a food's role in the total daily diet and calculating levels of total fat, saturated fat, cholesterol, and sodium that would increase the risk of disease or health-related conditions in the general population. FDA calculated these levels by considering the number of foods consumed each day, as well as the number of foods that are likely to contain significant levels of these nutrients.

The agency has established different disqualifying levels for different types of foods, depending on the role that they play in the daily diet. Section 101.14(a)(5) defines the disqualifying level for individual foods as 20 percent of the DV's for total fat, saturated fat, cholesterol, and sodium. These levels

translate to 13.0 grams (g) of total fat, 4.0 g of saturated fat, 60 mg of cholesterol, and 480 mg of sodium per reference amount customarily consumed, per label serving size, and for foods with reference amounts customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g. The regulations make additional allowances for main dish products and meal-type products. The disqualifying levels for main dish and meal products are 30 percent and 40 percent of the DV, respectively. These different levels are consistent with the legislative history, which states, ''a particular level of fat in a frozen dinner might not trigger the provision, whereas the same amount of fat in a snack food might trigger it.''

A food that exceeds the disqualifying level for any of the four disqualifying nutrients may not bear a health claim unless the agency has granted an exemption ''based on a finding that such a claim would assist consumers in maintaining healthy dietary practices.'' (Section 403(r)(3)(A)(ii) of the act.) To date, the agency has received no petitions for an exemption from this provision.

The NFPA petition requested that the defined disqualification levels be converted to disclosure levels under certain circumstances. More specifically, the petition suggested that ''the presence of one of these nutrients at the prescribed level would require disqualification *only* if the nutrient was found in another health claim regulation to be directly and adversely related to the disease mentioned in the claim.'' The petition went on to state that ''[i]f the nutrient is not so directly related to the disease to which the claim refers, the regulations would require only disclosure by an appropriate referral statement in conjunction with the health claim on the label, as the regulations now require for nutrient content claims.''

As stated in the May 11, 1995, letter to NFPA, FDA concludes that a generic change in its regulations would not be consistent with the underlying goals of the NLEA. The current disqualifying levels assist consumers in constructing total daily diets that meet dietary guidelines. The agency considered the role a food plays in the daily diet when it calculated the disqualifying levels. Health claims on foods with levels of fat, saturated fat, cholesterol, or sodium that exceed the disqualifying levels would encourage increased intake of these foods and would make it difficult for consumers to follow the Surgeon General's recommendations and to construct a healthful diet. Even with the current disqualification levels, consumers could reach the DV's for total fat, saturated fat, cholesterol, or sodium by eating as few as five foods that bear health claims.

The agency considers the current disqualification rules to be consistent with congressional intent. Congress contemplated that health claims would be reserved for those foods that can contribute to a healthful diet. As the House Report states, ''Health claims supported by a significant scientific agreement can reinforce the Surgeon General's recommendations and help Americans to maintain a balanced and healthful diet.'' (See H. Rept. 101–538, 101st Cong., 2d sess. pp. 9–10 (1990).)

Nevertheless, the agency tentatively finds that there may be some instances where disclosure rather than disqualification is appropriate. While FDA continues to believe that exceptions should be granted on a case-by-case basis, using a petition process, the agency recognizes that further guidance on the criteria that it will use to evaluate petitions for exceptions would be useful. FDA is, therefore, proposing to amend its regulations to give such guidance.

Proposed § 101.70(f) provides guidance for petitioners requesting an exception to the prohibition in § 101.14(e)(3) against health claims for foods exceeding the disqualifying levels identified in § 101.14(a)(5). This proposed amendment to the petition procedures sets out some of the factors that the agency will consider when evaluating a petition.

The first factor that FDA is proposing to list is whether the risk of the disease or health-related condition is of such public health significance, and the role of the diet so critical, that disqualification is not appropriate (proposed § 101.70(f)(1)). The agency recognizes that there may be instances where extraordinary efforts are needed to address a particular public health problem. In such cases, the agency would consider providing for disclosure rather than disqualification levels.

The second factor is whether the availability of foods that qualify for a health claim is adequate to address the public health concern that is the subject of the health claim (proposed § 101.70(f)(2)). The agency intends to consider whether the application of the claim is so limited because of the disqualification levels that it will not be possible to meet the public health goal of the health claim. If only a limited number of food products qualify to bear the claim because of the disqualifying levels, the agency would consider providing for disclosure rather than disqualification levels.

The third factor that FDA intends to consider is whether there is some evidence that the population to which the health claim is targeted is not at risk for the disease or health-related condition associated with the disqualifying nutrient (proposed § 101.70(f)(3)). Although the current disqualifying nutrients are associated with diseases or health-related conditions that pose risks to the general population, there may be some categories of foods that are targeted to specific subpopulations that are not at particular risk for the disease or health-related condition associated with the disqualifying nutrient (toddlers, for example). The agency would be willing to look at data and to consider whether an exception to the disqualifying levels should be made for foods intended for such subgroups.

Related to this criterion, is the question of whether there is evidence that consumers can identify themselves as being at risk for a particular disease or health-related condition associated with the disqualifying levels. For instance, some individuals can already identify themselves as being sensitive to sodium and, therefore, would recognize the risk of a high sodium food if it were disclosed. If the ability to self-identify for these risks becomes widespread, disclosure might be sufficient to reduce the risk from the disqualifying nutrient. FDA would expect to receive data that demonstrate that this ability exists, however, before it would be willing to grant an exemption on this basis.

Finally, the agency intends to consider whether there are any other public health reasons for providing for disclosure rather than disqualification (proposed § 101.70(f)(4)). The agency does not consider the above list of criteria exhaustive. There may be other criteria that would be useful in determining whether the agency should provide for disclosure rather that disqualification levels for health claims, and the agency is open to considering such factors.

The agency requests comments on the appropriateness of these criteria.

The agency notes that there are ways to convey important health information other than through health claims. A food may still be able to bear a nutrient content claim or a structure/function claim in order to highlight a particular attribute even if it exceeds the disqualification level for a health claim. For example, while whole milk may not be able to bear a calcium and osteoporosis health claim, it can still bear a ''high calcium'' nutrient content claim, so long as the levels of fat and saturated fat are disclosed. Similarly,

cooking oils that are lower in saturated fat may not be able to bear a ''healthy heart'' claim but can still bear a ''low'' or ''less'' saturated fat nutrient content claim.

In addition, some products can make other truthful and not misleading claims. For example, the label of whole milk can state ''Calcium builds strong bones.'' While such a claim is not considered a health claim under the 1990 amendments, it still conveys important dietary advice useful to consumers in constructing a healthful diet.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

FDA is proposing to: (1) Specify circumstances under which synonyms may be used, authorizing the use of unlisted synonyms provided that they are properly anchored to a listed term; (2) exempt certain types of products from the 10 percent nutrient contribution requirement; (3) provide the basis for shorter health claims by eliminating some of the required elements; and (4) permit an abbreviated health claim to be used on the principal display panel. FDA is also providing guidance for petitioners requesting an exception to the prohibition against health claims for foods exceeding FDA's defined disqualifying levels. The agency anticipates that the costs of this proposed rule will be minimal. If this rule is finalized as proposed, it will not require any manufacturers currently making claims to change their labels or labeling. Also, this rule may reduce the costs of making future claims by reducing the uncertainty and relaxing the requirements of the petition process for claims.

Although many health claims have appeared on a variety of products, the agency is concerned that health claims are not being used as extensively as they could be. To the extent that valid claims are not being used, a cost is imposed on society in that some valuable information may not be conveyed to consumers. This proposed rule will reduce the cost of lost beneficial information by making it easier for firms to make nutrient content and health claims. The agency is aware that the food label or labeling is a major means of providing information on foods at the point-of-purchase. By adopting a less restrictive approach to claims, the agency is providing industry with a method by which the label can be used to inform consumers of the health benefits of foods in such a way that will catch the attention of consumers. As long as the claims are truthful, not misleading, and scientifically valid, the additional information will benefit consumers by reinforcing the Surgeon General's recommendations and helping consumers maintain healthful dietary practices. In addition, the greater flexibility provided to industry will increase the incentive to develop more healthful products.

The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. The current claims regulations may have discouraged small businesses from making valid nutrient content claims and health claims. To the extent that this rule relaxes the restrictions on the ability of firms to use claims on the labels or in the labeling of their products, this rule will benefit small firms. In accordance with the Regulatory Flexibility Act, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small businesses.

VII. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, labeling, or other third party disclosure requirements; thus there is not ''information collection'' necessitating clearance by the Office of Management and Budget. However, to ensure the accuracy of this tentative conclusion, FDA is seeking comment on whether this proposed rule to permit additional flexibility in the use of health claims and synonyms for nutrient content claims on food labels imposes any paperwork burden.

VIII. Comments

Interested persons may, on or before March 20, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. House Committee on Energy and Commerce, ''Nutrition Labeling and Education Act of 1990,'' 101st Congress, 2d sess., Report 101–538, pp. 9–10, June 13, 1990.

2. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, IOM, National Academy of Science, ''Nutrition Labeling, Issues and Directions for the 1990's,'' Washington, DC, National Academy Press, 1990.

3. United States Department of Agriculture, Human Nutrition Information Services, ''USDA's Food Guide Pyramid,'' Home and Garden Bulletin No. 249, April, 1992.

4. ''The Surgeon General's Report on Nutrition and Health,'' DHHS, Public Health Service Publication No. 88–50210 (Government Printing Office Stock No. 017–001–00465–1), U.S. Government Printing Office, Washington, DC, 1988.

5. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, National Academy of Science, ''Diet and Health: Implications for Reducing Chronic Disease Risk,'' National Academy Press, Washington, DC, 1989.

6. National Institutes of Health, Office of the Director, ''NIH Consensus Statement, Optimal Calcium Intake,'' vol. 12, No. 4, June 6–8, 1994. Available from: NIH Consensus Program Information Service, P.O. Box 2577, Kensington, MD 20891, 1–800–644–6627.

7. Levy, A., Food and Drug Administration, Center for Food Safety and Applied Nutrition, Division of Market Studies, ''Summary Report on Health Claims Focus Groups,'' June 15, 1995.

8. Dietary Supplement Health and Education Act of 1994 (Pub. L. 103–417), October 25, 1994.

9. Technical Report—Cancer Prevention Awareness Survey—Wave II, Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Bethesda, MD, November 1986.

10. Brenda Derby, Memorandum to Victor Frattali, ''Consumer Understanding of

Multifactoriality of Disease,'' October 25, 1995.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.13 is amended by revising the introductory text of paragraph (b) and adding new paragraph (r) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(b) A claim that expressly or implicitly characterizes the level of a nutrient (nutrient content claim) of the type required in nutrition labeling under § 101.9 with the exception of such claims on restaurant menus and except as noted in paragraph (r) of this section for unlisted synonyms, may not be made on the label or in labeling of foods unless the claim is made in accordance with this regulation and with the applicable regulations in subpart D of this part or in part 105 or part 107 of this chapter.

* * * * *

(r) Expressed synonyms for nutrient content claims may be used, provided:

(1) The term is listed as a synonym of a defined term in the regulations in subpart D of this part or in part 105 or part 107 of this chapter; or

(2) The term is used in a manner that complies with the following requirements:

(i) Such term is not misleading and, in the context of the entire label, is reasonably understood by consumers to be a synonym of a term listed in subpart D of this part or in part 105 or part 107 of this chapter;

(ii)(A) The term that is listed in subpart D of this part or in part 105 or part 107 of this chapter, and for which the unlisted term is being used as a synonym, appears prominently and conspicuously on the label, such that it is:

(*1*) Immediately adjacent (with no intervening material) to the most prominent use of the unlisted synonym (as determined in accordance with § 101.13(j)(2)(iii)); and

(*2*) At least half as prominent (including type size, style, and color) as the unlisted synonym authorized under this paragraph.

(B) If the term listed in subpart D of this part or in part 105 or part 107 of this chapter is more than twice as prominent on a label as the synonym authorized under this paragraph such that the claimed nutrient level is clearly understood (e.g., a claim in the statement of identity versus an unlisted synonym used only in a paragraph in small sized type), the term listed in subpart D of this part or in part 105 or part 107 of this chapter need not be placed adjacent to the unlisted synonym authorized under this paragraph.

(iii) The unlisted synonym is used in conformance with all the requirements for the use of the defined term, i.e., the referral statement required in § 101.13(g) and any other required label statements appear in the prescribed manner; and

(iv) This paragraph does not authorize a term listed in subpart D of this part or in part 105 or part 107 of this chapter to be used in conjunction with an unlisted qualifying term (e.g., ''extra low,'' ''extra high,'' ''especially good source,'' or ''great source'').

3. Section 101.14 is amended by revising paragraphs (d)(2)(iv) and (e)(6) to read as follows:

§ 101.14 Health claims: general requirements.

* * * * *

(d) * * *

(2) * * *

(iv) All information required to be included in the claim appears in one place without other intervening material, except that the principal display panel of the label or labeling may bear:

(A) The reference statement, ''See———— for information about the relationship between———— and ————,'' with the blanks filled in with the location of the labeling containing the health claim, the name of the substance, and the name of the disease or health-related condition (e.g., ''See attached pamphlet for information about calcium and osteoporosis''), with the entire claim appearing elsewhere on the other labeling, Provided that, where any graphic material (e.g., a heart symbol) constituting an explicit or implied health claim appears on the label or labeling, the reference statement or the complete claim shall appear in immediate proximity to such graphic material; or

(B) As authorized under subpart E of this part, an abbreviated claim consisting only of a truthful, nonmisleading, and scientifically valid description of the relationship between the substance and the disease or health-related condition, Provided that:

(*1*) Such an abbreviated claim is accompanied by a reference statement to the complete health claim;

(*2*) The reference statement is prominent and in immediate proximity to the abbreviated claim; and

(*3*) The complete health claim appears on the same label, or in the same labeling, in which the abbreviated claim appears.

* * * * *

(e) * * *

(6) Except for dietary supplements, fruit or vegetable products composed solely of fruits and vegetables, enriched grain products that conform to a standard of identity in part 136, 137, or 139 of this chapter, and bread which conforms to the standard of identity for enriched bread in § 136.115 of this chapter except that it contains whole wheat or other grain products not permitted under that standard, or where provided for in other regulations in part 101, subpart E, the food contains 10 percent or more of the Reference Daily Intake or Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

* * * * *

4. Section 101.70 is amended in paragraph (f) by adding in the model petition new text immediately preceding the last undesignated paragraph of section B to read as follows:

§ 101.70 Petitions for health claims.

* * * * *

(f) * * *

B. * * *

In deciding the merits of a petition filed for an exception to the prohibition in § 101.14(e)(3) against health claims for foods exceeding the disqualifying levels identified in § 101.14(a)(5), the agency will consider the following factors:

1. The public health significance of the risk of the disease or health-related condition that is the subject of the claim and the role that the diet plays in decreasing that risk;

2. The availability of foods that qualify for a claim to address the underlying public health concerns;

3. Evidence demonstrating the population to which the health claim is targeted is not at risk for the disease or health-related condition associated with the disqualifying nutrient, including,

but not limited to, the ability of individuals to identify themselves as being at risk for the disease or health-related condition associated with the disqualifying nutrient; and

4. All other evidence demonstrating the public health need for waiving the disqualification requirements.

* * * * *

5. Section 101.72 is amended by revising paragraph (c)(2)(i); by redesignating paragraphs (c)(2)(ii) and (d)(2) as (c)(2)(iii) and (d)(5), respectively; by adding new paragraphs (c)(2)(ii), (d)(2), (d)(3), and (d)(4); and by revising paragraph (e) to read as follows:

§ 101.72 Health claims: calcium and osteoporosis.

* * * * *

(c)(2) Specific requirements. (i) *Nature of the claim*. A health claim associating calcium with a reduced risk of osteoporosis may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim makes clear that adequate calcium intake as part of a healthful diet throughout life is essential to reduce the risk of osteoporosis. The claim does not imply that adequate dietary calcium intake is the only recognized risk factor for the development of osteoporosis;

(B) The claim does not state or imply that the risk of osteoporosis is equally applicable to the general United States population. The claim shall identify the population at particular risk for the development of osteoporosis as women in their bone forming years from approximately 11 to 35 years of age. An optional statement that further characterizes this and other populations at risk for developing osteoporosis may be made in accordance with paragraph (d)(3) of this section;

(C) The claim does not attribute any degree to which maintaining adequate calcium intake throughout life may reduce the risk of osteoporosis; and

(D) The claim states that total dietary intake of calcium greater than 2,000 milligrams (mg) per day (200 percent of the DV for calcium for adults and children 4 or more years of age or 154 percent of the daily value (DV) for pregnant or lactating women) provides no further benefit to bone health in reducing the risk of osteoporosis. This requirement does not apply to a food that provides 1,500 mg or less of calcium per day (150 percent or less of the DV for calcium for adults and children 4 or more years of age or 115 percent or less of the DV for pregnant or lactating women) when used as directed in labeling.

(ii) *Presentation of the claim*. All of the elements listed in paragraph (c)(2)(i) of this section must be included in one presentation of the claim displayed prominently on the label or labeling on which the claim appears. Other presentations of the claim on that label or labeling, including on the principal display panel, need not include the information in paragraphs (c)(2)(i)(B) and (c)(2)(i)(D) of this section provided that, displayed prominently and in immediate proximity to such claim, the following referral statement is used: ''See ———— for more information'' with the blank filled in with the identity of the panel on which is presented the statement of the claim that includes all of the elements in paragraph (c)(2)(i) of this section.

(A)The referral statement ''See [appropriate panel] for more information'' shall be in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, that is no less than that required by § 101.105(i) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the referral statement shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch.

(B) The referral statement shall be immediately adjacent to any presentation of the health claim that does not include all of the elements of paragraph (c)(2)(i) of this section, and there may be no intervening material between the claim and the referral statement. If the abbreviated health claim appears on more than one panel of the label, the referral statement shall be adjacent to the claim on each panel except for the panel that bears the full health claim where it may be omitted.

* * * * *

(d) * * *

(2) The claim may list specific risk factors for osteoporosis, identifying them among the multifactorial risks for the disease. Such factors include a person's sex, age, and race. The claim may state that an adequate amount of exercise is also needed to reduce risk for the disease.

(3) The claim may further identify the population at particular risk for the development of osteoporosis as including white (or ''Caucasian'') women and Asian women in their bone forming years (approximately 11 to 35 years of age). The claim may also identify menopausal (or the term ''middle-aged'') women, persons with a family history of the disease, and elderly (or ''older'') men and women as being at risk.

(4) The claim may state that adequate calcium intake throughout life is linked to reduced risk of osteoporosis through the mechanism of optimizing peak bone mass during adolescence and early adulthood. The phrase ''build and maintain good bone health'' may be used to convey the concept of optimizing peak bone mass. When reference is made to persons with a family history of the disease, menopausal women, and elderly men and women, the claim may also state that adequate calcium intake is linked to reduced risk of osteoporosis through the mechanism of slowing the rate of bone loss.

* * * * *

(e) *Model health claims*. The following are examples of model health claims that may be used in food labeling to describe the relationship between calcium and osteoporosis:

(1) *Examples 1 and 2*. Model health claims for a food that does not require the statement specified in paragraph (c)(2)(i)(D) of this section:

Especially for teen and young adult women, adequate calcium in a healthful diet may reduce the risk of osteoporosis later in life.

A healthful diet with adequate calcium and regular exercise help teen and young adult white and Asian women maintain good bone health and may reduce their high risk of osteoporosis later in life.

(2) *Example 3*. Model health claims for a food labeled for use by adults and children 4 or more years of age that requires the statement specified in paragraph (c)(2)(i)(D) of this section:

Exercise and a healthful diet with enough calcium may help teen and young adult women reduce their high risk of osteoporosis later in life. Adequate calcium is important for everyone (women and men at all ages) but daily intakes above 2,000 mg (200 percent of the DV) may not provide added benefit.

(3) *Example 4*. Abbreviated model health claim for use with a full health claim and that conforms with the requirements of paragraph (c)(2)(ii) of this section:

Adequate calcium in a healthful diet may reduce the risk of osteoporosis. See [appropriate panel] for more information.

6. Section 101.73 is amended by revising paragraphs (c)(2)(i)(F), (d)(1), and (e)(1) to read as follows:

§ 101.73 Health claims: dietary lipids and cancer.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(F) The claim does not imply that dietary fat consumption is the only

recognized risk factor for the development of cancer.

* * * * *

(d) *Optional information.* (1) The claim may indicate that development of cancer depends on many factors and identify one or more of the following as risk factors for the disease: Family history of a specific type of cancer, cigarette smoking, alcohol consumption, overweight and obesity, ultraviolet or ionizing radiation, exposure to cancer-causing chemicals, and dietary factors.

* * * * *

(e) * * *

(1) A low fat diet may reduce the risk of some cancers.

* * * * *

7. Section 101.74 is amended by revising paragraphs (c)(2)(i)(E), (d)(1), (e)(1), and (e)(2) to read as follows:

§ 101.74 Health claims: sodium and hypertension.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(E) The claim does not imply that dietary sodium consumption is the only recognized risk factor for the development of high blood pressure.

* * * * *

(d) *Optional information.* (1) The claim may indicate that development of high blood pressure depends on many factors and identify one or more of the following as risk factors for the disease in addition to dietary sodium consumption: Family history of high blood pressure, growing older, alcohol consumption, and excess weight.

* * * * *

(e) * * *

(1) A low sodium diet may reduce the risk of high blood pressure.

(2) [This product] can be part of a low sodium, low salt diet that might reduce the risk of hypertension or high blood pressure.

8. Section 101.75 is amended by revising paragraphs (c)(2)(i)(E), (d)(1), (e)(1), and (e)(2) to read as follows:

§ 101.75 Health claims: dietary saturated fat and cholesterol and risk of coronary heart disease.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(E) The claim does not imply that consumption of dietary saturated fat and cholesterol is the only recognized risk factor for the development of coronary heart disease.

* * * * *

(d) *Optional information.* (1) The claim may indicate that coronary heart disease risk depends on many factors and identify one or more of the following in addition to saturated fat and cholesterol about which there is general scientific agreement that they are major risk factors for this disease: A family history of coronary heart disease, elevated blood total and LDL-cholesterol, excess body weight, high blood pressure, cigarette smoking, diabetes, and physical inactivity.

* * * * *

(e) * * *

(1) Diets low in saturated fat and cholesterol may reduce the risk of heart disease;

(2) Your risk of heart disease might be reduced by a diet low in saturated fat and cholesterol and a healthy lifestyle;

* * * * *

9. Section 101.76 is amended by revising paragraphs (c)(2)(i)(D), (d)(2), (e)(1), and (e)(2) to read as follows:

§ 101.76 Health claims: fiber-containing grain products, fruits, and vegetables and cancer.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) The claim does not imply that consumption of diets low in fat and high in fiber-containing grain products, fruits, and vegetables is the only recognized risk factor for a reduced risk of developing cancer.

* * * * *

(d) * * *

(2) The claim may indicate that development of cancer depends on many factors and identify one or more of the following as risk factors for the disease: Family history of a specific type of cancer, cigarette smoking, alcohol consumption, overweight and obesity, ultraviolet or ionizing radiation, exposure to cancer-causing chemicals, and dietary factors.

* * * * *

(e) * * *

(1) Low fat diets rich in fiber-containing grain products, fruits, and vegetables may reduce the risk of some types of cancer.

(2) A diet low in fat and high in grain products, fruits, and vegetables that contain fiber may reduce your risk of some cancers.

* * * * *

10. Section 101.77 is amended by revising paragraphs (c)(2)(i)(F), (d)(1), and (e) to read as follows:

§ 101.77 Health claims: fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease.

(c) * * *

(2) * * *

(i) * * *

(F) The claim does not imply that consumption of diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, is the only recognized risk factor for a reduced risk of developing coronary heart disease.

* * * * *

(d) *Optional information.* (1) The claim may indicate that development of coronary heart disease depends on many factors and identify one or more of the following as risk factors for the disease: A family history of coronary heart disease, elevated blood-, total- and LDL-cholesterol, excess body weight, high blood pressure, cigarette smoking, diabetes, and physical inactivity.

* * * * *

(e) *Model health claims.* The following model health claims may be used in food labeling to characterize the relationship between diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain soluble fiber and the risk of coronary heart disease:

(1) Diets low in saturated fat and cholesterol and rich in fiber-containing fruits, vegetables, and grain products may reduce the risk of heart disease.

(2) A diet low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain fiber may lower blood cholesterol levels and reduce your risk of heart disease.

11. Section 101.78 is amended by removing paragraph (c)(2)(i)(D); by redesignating paragraphs (c)(2)(i)(E) through (c)(2)(i)(J) and (d)(3) through (d)(5) as (c)(2)(i)(D) through (c)(2)(i)(I) and (d)(4) through (d)(6), respectively; by revising newly redesignated paragraph (c)(2)(i)(I), paragraphs (d)(2), (e)(1), and (e)(2); and by adding new paragraph (d)(3) to read as follows:

§ 101.78 Health claims: fruits and vegetables and cancer.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(I) The claim does not imply that consumption of diets low in fat and high in fruits and vegetables is the only recognized risk factor for a reduced risk of developing cancer.

* * * * *

(d) * * *

(2) The claim may indicate that development of cancer depends on many factors and identify one or more of the following as risk factors for the disease: Family history of a specific type of cancer, cigarette smoking, alcohol consumption, overweight and obesity, ultraviolet or ionizing radiation, exposure to cancer-causing chemicals, and dietary factors.

(3) The claim may characterize fruits and vegetables that meet the requirements described in paragraph (c)(2)(ii) of this section as foods that are low in fat and that contain (or are a good source of) one or more of vitamin A, vitamin C, or dietary fiber.

* * * * *

(e) * * *

(1) Low fat diets rich in fruits and vegetables (foods that are low in fat and may contain dietary fiber, vitamin A and vitamin C), may reduce the risk of some types of cancer.

(2) A diet low in fat and high in certain fruits and vegetables, foods that are low in fat and that may contain vitamin A and vitamin C, may reduce your risk of some cancer.

Dated: December 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–31008 Filed 12–20–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

21 CFR Part 888

[Docket No. 95N–0176]

Orthopedic Devices: Classification, Reclassification, and Codification of Pedicle Screw Spinal Systems; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting certain statements in the preamble to a proposed rule that appeared in the Federal Register of October 4, 1995 (60 FR 51946). The document proposed to classify certain unclassified preamendments pedicle screw spinal systems into class II (special controls), and to reclassify certain postamendments pedicle screw spinal systems from class III (premarket approval) to class II. The document states further that FDA is issuing for public comment the recommendations of the Orthopedic and Rehabilitation Devices Panel (the Panel) concerning the classification/reclassification of pedicle screw spinal systems, and the agency's tentative findings on the Panel's recommendations. The document is being corrected to reflect an accurate description of the formation, membership, and activities of the Spinal Implant Manufacturers Group (SIMG), and the Scientific Committee, two separate entities established by the spinal implant manufacturers and medical professional societies to collect and submit to FDA all available valid scientific data on the performance of pedicle screw spinal devices.

FOR FURTHER INFORMATION CONTACT: Mark N. Melkerson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

In the FR Doc. 95–24686, appearing on page 51946 in the Federal Register of Wednesday, October 4, 1995, the following corrections are made:

1.On page 51947, in the second column, in the fourth paragraph, beginning in line 7, the second, third, and fourth sentences are removed and the following text is added in their place to read as follows:

In response, two groups were founded: The Spinal Implant Manufacturers Group (SIMG), and the Scientific Committee. SIMG, founded by 16 medical device manufacturers, agreed to provide the funding that would be required to conduct a nationwide study of pedicle screw devices. The Scientific Committee was formed by five professional medical societies, including the North American Spine Society, the American Academy of Orthopedic Surgeons, the Scoliosis Research Society, the Congress of Neurosurgeons, and the American Association of Neurological Surgeons. The Scientific Committee was formed to develop and implement a uniform research protocol to gather clinical experience from the use of the device. The Scientific Committee consisted of four surgeons and two nonvoting SIMG representatives, a biostatistician, and a clinical/regulatory affairs professional.

2. On page 51947, in the third column, in the first paragraph, beginning in the fifteenth line, the fourth and fifth sentences are removed and the following text is added in their place to read as follows:

At this meeting, the Scientific Committee presented clinical data from its nationwide ''Historical Cohort Study of Pedicle Screw Fixation in Thoracic, Lumbar, and Sacral Spinal Fusions'' (Cohort Study). FDA presented a comprehensive review of the medical literature, an analysis of the medical literature, an analysis of the Cohort study conducted by the Scientific Committee, and a summary of the clinical data that had been released by IDE sponsors.

3. On page 51950, in the first column, in the fourth paragraph, in the first line, the abbreviation ''SIMG'' is corrected to read ''Scientific Committee''.

Dated: December 8, 1995.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–31047 Filed 12–20–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–52–86]

RIN 1545–AL99

Statements to Recipients of Dividends and Patronage Dividends

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This document withdraws a portion of the notice of proposed rulemaking under sections 6042 and 6044 of the Internal Revenue Code that was published in the Federal Register on February 29, 1988, as proposed to be amended on September 27, 1990. The proposed regulations prescribed rules for official statements to recipients of dividends and patronage dividends paid after December 31, 1983.

DATES: This withdrawal is effective on December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Renay France, (202)622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 29, 1988, the IRS issued proposed regulations on backup withholding (INTL–52–86, 53 FR 5991). The proposed regulations related, in part, to official statements to recipients of dividends and patronage dividends under sections 6042 and 6044, respectively (proposed §§ 1.6042–5 and 1.6044–6). On September 27, 1990, the IRS issued additional proposed regulations on backup withholding (IA–224–82, 55 FR 39427). Those proposed

regulations contained amendments to the regulations previously proposed under sections 6042 and 6044.

In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing final regulations relating to backup withholding that were proposed in INTL–52–86 and IA- 224–82. Those final regulations do not include proposed §§ 1.6042–5 and 1.6044–6. Further, when the IRS issues additional final regulations that were proposed under INTL–52–86, those additional final regulations will not include proposed §§ 1.6042- 5 and 1.6044–6. Accordingly, this document withdraws those proposed regulations sections. See §§ 1.6042–4 and 1.6044–5 of the final regulations for substantive rules proposed under the withdrawn sections.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Portion of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, proposed §§ 1.6042–5 and 1.6044–6 that were published in the Federal Register on February 29, 1988 (53 FR 5991) and amended in the Federal Register on September 27, 1990 (55 FR 39427) are withdrawn.

Margaret Milner Richardson,

Commissioner of Internal Revenue

[FR Doc. 95–30735 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[EE–53–95]

RIN 1545–AT95

Requirements for Tax Exempt Section 501(c)(5) Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations clarifying certain requirements of section 501(c)(5). The requirements are being clarified to provide needed guidance to organizations as to the requirements an organization must meet in order to be exempt from tax as an organization described in section 501(c)(5).

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–53–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–53–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking clarifies the scope of the exemption provided in section 501(c)(5) of the Internal Revenue Code for labor, agricultural and horticultural organizations.

An income tax exemption for labor organizations was first provided in the Corporation Excise Tax Act of 1909, Public Law No. 61–5, 36 Stat. 11, 112–118, and has been in effect continuously since that time. A labor organization is an entity that is organized ''to protect and promote the interests of labor.'' *Portland Cooperative Labor Temple Association* v. *Commissioner,* 39 B.T.A. 450 (1939), acq., 1939–1 C.B. 28. The principal purpose of the organization must be to better the working conditions of people engaged in a common pursuit. See, Treas. Reg. § 1.501(c)(5)–1. Organizations meeting this requirement have traditionally engaged in collective action directed toward the workers' common objective of improving working conditions. They include labor unions that negotiate with employers on behalf of workers for improved wages, fringe benefits, hours and similar working conditions, and certain union-controlled organizations, like strike funds, that provide benefits to workers that enhance the union's ability to bargain effectively. See Rev. Rul. 67–7 (1967–1 C.B. 137). They do not include strike funds that provide income to union members but are not controlled by unions. See Rev. Rul. 76–420 (1976–2 C.B. 153). Such an organization will not pay the strike benefits ''with the objective of bettering conditions of employment, but by reason of its contractual agreements with the workers.''

Labor organizations may also meet the requirements of section 501(c)(5) by providing benefits that directly improve working conditions or compensate for unpredictable hazards that interrupt work. Examples of such benefits include operating a dispatch hall to match union members with work assignments and providing industry stewards who represent employees with grievances against management. See Rev. Rul. 75–473 (1975–2 C.B. 213); Rev. Rul. 77–5 (1977–1 C.B. 148). On the other hand, managing saving and investment plans for workers, including retirement plans, does not bear directly on working conditions. See Rev. Rul. 77–46 (1977–1 C.B. 147). Accordingly, section 501(c)(5) has not been applied to organizations that manage retirement savings plans as their principal activity.

Nevertheless, in *Morganbesser* v. *United States,* 984 F.2d 560 (2d Cir. 1993), the court held that a trust managing a pension benefit plan pursuant to a collective bargaining agreement qualified as a labor organization described in section 501(c)(5). The IRS and the Treasury Department believe that this decision is contrary to existing law, and the IRS is issuing an action on decision reflecting its view that the *Morganbesser* court erred in its holding. These proposed regulations are a clarification of the existing legal standard.

Like labor organizations, agricultural and horticultural organizations must also better the conditions of those engaged in a common pursuit in order to be described in section 501(c)(5). See § 1.501(c)(5)–1. There is no authority indicating that the law is to be interpreted differently for agricultural and horticultural organizations than for labor organizations. Accordingly, the proposed regulations clarify the law as it applies to all section 501(c)(5) organizations.

Certain organizations have taken the position in refund actions that they are labor organizations described in section 501(c)(5) even though their principal activity was to manage retirement savings plans for workers. In addition, some such foreign organizations have claimed exemption from withholding on dividend, interest and similar income that they have earned. The IRS will continue to oppose these claims for refund and exemption from withholding.

A health plan is not a retirement savings plan. Thus, the IRS will continue to follow Rev. Rul. 62–17 (1962–1 C.B. 87) (regarding a labor organization providing health benefits) even in circumstances where a majority of the organization's members are retired. Furthermore, the IRS will continue to recognize that negotiating the terms of a retirement plan and other postretirement benefits and designating one or more representatives to the board of a multiemployer pension trust are proper activities for a labor organization. The proposed regulations are not intended to apply to or affect

any other provision of federal law, including provisions of the Employee Retirement Income Security Act of 1974 (ERISA) administered by the Secretary of Labor.

Explanation of Provisions

The proposed regulations add a new paragraph to § 1.501(c)(5)–1 providing that an organization is not an organization within the meaning of section 501(c)(5) if the organization's principal activity is to manage savings or investment plans or programs, including retirement savings plans.

Proposed Effective Date

These regulations are proposed to be effective December 21, 1995.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.501(c)(5)–1 is amended by:

1. Redesignating paragraph (b) as paragraph (c).

2. Adding a new paragraph (b) to read as follows:

§ 1.501(c)(5)-1 Labor, agricultural, and horticultural organizations.

* * * * *

(b)(1) An organization is not an organization described in section 501(c)(5) if the principal activity of the organization is to receive, hold, invest, disburse, or otherwise manage funds associated with savings or investment plans or programs, including pension or other retirement savings plans or programs.

(2) *Example.* Trust A is organized in accordance with a collective bargaining agreement between a labor union and multiple employers. Representatives of both the employers and the union serve as trustees. Trust A receives funds from the employers who are subject to the agreement, invests the funds and uses the funds and accumulated earnings to pay pension benefits to union members as specified in the agreement. It also provides information to union members about their retirement benefits and assists them with administrative tasks associated with the benefits. Most of Trust A's activities are devoted to these functions. From time to time, Trust A also participates in the renegotiation of the collective bargaining agreement. Because Trust A's principal activity is to manage funds associated with a pension plan, it is not an organization described in section 501(c)(5).

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30830 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[EE–20–95]

RIN 1545–AT47

Effect of the Family and Medical Leave Act on the Operation of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to cafeteria plans that reflect changes made by the Family and Medical Leave Act of 1993. The proposed regulations provide the public with guidance needed to comply with the Act and affect employees who participate in cafeteria plans.

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (EE–20–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (EE–20–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Catherine Fuller, (202) 622–6080; concerning submissions and the hearing, Mike Slaughter, (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to the Income Tax Regulations (26 CFR Part 1) under section 125 of the Internal Revenue Code of 1986 (Code). These additions are proposed to conform the regulations to the Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3. FMLA imposes certain requirements on employers regarding coverage, including family coverage, under group health plans for employees taking FMLA leave, and regarding the restoration of benefits to employees who return from FMLA leave. This notice of proposed rulemaking addresses a number of the principle questions that have been raised about how these FMLA requirements affect the operation of cafeteria plans (including flexible spending arrangements) maintained under section 125 of the Code. The rules in this notice of proposed rulemaking supplement the proposed Income Tax Regulations under section 125 of the Code. Except as otherwise provided in this notice of proposed rulemaking, all of the existing rules governing cafeteria plans, including the nondiscrimination rules, continue to apply.

The requirements pertaining to FMLA leave, including the employer's obligation to maintain coverage under a group health plan during FMLA leave and to restore benefits upon return from FMLA leave, are established by FMLA,

not the Code. The U.S. Department of Labor, in 29 CFR part 825, has published rules interpreting the requirements of FMLA, and the Department of Labor has jurisdiction relating to those rights or obligations. This notice of proposed rulemaking does not interpret FMLA; it provides guidance on the cafeteria plan rules that apply to an employee in circumstances to which FMLA and the Labor Regulations thereunder also apply. The Department of Labor has advised the Department of the Treasury, including the Internal Revenue Service (IRS), that the provisions of this notice of proposed rulemaking do not conflict with, and are not inconsistent with, the provisions of FMLA or the Labor Regulations thereunder.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par.Section 1.125–3 is added to read as follows:

§ 1.125–3 Effect of the Family and Medical Leave Act (FMLA) on the operation of cafeteria plans.

Q–1: *May an employee taking FMLA leave revoke an existing election of group health plan coverage under a cafeteria plan?*

A–1: Yes. An employee taking FMLA leave may revoke an existing election of group health plan coverage (including a health flexible spending arrangement (FSA)) under a cafeteria plan for the remaining portion of the coverage period. See 29 CFR 825.209(e). FMLA also requires that an employee be permitted to choose to be reinstated in the group health plan coverage (including a health FSA) provided under a cafeteria plan upon returning from FMLA leave if the employee's group health plan coverage terminated while on FMLA leave (either by revocation or nonpayment of premiums). Such an employee is entitled, under FMLA, to be reinstated on the same terms as prior to taking FMLA leave (including family or dependent coverage). See 29 CFR 825.209(e) and 825.215(d). However, the employee has no greater right to benefits for the remainder of the plan year than an employee who has been continuously working during the plan year. In addition to the rights granted under FMLA, such an employee has the right to revoke or change elections (e.g., because of changes in family status or significant cost or coverage changes imposed by a third-party provider) under the same terms and conditions as are available to employees participating in the cafeteria plan who are not on FMLA leave.

Q–2: *Who is responsible for making premium payments under a cafeteria plan when an employee on FMLA leave continues group health plan coverage?*

A–2: An employee is entitled to continue group health plan coverage (including a health FSA) during FMLA leave whether or not provided under a health FSA or other component of a cafeteria plan. See 29 CFR 825.209(b). An employee making premium payments under a cafeteria plan who chooses to continue group health plan coverage (including a health FSA) while on FMLA leave is responsible for the share of group health premiums that the employee was paying while working, such as amounts paid pursuant to a salary reduction agreement. The employer must continue to contribute the share of the cost of the employee's coverage that the employer was paying before the employee commenced FMLA leave. See 29 CFR 825.100(b) and 825.210(a).

Q–3: *What payment options are required or permitted to be offered under a cafeteria plan to an employee who continues group health plan coverage (including a health FSA) while on unpaid FMLA leave, and what is the tax treatment of these payments?*

A–3: (a) *In general* A cafeteria plan may, on a nondiscriminatory basis, offer one or more of the following payment options (subject to the limitations described in paragraph (b) of this Q&A–3) to an employee who continues group health plan coverage (including a health FSA) while on unpaid FMLA leave. These options are referred to in this section as pre-pay, pay-as-you-go and catch-up.

(1) *Pre-pay*. (i) Under the pre-pay option, a cafeteria plan may permit an employee to pay, prior to commencement of the FMLA leave period, the amounts due for the FMLA leave period. However, the Labor Regulations under FMLA provide that under no circumstances may the employer mandate that an employee pre-pay the amounts due for the leave period. See 29 CFR 825.210(c)(3) and (4).

(ii) Contributions under the pre-pay option may be made on a pre-tax salary reduction basis from any taxable compensation (including the cashing out of unused sick days or vacation days). These contributions will not be included in the employee's gross income, provided that all cafeteria plan requirements are satisfied. For example, see Q&A–5 of this section regarding restrictions on pre-tax salary reduction contributions when an employee's FMLA leave spans two cafeteria plan years.

(iii) Contributions under the pre-pay option may also be made on an after-tax basis. See Prop. Treas. Reg. § 1.125–1, Q&A–5.[1]

[1] Published as a proposed rule at 49 FR 19321 (May 7, 1984).

(2) *Pay-as-you-go.* (i) Under the pay-as-you-go option, employees may pay their share of the premium payments on the same schedule as payments would be made if the employee were not on leave or under any other payment schedule permitted by the Labor Regulations at 29 CFR 825.210(c) (i.e., on the same schedule as payments are made under the Consolidated Omnibus Reconciliation Act of 1985, Public Law 99–272; under the employer's existing rules for payment by employees on leave without pay; or under any other system voluntarily agreed to between the employer and the employee that is not inconsistent with this section or with 29 CFR 825.210(c)).

(ii) Contributions under the pay-as-you-go option are generally made by the employee on an after-tax basis. However, contributions may be made on a pre-tax basis to the extent that the contributions are made from taxable compensation (e.g., cashing out unused sick or vacation days) that is due the employee during the leave period, and provided that all cafeteria plan requirements are satisfied.

(iii) An employer is not required to continue the health coverage of an employee who fails to make required premium payments while on FMLA leave. See 29 CFR 825.212. However, if the employer chooses to continue the health coverage of an employee who fails to make required premium payments while on FMLA leave, the employer is entitled to recoup those payments as set forth in paragraph (a)(3)(i) of this Q&A–3. See also Q&A–6 of this section regarding coverage under a health FSA when an employee fails to make the required premium payments while on FMLA leave.

(3) *Catch-up.* (i) An employer that continues providing group health coverage to an employee who does not pay premiums on FMLA leave is, to the extent provided under the Labor Regulations, permitted to utilize the catch-up option to recoup the employee's share of premium payments. See, e.g., 29 CFR 825.212(b).

(ii) Where an employee is electing to use the catch-up option, the employer and the employee must agree in advance of the coverage period that: the employee elects to continue health coverage while on unpaid FMLA leave; the employer will assume responsibility for advancing payment of the premiums on the employee's behalf during the FMLA leave; and these advance amounts must be paid by the employee when the employee returns from FMLA leave.

(iii) Contributions under the catch-up option may be made on a pre-tax salary reduction basis when the employee returns from FMLA leave from any available taxable compensation (including the cashing out of unused sick days and vacation days). These contributions will not be included in the employee's gross income, provided that all cafeteria plan requirements are satisfied.

(iv) Contributions under the catch-up option may also be made on an after-tax basis. See Prop. Treas. Reg. § 1.125–1, Q&A–5.[2]

(b) *Exceptions.* Cafeteria plans may offer (pursuant to 29 CFR 825.210(c)) one or more of the payment options described in paragraph (a) of this Q&A–3, with the following exceptions:

(1) The pre-pay option cannot be the sole option offered to employees on FMLA leave. However, the cafeteria plan may include pre-payment as an option for employees on FMLA leave, even if such option is not offered to employees on non-FMLA leave-without-pay.

(2) The catch-up option can be the sole option offered to employees on FMLA leave if and only if the catch-up option is the sole option offered to employees on non-FMLA leave-without-pay.

(3) A cafeteria plan cannot offer employees on FMLA leave a choice of either the pre-pay option or the catch-up option without also offering the pay-as-you-go option, if the pay-as-you- go option is offered to employees on non-FMLA leave-without-pay.

(c) *Voluntary waiver of employee payments.* In addition to the foregoing payment options, an employer may voluntarily waive, on a nondiscriminatory basis, the requirement that employees who elect to continue health coverage while on FMLA leave pay the amounts the employees would otherwise be required to pay for the leave period.

Q–4: *Do the special FMLA requirements concerning an employee who continues group health plan coverage under a cafeteria plan apply if the employee is on paid FMLA leave?*

A–4: No. The Labor Regulations provide that, if an employee's FMLA leave is substituted paid leave as described at 29 CFR 825.207 and the employee continues group health plan coverage while on FMLA leave, the employee's share of the premiums must be paid by the method normally used during any paid leave (i.e., salary reduction). See 29 CFR 825.210(b).

Q–5: *What restrictions apply to contributions when an employee's FMLA leave spans two cafeteria plan years?*

A–5: (a) Contributions to a cafeteria plan during FMLA leave will not be included in an employee's gross income, provided that the plan complies with all cafeteria plan requirements. Among other requirements, a plan may not operate in a manner that enables employees on FMLA leave to defer compensation from one cafeteria plan year to a subsequent cafeteria plan year. See Prop. Treas. Reg. § 1.125–2, Q&A–5.[3]

(b) The following example illustrates this Q&A–5:

Example. Employee A elects health coverage under a calendar year cafeteria plan maintained by Employer X. A's premium for health coverage is $100 per month throughout the 12-month period of coverage. A takes FMLA leave for 12 weeks beginning on October 31 after making 10 months worth of premiums totalling $1000 (10 months × $100 = $1000). A maintains health coverage while on FMLA leave. A utilizes the pre-pay option by cashing-out A's unused sick days in order to make the required premium payments due while A is on FMLA leave. Because A cannot defer compensation from one plan year to a subsequent plan year, A may pre-pay the premiums due in November and December (i.e., $100 per month) on a pre-tax basis, but A cannot pre-pay the premium payment due in January on a pre-tax basis. If A participates in the cafeteria plan in the subsequent plan year, A must use another option (e.g., pay-as-you-go or catch-up) to make the premium payment due in January.

Q–6: *Are there special rules concerning employees taking FMLA leave who participate in health FSAs offered under a cafeteria plan?*

A–6: (a) *In general.* (1) A health plan that is a flexible spending arrangement (FSA) offered under a cafeteria plan must conform to the generally applicable rules in this section concerning employees who take FMLA leave. Thus, FMLA requires that an employee taking FMLA leave be permitted to—

(i) Continue coverage under a health FSA while on FMLA leave; or

(ii) Revoke an existing health FSA election under the cafeteria plan for the remainder of the coverage period. See 29 CFR 825.209(e).

(2) FMLA also requires the plan to permit the employee to be reinstated in the health FSA upon return from FMLA leave on the same terms as prior to taking FMLA leave. See 29 CFR 825.215(d) and paragraph (b)(2) of this Q&A–6. However, reinstatement is at the employee's election and under no circumstances may an employer require

[2] Published as a proposed rule at 49 FR 19321 (May 7, 1984).

[3] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

an employee whose coverage has terminated while on FMLA leave to reinstate coverage under a health FSA upon return from FMLA leave. See 29 CFR 825.214(a).

(b) *Uniform Coverage Rule* (1) Q&A–7(b)(2) of § 1.125–2[4] (the uniform coverage rule) applies during the FMLA leave period as long as the employee continues health coverage. Therefore, regardless of the payment option selected under Q&A–3 of this section, for so long as the employee continues coverage (or for so long as the employer continues the coverage of an employee who fails to make the required contributions as described in Q&A–3(a)(2)(iii) of this section), the full amount of the elected coverage, less any prior reimbursements, must be available to the employee at all times, including the FMLA leave period.

(2)(i) If an employee's coverage under the health FSA terminates while the employee is on FMLA leave, the employee is not entitled to receive reimbursements for claims incurred during the period when the coverage is terminated. If that employee subsequently elects to be reinstated in the health FSA upon return from FMLA leave for the remainder of the plan year, the employee may not retroactively elect health FSA coverage for claims incurred during the period when the coverage was terminated. Further, the employee is not entitled to greater FSA benefits relative to premiums paid than an employee who has been continuously working during the plan year. See 29 CFR 825.216. Therefore, if an employee elects to be reinstated in a health FSA upon return from FMLA leave, the employee's coverage for the remainder of the plan year is equal to the employee's election for the 12-month period of coverage (or such shorter period as provided under § 1.125–2[5]), prorated for the period during the FMLA leave for which no premiums were paid, and reduced by prior reimbursements.

(ii) An employee on FMLA leave has the right to revoke or change elections (e.g., because of changes in family status) under the same terms and conditions that apply to employees participating in the cafeteria plan who are not on FMLA leave. Thus, notwithstanding the rules described in paragraph (b)(2)(i) of this Q&A–6, an employee who returns from FMLA leave may make a new health FSA election for the remainder of the plan year if return from leave without pay constitutes a change of family status under the employer's cafeteria plan.

(3) The following examples illustrate the rules in this Q&A–6:

Example 1: (a) Employee A elects $1200 worth of coverage under a calendar year health FSA provided under a cafeteria plan, with an annual premium of $1200. A is permitted to pay the $1200 through pre-tax salary reduction amounts of $100 per month throughout the 12-month period of coverage. A incurs no medical expenses prior to April 1. On April 1, A takes FMLA leave after making three months worth of contributions totalling $300 (3 months × $100 = $300). The plan does not permit a revocation of election on account of a change in family status. However, pursuant to A's rights under FMLA, A elects to terminate coverage upon going on FMLA leave. Consequently, A makes no premium payments for the months of April, May, and June, and A is not entitled to submit claims or receive reimbursements for expenses incurred during this period. A returns from FMLA leave and elects to be reinstated in the health FSA on July 1.

(b) Under FMLA, A has no greater right to benefits upon reinstatement than if A had been continuously working during the plan year. Therefore, A is reinstated to A's annual election (i.e., $1200) prorated for the period during the FMLA leave for which no premiums were paid (i.e., reduced for 3 months or ¼ of the plan year) less prior reimbursements (i.e., $0). Consequently, A's coverage for the remainder of the plan year equals $900. A must also begin making premium payments of $100 per month for the remainder of the plan year.

Example 2: Assume the same facts as *Example 1* except that A incurs medical expenses totaling $200 in February and obtains reimbursement of these expenses. The results are the same as in *Example 1*, except that A's coverage for the remainder of the plan year equals $700.

Example 3: Assume the same facts as *Example 1* except that prior to taking FMLA leave, A elects to continue health FSA coverage during the FMLA leave. The plan permits A (and A elects) to use the catch-up payment option described in Q&A–3 of this section, and as further permitted under the plan, A chooses to repay the $300 in missed payments on a ratable basis over the remaining six-month period of coverage (i.e., $50 per month). Thus, A's monthly premium payments for the remainder of the plan year will be $150 ($100 + $50).

Q–7: *Are employees entitled to non-health benefits while taking FMLA leave*?

A–7: FMLA does not require an employer to maintain an employee's non-health benefits (e.g., life insurance) during FMLA leave. An employee's entitlement to benefits other than group health benefits under a cafeteria plan during a period of FMLA leave is to be determined by the employer's established policy for providing such benefits when the employee is on non-FMLA leave (paid or unpaid). See 29 CFR 825.209(h). Therefore, an employee who takes FMLA leave is entitled to revoke an election of non-health benefits under a cafeteria plan to the same extent employees taking non-FMLA leave are permitted to revoke elections of non-health benefits under a cafeteria plan. For example, election changes are permitted due to changes of family status or upon enrollment for a new plan year. See § 1.125–2, Q&A–6(c)[6] and § 1.125–1, Q&A–8.[7] However, the FMLA regulations provide that, in certain cases, an employer may continue an employee's non-health benefits under the employer's cafeteria plan while the employee is on FMLA leave to ensure that the employer can meet its responsibility to provide equivalent benefits to the employee upon return from unpaid FMLA. If the employer continues an employee's non-health benefits during FMLA leave, the employer is entitled to recoup the costs incurred for paying the employee's share of the premiums during the FMLA leave period. See 29 CFR 825.213(b). In addition, a cafeteria plan must, as required by FMLA, permit an employee whose coverage terminated while on FMLA leave (either by revocation or nonpayment of premiums) to be reinstated in the cafeteria plan on return from FMLA leave. See 29 CFR 825.214(a) and 825.215(d).

Q–8: *How may taxpayers rely on these proposed regulations*?

A–8: (a) The guidance provided by the questions and answers in this section may be relied upon to comply with provisions of section 125 and will be applied by the Internal Revenue Service in resolving issues arising under cafeteria plans and related Internal Revenue Code sections. If final regulations are more restrictive than the guidance in this section, the regulations will not be applied retroactively. No inference, however, should be drawn regarding issues not expressly raised that may be suggested by a particular question or answer or by the inclusion or exclusion of certain questions.

(b) The Department of Labor has advised the Department of the Treasury, including the Internal Revenue Service, that the provisions of this section are not inconsistent with the provisions of

[4] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

[5] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

[6] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

[7] Published as a proposed rule at 49 FR 19321 (May 7, 1984).

FMLA and the Labor Regulations thereunder.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30681 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[EE–106–82]

RIN 1545–AE45

Loans to plan participants

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations under section 72(p) of the Internal Revenue Code relating to loans made from a qualified employer plan to plan participants or beneficiaries. Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982, and amended by the Technical Corrections Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. These regulations provide guidance to the public with respect to this provision, and affect any plan participant or beneficiary who receives a loan from a qualified employer plan.

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (EE–106–82), Attention: Plan Loans Guidance, room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (EE–106–82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS, at (202) 622–6070 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 72 of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations to section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), which added section 72(p) to the Code, and to the amendments to section 72(p) made by the Technical Corrections Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

Explanation of Provisions

Section 72(p) of the Code generally provides that an amount received as a loan from a qualified employer plan by a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution), except to the extent certain conditions are satisfied. For purposes of section 72, a qualified employer plan includes a plan that qualifies under section 401 (relating to qualified trusts), 403(a) (relating to qualified annuities) or 403(b) (relating to tax sheltered annuities), as well as a plan (whether or not qualified) maintained by the United States, a State or a political subdivision thereof, or an agency or instrumentality thereof. A qualified employer plan also includes a plan which was (or was determined to be) a qualified plan or a government plan. A loan from a contract purchased under a qualified employer plan is also treated as a loan from the plan. Section 72(p) also provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is to be treated as a loan from the plan.

Under section 72(p), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies certain requirements relating to the terms of the loan and the repayment schedule, and to the extent the loan satisfies certain limitations on the amount loaned. The proposed regulations require that the loan be evidenced by an enforceable agreement, set forth in writing or in another form that is approved by the Commissioner of Internal Revenue, that includes terms that satisfy the statutory requirements. Thus, the agreement must specify the amount of the loan, the term of the loan, and the repayment schedule. The agreement may be set forth in more than one document.

If a loan fails to satisfy the repayment requirements or the enforceable agreement requirement, the proposed regulations provide for the balance then due under the loan to be treated as a distribution from the plan. This may occur at the time the loan is made or at a later date if the loan is not repaid in accordance with the repayment schedule. If the loan satisfies the repayment requirements and the enforceable agreement requirement, but at the time the loan is made the amount of the loan exceeds the statutory limitation on the amount that is permitted to be loaned, the proposed regulations provide that only the excess amount is a deemed distribution.

One of the repayment requirements is that the loan be repaid within five years, unless the loan is used to acquire a dwelling unit which within a reasonable time is used as the principal residence of the participant. The proposed regulations provide that a principal residence has the same meaning as under section 1034 (relating to the taxation of a sale of a residence) and that tracing rules established under section 163(h)(3)(B) (relating to interest deductions for indebtedness incurred with respect to the acquisition of a principal residence) will be used to determine whether the section 72(p)(2)(B)(ii) exception to the five-year repayment requirement applies. (Notice 88–74 (1988–2 C.B. 385), sets forth certain standards applicable under section 163(h)(3).)

The Tax Reform Act of 1986 amended section 72(p) to require that, in order for a loan to not be treated as a distribution, the loan must be repaid in substantially level installments (not less frequently than quarterly) over the term of the loan. Section 72(p) authorizes regulations to allow exceptions from this requirement. Pursuant to this authorization, the proposed regulations permit loan repayments to be suspended during a leave of absence of up to one year, if the participant's pay from the employer is insufficient to service the debt, but only if the loan is repaid by the latest date permitted under section 72(p)(2)(B).

If the repayment terms of a loan are not satisfied after the loan has been made due to a failure to make a scheduled loan repayment, the proposed regulations provide for the balance then due under the loan to be deemed to be distributed. The proposed regulations permit a grace period, to the extent the grace period does not extend beyond the end of the calendar quarter next following the calendar quarter in which the repayment was scheduled to be made.

If a loan is treated as a distribution under section 72(p), the proposed regulations state that the amount so distributed is to be treated as a taxable distribution, subject to the normal rules of section 72 if the participant's interest in the plan includes after-tax contributions (or other tax basis). A deemed distribution would also be a distribution for purposes of the 10

percent tax in section 72(t) and the excise tax on excess distributions under section 4980A. However, a deemed distribution under section 72(p) is not treated as an actual distribution for purposes of the qualification requirements of section 401, the rollover and income averaging provisions of section 402 and the distribution restrictions of section 403(b).

By contrast, if a participant's accrued benefit is reduced (offset) in order to repay a loan, an actual distribution occurs for purposes of the provisions in sections 401, 402 and 403(b) referred to above. Thus, for example, a plan is prohibited from enforcing its security interest in a participant's account balance attributable to amounts contributed pursuant to an election under section 401(k) until a date on which distribution is permitted under section 401(k).

The proposed regulations do not address all issues arising under section 72(p). Comments are requested on whether further guidance should be provided on issues that are not addressed and how the issues should be resolved, including the effect of a deemed distribution on the tax treatment of subsequent distributions from the plan and the application of the $50,000 limitation and the five year repayment requirement to a refinancing and to multiple loan arrangements.

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analysis

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

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the following address: CC:DOM:CORP:R (EE–106–82), Attention: Plan Loans Guidance, room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Vernon S. Carter, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.72–17A is amended as follows:

1. Paragraphs (d)(1), (d)(2) and (d)(3) are redesignated as paragraphs (d)(2), (d)(3) and (d)(4), respectively.

2. New paragraph (d)(1) is added to read as follows:

§ 1.72–17A Special rules applicable to employee annuities and distributions under deferred compensation plans to self-employed individuals and owner-employees.

* * * * *

(d) * * * (1) The references in this paragraph (d) to section 72(m)(4) are to that section as in effect on August 13, 1982. Section 236(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 repealed section 72(m)(4), generally effective for assignments, pledges and loans made after August 13, 1982, and added section 72(p). See section 72(p) and § 1.72(p)-1 for rules governing the income tax treatment of certain assignments, pledges and loans from qualified employer plans made after August 13, 1982.

* * * * *

Par. 3. Section 1.72(p)–1 is added to read as follows:

§ 1.72(p)–1 Loans treated as distributions.

The questions and answers in this section provide guidance under section 72(p) pertaining to loans from qualified employer plans (including government plans and tax-sheltered annuities and employer plans that were formerly qualified). The examples included in the questions and answers in this section are based on the assumption that a bona fide loan is made to a participant from a qualified defined contribution plan pursuant to an enforceable agreement (in accordance with Q&A–3(b) of this section), with adequate security and with an interest rate and repayment terms that are commercially reasonable. (The particular interest rate used for illustration in this section is 8.75 percent compounded annually.) In addition, unless the contrary is specified, it is assumed in the examples that the amount of the loan does not exceed 50 percent of the participant's nonforfeitable account balance, the participant has no other outstanding loan (and had no prior loan) from the plan or any other plan maintained by the participant's employer or any other person required to be aggregated with the employer under section 414(b), (c) or (m), and the loan is not excluded from section 72(p) as a loan made in the ordinary course of an investment program as described in Q&A–18 of this section. No inference should be drawn from these regulations or the examples therein that a loan would not result in a prohibited transaction under section 4975 or would be consistent with the fiduciary standards of Title I of the Employee Retirement Income Security Act of 1974, as amended. See, for example, 29 CFR § 2550.408b–1 (interpreting the statutory prohibited transaction exemption for loans to participants and beneficiaries).

Questions and Answers

Q–1: In general, what does section 72(p) provide with respect to loans from a qualified employer plan?

A–1: (a) *Loans.* Under section 72(p), an amount received by a participant or beneficiary as a loan from a qualified employer plan is treated as having been received as a distribution from the plan (a deemed distribution), unless the loan satisfies the requirements of Q&A–3 of this section. For purposes of section 72(p), a loan made from a contract that has been purchased under a qualified employer plan (including a contract that

has been distributed to the participant or beneficiary) shall be considered a loan made under a qualified employer plan.

(b) *Pledges and assignments.* Under section 72(p), if a participant or beneficiary assigns or pledges (or agrees to assign or pledge) any portion of his or her interest in a qualified employer plan as security for a loan, the portion of the individual's interest assigned or pledged (or subject to an agreement to assign or pledge) is treated as a loan from the plan to the individual, with the result that such portion is subject to the deemed distribution rule described in paragraph (a) of this Q&A–1. For purposes of section 72(p), any assignment or pledge of (or agreement to assign or to pledge) by a participant or beneficiary of any portion of his or her interest in a contract that has been purchased under a qualified employer plan (including a contract that has been distributed) shall be considered an assignment or pledge of (or agreement to assign or pledge) an interest in a qualified employer plan. However, if all or a portion of a participant's or beneficiary's interest in a qualified employer plan is pledged or assigned as security for a loan from the plan to the participant or the beneficiary, only the amount of the loan received by the participant or the beneficiary, not the amount pledged or assigned, is treated as a loan.

Q–2: What is a qualified employer plan for purposes of section 72(p)?

A–2: For purposes of section 72(p), a qualified employer plan means—

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(b) An annuity plan described in section 403(a);

(c) A plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b);

(d) Any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of the United States, a State or a political subdivision of a State; or

(e) Any plan which was (or was determined to be) described in paragraph (a), (b), (c), or (d) of this Q&A–2.

Q–3: What requirements must be satisfied in order for a loan to a participant or beneficiary from a qualified employer plan not to be a deemed distribution?

A–3: (a) *In general.* A loan to a participant or beneficiary from a qualified employer plan will not be a deemed distribution to the participant or beneficiary if the loan satisfies the repayment term requirement of section 72(p)(2)(B), the level amortization requirement of section 72(p)(2)(C), and the enforceable agreement requirement of paragraph (b) of this Q&A–3, but only to the extent the loan satisfies the amount limitations of section 72(p)(2)(A).

(b) *Enforceable agreement requirement.* A loan does not satisfy the requirements of this paragraph unless the loan is evidenced by a legally enforceable agreement (which may include more than one document) set forth in writing or in such other form as may be approved by the Commissioner, and the terms of the agreement demonstrate compliance with the requirements of section 72(p)(2) and this section. Thus, the agreement must specify the amount of the loan, the term of the loan, and the repayment schedule.

Q–4: If a loan from a qualified employer plan to a participant or beneficiary fails to satisfy the requirements of Q&A–3 of this section, when does a deemed distribution occur?

A–4: (a) *Deemed distribution.* For purposes of section 72, a deemed distribution occurs at the first time that the requirements of Q&A–3 of this section are not satisfied, in form or in operation, with respect to that amount. This may occur at the time the loan is made or at a later date. If the terms of the loan do not require repayments that satisfy the repayment term requirement of section 72(p)(2)(B) or the level amortization requirement of section 72(p)(2)(C), or the loan is not evidenced by an enforceable agreement satisfying the requirements of Q&A–3(b) of this section, the entire amount of the loan is a deemed distribution under section 72(p) at the time the loan is made. If the loan satisfies the requirements of Q&A–3 of this section except that the amount loaned exceeds the limitations of 72(p)(2)(A), the amount of the loan in excess of the applicable limitation is a deemed distribution under section 72(p) at the time the loan is made. If the loan initially satisfies the requirements of section 72(p)(2)(A), (B) and (C) and the enforceable agreement requirement of Q&A–3(b) of this section, but payments are not made in accordance with the terms applicable to the loan, a deemed distribution occurs as a result of the failure to make such payments. See Q&A–10 of this section regarding when such a deemed distribution occurs and the amount thereof and Q&A–11 of this section regarding the tax treatment of a deemed distribution.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q&A–4 and are based upon the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example 1. (a) A participant has a nonforfeitable account balance of $200,000 and receives $70,000 as a loan repayable in level quarterly installments over five years.

(b) Under section 72(p), the participant has a deemed distribution of $20,000 (the excess of $70,000 over $50,000) at the time of the loan, because the loan exceeds the $50,000 limit in section 72(p)(2)(A)(i). The remaining $50,000 is not a deemed distribution.

Example 2. (a) A participant with a nonforfeitable account balance of $30,000 borrows $20,000 as a loan repayable in level monthly installments over five years.

(b) Because the amount of the loan is $5,000 more than 50% of the participant's nonforfeitable account balance, the participant has a deemed distribution of $5,000 at the time of the loan. The remaining $15,000 is not a deemed distribution. (Note also that, if the loan is secured solely by the participant's account balance, the loan may be a prohibited transaction under section 4975 because the loan may not satisfy 29 CFR § 2550.408b–1(f)(2)).

Example 3. (a) The nonforfeitable account balance of a participant is $100,000 and a $50,000 loan is made to the participant repayable in level quarterly installments over seven years. The loan is not eligible for the section 72(p)(2)(B)(ii) exception for loans used to acquire certain dwelling units.

(b) Because the repayment period exceeds the maximum five-year period in section 72(p)(2)(B)(i), the participant has a deemed distribution of $50,000 at the time the loan is made.

Example 4. (a) On August 1, 1998, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over five years in level monthly installments due at the end of each month. After making monthly payments through July 1999, the participant fails to make any of the payments due thereafter.

(b) As a result of the failure to satisfy the requirement that the loan be repaid in level monthly installments, the participant has a deemed distribution. See Q&A–10(c) *Example* of this section regarding when such a deemed distribution occurs and the amount thereof.

Q–5: What is a principal residence for purposes of the exception in section 72(p)(2)(B)(ii) from the requirement that a loan be repaid in five years?

A–5: Section 72(p)(2)(B)(ii) provides that the requirement in section 72(p)(2)(B)(i) that a plan loan be repaid within five years does not apply to a loan used to acquire a dwelling unit which will within a reasonable time be used as the principal residence of the participant (a principal residence plan loan). For this purpose, a principal residence has the same meaning as a principal residence under section 1034.

Q–6: In order to satisfy the requirements for a principal residence plan loan, is a loan required to be secured by the dwelling unit that will within a reasonable time be used as the principal residence of the participant?

A–6: A loan is not required to be secured by the dwelling unit that will within a reasonable time be used as the participant's principal residence in order to satisfy the requirements for a principal residence plan loan.

Q–7: What tracing rules apply in determining whether a loan qualifies as a principal residence plan loan?

A–7: The tracing rules established under section 163(h)(3)(B) apply in determining whether a loan is treated as for the acquisition of a principal residence in order to qualify as a principal residence plan loan.

Q–8: Can a refinancing qualify as a principal residence plan loan?

A–8: (a) *Refinancings.* In general, no. However, a loan from a qualified employer plan used to repay a loan from a third party will qualify as a principal residence plan loan if the plan loan qualifies as a principal residence plan loan without regard to the loan from the third party.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–8 and is based upon the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example. (a) On July 1, 1999, a participant requests a $50,000 plan loan to be repaid in level monthly installments over 15 years. On August 1, 1999, the participant acquires a principal residence and pays a portion of the purchase price with a $50,000 bank loan. On September 1, 1999, the plan loans $50,000 to the participant, which the participant uses to pay the bank loan.

(b) Because the plan loan satisfies the requirements to qualify as a principal residence plan loan (taking into account the tracing rules of section 163(h)(3)(B)), such plan loan qualifies for the exception in section 72(p)(2)(B)(ii).

Q–9: Does the level amortization requirement of section 72(p)(2)(C) apply when a participant is on a leave of absence without pay?

A–9: (a) *Leave of absence.* The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year, that a participant is on a leave of absence, either without pay from the employer or at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan. However, the loan must be repaid by the latest date permitted under section 72(p)(2)(B) and the installments due after the leave ends (or, if earlier, after the first year of the leave) must not be less than those required under the terms of the original loan.

(b) *Example.* The following example illustrates the rules of paragraph (a) of this Q&A–9 and is based upon the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example. (a) On July 1, 1997, a participant with a nonforfeitable account balance of $80,000, borrows $40,000 to be repaid in level monthly installments of $825 each over five years. The loan is not a principal residence plan loan. The participant makes nine monthly payments and commences an unpaid leave of absence that lasts for 12 months. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2002.

(b) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2002 repaid the full balance remaining due.

Q–10: If a participant fails to make the installment payments required under the terms of a loan that satisfied the requirements of Q&A–3 of this section when made, when does a deemed distribution occur and what is the amount of the deemed distribution?

A–10: (a) *Timing of deemed distribution.* Failure to make any installment payment when due in accordance with the terms of the loan violates section 72(p)(2)(C) and, accordingly, results in a deemed distribution at the time of such failure. However, the plan administrator may allow a grace period, and section 72(p)(2)(C) will not be considered to have been violated until the last day of the grace period. Any such grace period shall be given effect for purposes of section 72(p)(2)(C) only to the extent it does not continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.

(b) *Amount of deemed distribution.* If a loan satisfies Q&A–3 of this section when made, but there is a failure to pay the installment payments required under the terms of the loan (taking into account any grace period allowed under the preceding paragraph (a) of this Q&A–10), then the amount of the deemed distribution equals the entire outstanding balance of the loan at the time of such failure.

(c) *Example.* The following example illustrates the rules in Q&A–10(a) and (b) of this section and is based upon the assumptions described in ASSUMPTIONS FOR EXAMPLES:

Example. (1) On August 1, 1998, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over five years in level monthly installments due at the end of each month. After making all monthly payments due through July 31, 1999, the participant fails to make the payment due on August 31, 1999 or any other monthly payments due thereafter. The plan administrator allows a three-month grace period.

(2) As a result of the failure to satisfy the requirement that the loan be repaid in level installments pursuant to section 72(p)(2)(C), the participant has a deemed distribution on November 30, 1999, which is the last day of the three-month grace period for the August 31, 1999 installment. The amount of the deemed distribution is $17,157, which is the outstanding balance on the loan at November 30, 1999. Alternatively, if the plan administrator had allowed a grace period through the end of the next calendar quarter, there would be a deemed distribution on December 31, 1999 equal to $17,282, which is the outstanding balance of the loan at December 31, 1999.

Q–11: Do sections 72 and 4980A apply to a deemed distribution as if it were an actual distribution?

A–11: (a) *Tax Basis.* If the employee's account includes after-tax contributions or other investment in the contract under section 72(e), section 72 applies to a deemed distribution as if it were an actual distribution, with the result that all or a portion of the deemed distribution may not be taxable.

(b) *Sections 72(t) and (m).* Section 72(t) (which imposes a 10 percent tax on certain early distributions) and section 72(m)(5) (which imposes a separate 10 percent tax on certain amounts received by a 5-percent owner) apply to a deemed distribution under section 72(p)

in the same manner as if the deemed distribution were an actual distribution.

(c) *Section 4980A.* For purposes of section 4980A, a deemed distribution under section 72(p) is taken into account in determining an individual's excess distributions, as provided in § 54.4981A–1T, Q&A a–8.

Q–12: Is a deemed distribution under section 72(p) treated as an actual distribution for purposes of the qualification requirements of section 401, the distribution provisions of section 402, or the distribution restrictions of section 401(k)(2)(B) or 403(b)(11)?

A–12: No. Thus, for example, if a participant in a money purchase plan who is an active employee has a deemed distribution under section 72(p), the plan will not be considered to have made an in-service distribution to the participant in violation of the qualification requirements applicable to money purchase plans. Similarly, the deemed distribution is not eligible to be rolled over to an eligible retirement plan and the participant is not eligible to elect income averaging with respect to the deemed distribution. See also §§ 1.402(c)–2, Q&A–4(d) and § 1.401(k)–1(d)(6)(ii).

Q–13: How does a reduction (offset) of an account balance in order to repay a plan loan differ from a deemed distribution?

A–13: (a) *Difference between deemed distribution and plan loan offset amount.* (1) Loans to a participant from a qualified employer plan can give rise to two types of taxable distributions—

(i) A deemed distribution pursuant to section 72(p); and

(ii) A distribution of an offset amount.

(2) As described in Q&A–4 of this section, a deemed distribution occurs when the requirements of Q&A–3 of this section are not satisfied, either when the loan is made or at a later time. A deemed distribution is treated as a distribution to the participant or beneficiary only for certain tax purposes and is not a distribution of the accrued benefit. A distribution of a plan loan offset amount (as defined in § 1.402(c)–2, Q&A–9(b)) occurs when, under the terms governing a plan loan, the accrued benefit of the participant or beneficiary is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in the accrued benefit). A distribution of a plan loan offset amount could occur in a variety of circumstances, such as where the terms governing the plan loan require that, in the event of the participant's request for a distribution, a loan be repaid immediately or treated as in default.

(b) *Plan loan offset.* In the event of a plan loan offset, the amount of the account balance that is offset against the loan is an actual distribution for purposes of the Internal Revenue Code, not a deemed distribution under section 72(p). Accordingly, a plan may be prohibited from making such an offset under the provisions of section 401(a), 401(k)(2)(B) or 403(b)(11) prohibiting or limiting distributions to an active employee. See § 1.402(c)–2, Q&A–9(c) *Example 6.*

Q–14: How is the amount includible in income as a result of a deemed distribution under section 72(p) required to be reported?

A–14: The amount includible in income as a result of a deemed distribution under section 72(p) is required to be reported on Form 1099–R (or any other form prescribed by the Commissioner).

Q–15: What withholding rules apply to plan loans?

A–15: To the extent that a loan, when made, is a deemed distribution or an account balance is reduced (offset) to repay a loan, the amount includible in income is subject to withholding. If a deemed distribution of a loan or a loan repayment by benefit offset results in income at a date after the date the loan is made, withholding is required only if a transfer of cash or property (excluding employer securities) is made to the participant or beneficiary from the plan at the same time. See §§ 35.3405–1(f)(4) and 31.3405(c)–1, Q&A–9 and Q&A–11 of this chapter for further guidance on withholding rules.

Q–16: If a loan fails to satisfy the requirements of Q&A–3 of this section and is a prohibited transaction under section 4975, is the deemed distribution of the loan under section 72(p) a correction of the prohibited transaction?

A–16: A deemed distribution is not a correction of a prohibited transaction under section 4975. See §§ 141.4975–13 and 53.4941(e)–1(c)(1) of this chapter for guidance concerning correction of a prohibited transaction.

Q–17: What are the income tax consequences if an amount is transferred from a qualified employer plan to a participant or beneficiary as a loan, but there is an express or tacit understanding that the loan will not be repaid?

A–17: If there is an express or tacit understanding that the loan will not be repaid, or, for any reason, the transaction does not create a debtor-creditor relationship, then the amount transferred is treated as an actual distribution from the plan for purposes of the Internal Revenue Code, and is not treated as a loan or as a deemed distribution under section 72(p).

Q–18: If a qualified employer plan maintains a program to invest in residential mortgages, are loans made pursuant to the investment program subject to section 72(p)?

A–18: Residential mortgage loans made by a plan in the ordinary course of an investment program are not subject to section 72(p) if the property acquired with the loans is the primary security for such loans and the amount loaned does not exceed the fair market value of the property. An investment program exists only if the plan has established, in advance of a specific investment under the program, that a certain percentage or amount of plan assets will be invested in residential mortgages available to persons purchasing the property who satisfy commercially customary financial criteria. Loans will not be considered as made under an investment program if the loans are only made available to, or any loan is earmarked for, any person or persons who are participants or beneficiaries in the plan, or if such loans mature upon a participant's termination from employment. In addition, no loan that benefits an officer, director, or owner of the employer maintaining the plan, or his or her beneficiaries, will be treated as made under an investment program. No inference should be drawn that a transaction under such an investment program is not a prohibited transaction under section 503 or 4975 or is not a violation of the applicable fiduciary standards for an employee benefit plan, so that such a loan could be a prohibited transaction if it does not satisfy the requirements of 29 CFR 2550.408b–1.

Q–19: When is the effective date of these regulations?

A–19: This section applies to assignments, pledges, and loans made on or after the date that is three months after the date of publication of the final regulations in the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30874 Filed 12–20–95; 8:45 am]

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26 CFR Part 1

[PS–7–89]

RIN 1545–AM98

Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1254 of the Internal Revenue Code relating to the tax treatment by S corporations and their shareholders of gain from the disposition by an S corporation (and a former S corporation) of certain natural resource recapture property (section 1254 property after enactment of the Tax Reform Act of 1986 and oil, gas, or geothermal property before enactment of the Tax Reform Act of 1986), and also rules relating to the disposition of stock in an S corporation that holds certain natural resource recapture property. Changes to the applicable tax law were made by the Tax Reform Act of 1986, and the Subchapter S Revision Act of 1982. The regulations provide the public with guidance in complying with the changed tax laws.

DATES: Written comments and requests for a public hearing must be received by February 20, 1996.

ADDRESSES: Send comments and requests for a public hearing to: CC:DOM:CORP:R (PS–7–89), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand-delivered to CC:DOM:CORP:R (PS–7–89), Room 5228, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: James A. Quinn, 202–622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224. Comments on the collection of information should be received by January 22, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is contained in § 1.1254–4(c) of the proposed regulations. This information is required by the Internal Revenue Service to verify that taxpayers have reported the appropriate amount of gain as ordinary income under section 1254 when a shareholder sells stock in an S corporation that holds natural resource recapture property. The likely respondents are individuals and businesses and other for-profit institutions.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 1,000 hours. The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 1,000.

Estimated annual frequency of responses: On occasion.

Background

On June 11, 1980, proposed amendments to the Income Tax Regulations, 26 CFR part 1, under sections 170, 301, 312, 341, 453, 751, 1254, and 1502 of the Internal Revenue Code of 1954 (Code) were published in the Federal Register (45 FR 39512). These amendments were proposed to conform the regulations to section 205(a), (b), (c)(1) and (2) of the Tax Reform Act of 1976, Public Law 94–455, 90 Stat. 1533, and section 402(c) of the Energy Tax Act of 1978, Public Law 95–618, 92 Stat. 3202, and to make certain other technical amendments to the regulations to conform them to section 1(c) of the Act of September 12, 1966, Public Law 89–570, 80 Stat. 762, section 211(b)(6) of the Tax Reform Act of 1969, Public Law 91–172, 83 Stat. 570, and sections 1042(c)(2), 1101(d)(2), 1901(a)(93), and 2110(a) of the Tax Reform Act of 1976, 90 Stat. 1637, 1658, 1780, 1905. Section 1.1254–3 of the proposed regulations provided rules relating to the sale or exchange of stock in an electing small business corporation (hereinafter referred to as an S corporation). Because of the substantial changes in the tax treatment of S corporations since the proposed regulations were issued, the proposed regulations contained in § 1.1254–3 needed to be completely revised.

This document revises and reproposes § 1.1254–3 of the above- referenced notice of proposed rulemaking as amendments to the Income Tax Regulations, 26 CFR part 1, under section 1254 of the Code, relating to S corporations (redesignated as § 1.1254–4). These amendments are proposed to conform the regulations to section 5(a)(37) of the Subchapter S Revision Act of 1982, Public Law 97–354, 96 Stat. 1669, and sections 411 and 413 of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2225, 2227. The amendments are to be issued under the authority contained in sections 1254(b) and 7805 of the Code.

Explanation of Provisions

These proposed regulations contain rules for applying the provisions of section 1254 to the disposition of natural resource recapture property by an S corporation (and a former S corporation) and the disposition of S corporation stock.

The proposed regulations provide that the recognition of ordinary income under section 1254 upon the disposition of natural resource recapture property by an S corporation is generally computed at the shareholder level. Determining the amount of ordinary income to be recognized under section 1254 at the shareholder level is appropriate because the determination of section 1254 costs can be affected by shareholder elections and characteristics. See, for example, sections 59(e) and 1363(c)(2)(A). Similarly, in the case of oil and gas properties, gain on the disposition of the property and depletion with respect to the property are computed at the shareholder level. See section 613A(c)(11).

The proposed regulations also contain rules relating to the recognition of ordinary income under section 1254 upon a sale or exchange of S corporation stock. Under section 1254(b)(2), rules similar to the rules of section 751 are to be applied to that portion of the excess of the amount realized over the adjusted basis of the stock that is attributable to section 1254 costs. Pursuant to section 1254(b)(2), the proposed regulations provide that, as a general rule, a

shareholder must treat any gain recognized on a sale or exchange of S corporation stock as ordinary income to the extent of the shareholder's section 1254 costs with respect to the shares sold or exchanged.

The proposed regulations provide two exceptions to the general rule for determining the amount treated as ordinary income under section 1254 upon a sale or exchange of stock. The first exception is that the general rule does not apply to the extent that the shareholder establishes that the gain is not attributable to the section 1254 costs. The portion of the gain recognized that is not attributable to section 1254 costs is that portion of the gain recognized that exceeds the amount of ordinary income that the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) if, immediately prior to the sale or exchange of the stock, the corporation had sold at fair market value all of the corporation's property the disposition of which would result in the recognition by the shareholder of ordinary income under section 1254. To establish that a portion of the gain recognized is not attributable to a shareholder's section 1254 costs, the shareholder must attach to the shareholder's tax return a statement detailing the shareholder's share of the fair market value and basis, and the shareholder's section 1254 costs, for each of the S corporation's natural resource recapture properties held immediately before the sale or exchange of stock.

The second exception to the general rule for sales or exchanges of stock is that, in the case of a contribution of property to the S corporation prior to a stock sale or exchange pursuant to a plan a principal purpose of which is to avoid the recognition of ordinary income under section 1254, the selling or exchanging shareholder must recognize as ordinary income under section 1254 the amount of ordinary income the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) had the S corporation sold all of its natural resource recapture property the disposition of which would result in ordinary income under section 1254. Section 1.1254–4(c)(3) *Example 3* of the proposed regulations illustrates this exception. The proposed regulations also provide rules for determining an S corporation shareholder's section 1254 costs. Generally, an S corporation shareholder's section 1254 costs with respect to any natural resource recapture property held by the corporation include all of the shareholder's section 1254 costs with respect to the property while in the hands of the S corporation. In the case of a person (acquiring shareholder) who acquires stock from another shareholder, the proposed regulations provide that the acquiring shareholder's section 1254 costs are zero if the acquiring shareholder's basis for the stock transferred is determined by reference to its cost (within the meaning of section 1012) or by reference to the fair market value of the stock on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date). However, an acquiring shareholder's section 1254 costs include any section 1254 costs paid or incurred before the decedent's death, to the extent that the basis of the stock is reduced under section 1014(b)(9) (relating to adjustments to basis if the property is acquired from a decedent prior to death). For stock that is acquired in a transfer that is a gift, in a transfer that is part sale or exchange and part gift, or a transfer described in section 1041, the acquiring shareholder generally acquires the section 1254 costs of the transferor but reduces the section 1254 costs by the amount of any gain treated as ordinary income under section 1254 by the transferor on the transfer.

The proposed regulations provide rules for applying section 1254 to the shareholders of an S corporation that incurred section 1254 costs while it was a C corporation (former C corporation). In the case of a C corporation that holds natural resource recapture property and that elects to be an S corporation, each shareholder's section 1254 costs as of the beginning of the corporation's first taxable year as an S corporation include a *pro rata* share of the section 1254 costs of the corporation as of the close of the last taxable year that the corporation was a C corporation.

The proposed regulations also provide rules for applying section 1254 to a corporation that holds natural resource recapture property after the termination of its S corporation election (former S corporation). In the case of an S corporation that becomes a C corporation, the C corporation's section 1254 costs with respect to any natural resource recapture property held by the corporation as of the beginning of the corporation's first taxable year as a C corporation include the sum of its shareholders' section 1254 costs with respect to the property as of the close of the last taxable year for which the corporation was an S corporation. In the case of an S termination year as defined in section 1362(e)(4), the shareholders' section 1254 costs are determined as of the close of the S short year as defined in section 1362(e)(1)(A).

Because certain transactions will change the allocation to the shareholders of gain or amount realized from the natural resource recapture property if the S corporation disposes of it subsequent to these transactions, the proposed regulations require that section 1254 costs be reallocated to reflect the effects of these transactions. Transactions requiring reallocation of the section 1254 costs are transactions involving the issuance of stock by an S corporation in a reorganization or otherwise, and transfers of natural resource recapture property to the S corporation in exchange for stock of the S corporation (for example, in a section 351 transaction or in a reorganization).

The rules for former S corporations and the rules for allocating section 1254 costs upon certain transfers require the S corporation to determine the aggregate of its shareholders' section 1254 costs. The proposed regulations provide rules for the S corporation to apply in determining a shareholder's section 1254 costs with respect to natural resource recapture property held by the S corporation. In general, the S corporation may determine a shareholder's section 1254 costs by using written data provided by the shareholder or by applying certain assumptions.

These regulations are proposed to apply to dispositions of natural resource recapture property by an S corporation (and a former S corporation) and dispositions of S corporation stock occurring after publication of these regulations as final regulations in the Federal Register.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section

553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1254–4 also issued under 26 U.S.C. 1254(b). * * *

Par. 2. Section 1.1254–0 is amended by revising the entry for § 1.1254–4 to read as follows:

§ 1.1254–0 Table of contents for section 1254 recapture rules.

* * * * *

§ 1.1254–4 Special rules for S corporations and their shareholders.

(a) In general.

(b) Determination of gain treated as ordinary income under section 1254 upon a disposition of natural resource recapture property by an S corporation.

(1) General rule.

(2) Examples.

(c) Character of gain recognized by a shareholder upon a sale or exchange of S corporation stock.

(1) General rule.

(2) Exceptions.

(3) Examples.

(d) Section 1254 costs of a shareholder.

(e) Section 1254 costs of an acquiring shareholder after certain acquisitions.

(1) Basis determined under section 1012.

(2) Basis determined by reason of the application of section 1014(a).

(3) Basis determined by reason of the application of section 1014(b)(9).

(4) Gifts and section 1041 transfers.

(f) Special rules for former S corporations and former C corporations.

(1) Section 1254 costs of an S corporation that was formerly a C corporation.

(2) Examples.

(3) Section 1254 costs of a C corporation that was formerly an S corporation.

(g) Determination of a shareholder's section 1254 costs upon certain stock transactions.

(1) Issuance of stock.

(2) Natural resource recapture property acquired in exchange for stock.

(3) Treatment of nonvested stock.

(4) Exception.

(5) Aggregate of S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation

(6) Examples.

(h) Effective date.

* * * * *

Par. 3. Section 1.1254–4 is amended by adding text to read as follows:

§ 1.1254–4 Special rules for S corporations and their shareholders.

(a) *In general.* This section provides rules for applying the provisions of section 1254 to S corporations and their shareholders upon the disposition by an S corporation (or a former S corporation) of natural resource recapture property and upon the disposition by a shareholder of stock of an S corporation that holds natural resource recapture property.

(b) *Determination of gain treated as ordinary income under section 1254 upon a disposition of natural resource recapture property by an S corporation*—(1) *General rule.* Upon a disposition of natural resource recapture property by an S corporation, the amount of gain treated as ordinary income under section 1254 is determined at the shareholder level. Each shareholder must recognize as ordinary income under section 1254 the lesser of—

(i) The shareholder's section 1254 costs with respect to the property disposed of; or

(ii) The shareholder's share of the amount, if any, by which the amount realized on the sale, exchange, or involuntary conversion, or the fair market value of the property upon any other disposition (including a distribution), exceeds the adjusted basis of the property.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b)(1) of this section:

Example 1. Disposition of natural resource recapture property other than oil and gas property. A and B are equal shareholders in X, an S corporation. On January 1, 1995, X acquires for $90,000 an undeveloped mineral property, its sole property. During 1995, X expends and deducts $100,000 in developing the property. On January 15, 1996, X sells the property for $250,000 when X's basis in the property is $90,000. Thus, X recognizes gain of $160,000 on the sale. A and B's share of the $160,000 gain recognized is $80,000 each. Each shareholder has $50,000 of section 1254 costs with respect to the property. Under these circumstances, A and B each are required to recognize $50,000 of the $80,000 of gain on the sale of the property as ordinary income under section 1254.

Example 2. Disposition of oil and gas property the adjusted basis of which is allocated to the shareholders under section 613A(c)(11). C and D are equal shareholders in Y, an S corporation. On January 1, 1995, Y acquires for $150,000 an undeveloped oil and gas property, its sole property. During 1995, Y expends in developing the property $40,000 in intangible drilling costs which it elects to expense under section 263(c). On January 15, 1996, Y sells the property for $200,000. C and D's share of the $200,000 amount realized on the sale is $100,000 each. C and D each have a basis of $75,000 in the property and $20,000 of section 1254 costs with respect to the property. Under these circumstances, C and D each are required to recognize $20,000 of the $25,000 gain on the sale of the property as ordinary income under section 1254.

(c) *Character of gain recognized by a shareholder upon a sale or exchange of S corporation stock*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, if an S corporation shareholder recognizes gain upon a sale or exchange of stock in the S corporation (determined without regard to section 1254), the gain is treated as ordinary income under section 1254 to the extent of the shareholder's section 1254 costs (with respect to the shares sold or exchanged).

(2) *Exceptions*—(i) *Gain not attributable to section 1254 costs*—(A) *General rule.* Paragraph (c)(1) of this section does not apply to any portion of the gain recognized on the sale or exchange of the stock that the taxpayer establishes is not attributable to section 1254 costs. The portion of the gain recognized that is not attributable to section 1254 costs is that portion of the gain recognized that exceeds the amount of ordinary income that the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) if, immediately prior to the sale or exchange of the stock, the corporation had sold at fair market value all of the corporation's property the disposition of which would result in the recognition by the shareholder of ordinary income under section 1254.

(B) *Substantiation.* To establish that a portion of the gain recognized is not attributable to a shareholder's section 1254 costs so as to qualify for the exception contained in paragraph (c)(2)(i)(A) of this section, the shareholder must attach to the shareholder's tax return a statement detailing the shareholder's share of the fair market value and basis, and the shareholder's section 1254 costs, for each of the S corporation's natural resource recapture properties held immediately before the sale or exchange of stock.

(ii) *Transactions entered into as part of a plan to avoid recognition of ordinary income under section 1254.* In the case of a contribution of property prior to a sale or exchange of stock pursuant to a plan a principal purpose of which is to avoid recognition of ordinary income under section 1254, paragraph (c)(1) of this section does not apply. Instead, the amount recognized as ordinary income under section 1254 is the amount of ordinary income the selling or exchanging shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) had the S corporation sold its natural resource recapture property the disposition of which would have resulted in the recognition of ordinary income under section 1254. The amount recognized as ordinary income under the preceding sentence reduces the amount realized on the sale or exchange of the stock. This reduced amount realized is used in determining any gain or loss on the sale or exchange.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (c):

Example 1. Application of general rule upon a sale of S corporation stock. C and D are equal shareholders in Y, an S corporation. As of January 1, 1995, Y holds two mining properties: Blackacre, with an adjusted basis of $5,000 and a fair market value of $35,000, and Whiteacre, with an adjusted basis of $20,000 and a fair market value of $15,000. Y also holds securities with a basis of $5,000 and a fair market value of $10,000. On January 1, 1995, D sells 50 percent of D's Y stock to E for $15,000. As of the date of the sale, D's adjusted basis in the Y stock sold is $7,500, and D has $18,000 of section 1254 costs with respect to Blackacre and $12,000 of section 1254 costs with respect to Whiteacre. Under this paragraph (c), the gain recognized by D upon the sale of Y stock is treated as ordinary income to the extent of D's section 1254 costs with respect to the stock sold, unless D establishes that a portion of such excess is not attributable to D's section 1254 costs. However, because D would recognize $7,500 in ordinary income under section 1254 with respect to the stock sold if Y sold Blackacre (the only asset the disposition of which would result in ordinary income to D under section 1254), the $7,500 of gain recognized by D upon the sale of D's Y stock is attributable to D's section 1254 costs. Therefore, upon the sale of stock to E, D recognizes $7,500 of ordinary income under this paragraph (c).

Example 2. Sale of S corporation stock where gain is not entirely attributable to section 1254 costs. Assume the same facts as in *Example 1*, except that Blackacre has a fair market value of $25,000, and the securities have a fair market value of $20,000. Immediately prior to the sale of stock to E, if Y had sold Blackacre (its only asset the disposition of which would result in the recognition of ordinary income to D under section 1254), D would recognize $5,000 in ordinary income with respect to the stock sold under section 1254. D attaches a statement to D's tax return for 1995 detailing D's share of the fair market values and bases, and D's section 1254 costs with respect to Blackacre and Whiteacre. Therefore, upon the sale of stock to E, of the $7,500 gain recognized by D, $5,000 is ordinary income under this paragraph (c).

Example 3. Contribution of property prior to sale of S corporation stock as part of a plan to avoid recognition of ordinary income under section 1254. H owns all of the stock of Z, an S corporation. As of January 1, 1995, H has $3,000 of section 1254 costs with respect to property P, which is natural resource recapture property and Z's only asset. Property P has an adjusted basis of $5,000 and a fair market value of $8,000. H has a basis of $5,000 in Z stock, which has a fair market value of $8,000. On January 1, 1995, H contributes securities to Z which have a basis of $7,000 and a fair market value of $4,000. On April 15, 1995, H sells all of the Z stock to J for $12,000. On that date, H's adjusted basis in the Z stock is also $12,000. Based on all the facts and circumstances, the sale of stock is part of a plan (along with the contribution by H of the securities to Z) that has a principal purpose to avoid recognition of ordinary income under section 1254. Consequently, under paragraph (c)(2)(ii) of this section, H must recognize $3,000 as ordinary income under section 1254, the amount of ordinary income that H would recognize as ordinary income under section 1254 if property P were sold at fair market value. In addition, H reduces the amount realized on the sale of the stock ($12,000) by $3,000. As a result, H also recognizes a $3,000 capital loss on the sale of the stock ($9,000 amount realized less $12,000 adjusted basis).

(d) *Section 1254 costs of a shareholder.* An S corporation shareholder's section 1254 costs with respect to any natural resource recapture property held by the corporation include all of the shareholder's section 1254 costs with respect to the property in the hands of the S corporation. See § 1.1254–1(b)(1) for the definition of section 1254 costs.

(e) *Section 1254 costs of an acquiring shareholder after certain acquisitions*—(1) *Basis determined under section 1012.* If stock in an S corporation that holds natural resource recapture property is acquired and the acquiring shareholder's basis for the stock is determined solely by reference to its cost (within the meaning of section 1012), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands is zero on the acquisition date.

(2) *Basis determined by reason of the application of section 1014(a).* If stock in an S corporation that holds natural resource recapture property is acquired from a decedent and the acquiring shareholder's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the stock on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands is zero on the acquisition date.

(3) *Basis determined by reason of the application of section 1014(b)(9).* If stock in an S corporation that holds natural resource recapture property is acquired before the death of the decedent, the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands includes the amount, if any, of the section 1254 costs deducted by the acquiring shareholder before the decedent's death, to the extent that the basis of the stock (determined under section 1014(a)) is required to be reduced under section 1014(b)(9) (relating to adjustments to basis when the property is acquired before the death of the decedent).

(4) *Gifts and section 1041 transfers.* If stock is acquired in a transfer that is a gift, in a transfer that is a part sale or exchange and part gift, or in a transfer that is described in section 1041(a), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands immediately after the transfer is an amount equal to—

(i) The amount of section 1254 costs with respect to the property held by the corporation in the hands of the transferor immediately before the transfer; minus

(ii) The amount of any gain recognized as ordinary income under section 1254 by the transferor upon the transfer.

(f) *Special rules for former S corporations and former C corporations*—(1) *Section 1254 costs of an S corporation that was formerly a C corporation.* In the case of a C

corporation that holds natural resource recapture property and that elects to be an S corporation, each shareholder's section 1254 costs as of the beginning of the corporation's first taxable year as an S corporation include a *pro rata* share of the section 1254 costs of the corporation as of the close of the last taxable year that the corporation was a C corporation.

(2) *Examples.* The following examples illustrate the application of the provisions of paragraph (f)(1) of this section:

Example 1. Sale of natural resource recapture property held by an S corporation that was formerly a C corporation—(i) Y is a C corporation that elects to be an S corporation effective January 1, 1996. On that date, Y owns Oil Well, which is natural resource recapture property and a capital asset. Y has section 1254 costs of $20,000 as of the close of the last taxable year that it was a C corporation. On January 1, 1996, Oil Well has a value of $200,000 and a basis of $100,000. Thus, under section 1374, Y's net unrealized built-in gain is $100,000. Also on that date, Y's basis in Oil Well is allocated to A, Y's sole shareholder, under section 613A(c)(11) and the section 1254 costs are allocated to A under § 1.1254–4(f)(1). In addition, A has a basis in A's Y stock of $100,000.

(ii) On November 1, 1996, Y sells Oil Well for $250,000. During 1996, Y has taxable income greater than $100,000, and no other transactions or items treated as recognized built-in gain or loss. Under section 1374, Y has net recognized built-in gain of $100,000. Assuming a tax rate of 35 percent on capital gain, Y has a tax of $35,000 under section 1374. The tax of $35,000 is treated as a capital loss under section 1366(f)(2). A has a realized gain on the sale of $150,000 ($250,000 minus $100,000) of which $20,000 is recognized as ordinary income under section 1254, and $130,000 is recognized as capital gain. Consequently, A recognizes ordinary income of $20,000 and net capital gain of $95,000 ($130,000 minus $35,000) on the sale.

Example 2. Sale of stock followed by sale of natural resource recapture property held by an S corporation that was formerly a C corporation—(i) Assume the same facts as in *Example 1*(i). On November 1, 1996, A sells all of A's Y stock to P for $250,000. A has a realized gain on the sale of $150,000 ($250,000 minus $100,000) of which $20,000 is recognized as ordinary income under section 1254, and $130,000 is recognized as capital gain.

(ii) On November 2, 1996, Y sells Oil Well for $250,000. During 1996, Y has taxable income greater than $100,000, and no other transactions or items treated as recognized built-in gain or loss. Under section 1374, Y has net recognized built-in gain of $100,000. Assuming a tax rate of 35 percent on capital gain, Y has a tax of $35,000 under section 1374. The tax of $35,000 is treated as a capital loss under section 1366(f)(2). P has a realized gain on the sale of $150,000 ($250,000 minus $100,000), which is recognized as capital gain. Consequently, P recognizes net capital gain of $115,000 ($150,000 minus $35,000) on the sale.

(3) *Section 1254 costs of a C corporation that was formerly an S corporation.* In the case of an S corporation that becomes a C corporation, the C corporation's section 1254 costs with respect to any natural resource recapture property held by the corporation as of the beginning of the corporation's first taxable year as a C corporation include the sum of its shareholders' section 1254 costs with respect to the property as of the close of the last taxable year that the corporation was an S corporation. In the case of an S termination year as defined in section 1362(e)(4), the shareholders' section 1254 costs are determined as of the close of the S short year as defined in section 1362(e)(1)(A). See paragraph (g)(5) of this section for rules on determining the aggregate amount of the shareholders' section 1254 costs.

(g) *Determination of a shareholder's section 1254 costs upon certain stock transactions*—(1) *Issuance of stock.* Upon an issuance of stock (whether such stock is newly-issued or had been held as treasury stock) by an S corporation in a reorganization or otherwise—

(i) Each recipient of shares must be allocated a *pro rata* share (determined solely with respect to the shares issued in the transaction) of the aggregate of the S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation immediately before the issuance (as determined pursuant to paragraph (g)(5) of this section); and

(ii) Each pre-existing shareholder must reduce his or her section 1254 costs with respect to natural resource recapture property held by the S corporation immediately before the issuance by an amount equal to the pre-existing shareholder's section 1254 costs immediately before the issuance multiplied by the percentage of stock of the corporation issued in the transaction.

(2) *Natural resource recapture property acquired in exchange for stock.* If natural resource recapture property is transferred to an S corporation in exchange for stock of the S corporation (for example, in a section 351 transaction, or in a reorganization described in section 368), the S corporation must allocate to its shareholders a *pro rata* share of the S corporation's section 1254 costs with respect to the property immediately after the transaction (as determined under § 1.1254–3(b)(1)).

(3) *Treatment of nonvested stock.* Stock issued in connection with the performance of services that is substantially nonvested (within the meaning of § 1.83–3(b)) is treated as issued for purposes of this section at the first time it is treated as outstanding stock of the S corporation for purposes of section 1361.

(4) *Exception.* Paragraph (g)(1) of this section does not apply to stock issued in exchange for stock of the same S corporation (as for example, in a recapitalization described in section 368(a)(1)(E)).

(5) *Aggregate of S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation*—(i) *In general.* The aggregate of S corporation shareholders' section 1254 costs is equal to the sum of each shareholder's section 1254 costs. The S corporation must determine each shareholder's section 1254 costs under either paragraph (g)(5)(i)(A) (written data) or paragraph (g)(5)(i)(B) (assumptions) of this section. The S corporation may determine the section 1254 costs of some shareholders under paragraph (g)(5)(i)(A) of this section and of others under paragraph (g)(5)(i)(B) of this section.

(A) *Written data.* An S corporation may determine a shareholder's section 1254 costs by using written data provided by a shareholder showing the shareholder's section 1254 costs with respect to natural resource recapture property held by the S corporation unless the S corporation knows or has reason to know that the written data is inaccurate. If an S corporation does not receive written data upon which it may rely, the S corporation must use the assumptions provided in paragraph (g)(5)(i)(B) of this section in determining a shareholder's section 1254 costs.

(B) *Assumptions.* An S corporation that does not use written data pursuant to paragraph (g)(5)(i)(A) of this section to determine a shareholder's section 1254 costs must use the following assumptions to determine the shareholder's section 1254 costs.

(*1*) The shareholder deducted his or her share of the amount of deductions under sections 263(c), 616, and 617 in the first year in which the shareholder could claim a deduction for such amounts, unless in the case of expenditures under sections 263(c) or 616 the S corporation elected to capitalize such amounts;

(*2*) The shareholder was not subject to the following limitations with respect to the shareholder's depletion allowance under section 611, except to the extent a limitation applied at the corporate

level: the taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); or the limitations of sections 613A(d)(2), (3), and (4) (exclusion of retailers and refiners).

(6) *Examples.* The following examples illustrate the provisions of this paragraph (g):

Example 1. Transfer of natural resource recapture property to an S corporation in a section 351 transaction. As of January 1, 1996, A owns all the stock (20 shares) in X, an S corporation. X holds property that is not natural resource recapture property that has a fair market value of $2,000 and an adjusted basis of $2,000. On January 1, 1996, B transfers natural resource recapture property, Property P, to X in exchange for 80 shares of X stock in a transaction that qualifies under section 351. Property P has a fair market value of $8,000 and an adjusted basis of $5,000. Pursuant to section 351, B does not recognize gain on the transaction. Immediately prior to the transaction, B's section 1254 costs with respect to Property P equaled $6,000. Under § 1.1254–2(c)(1), B does not recognize any gain under section 1254 on the section 351 transaction and, under § 1.1254–3(b)(1), X's section 1254 costs with respect to Property P immediately after the contribution equal $6,000. Under paragraph (g)(2) of this section, each shareholder is allocated a *pro rata* share of X's section 1254 costs. The *pro rata* share of X's section 1254 costs that is allocated to A equals $1,200 (20 percent interest in X multiplied by X's $6,000 of section 1254 costs). The *pro rata* share of X's section 1254 costs that is allocated to B equals $4,800 (80 percent interest in X multiplied by X's $6,000 of section 1254 costs).

Example 2. Contribution of money in exchange for stock of an S corporation holding natural resource recapture property. As of January 1, 1996, A and B each own 50 percent of the stock (50 shares each) in X, an S corporation. X holds natural resource recapture property, Property P, which has a fair market value of $20,000 and an adjusted basis of $14,000. A's and B's section 1254 costs with respect to Property P are $4,000 and $1,500, respectively. On January 1, 1996, C contributes $20,000 to X in exchange for 100 shares of X's stock. Under paragraph (g)(1)(i) of this section, X must allocate to C a *pro rata* share of its shareholders' section 1254 costs. Using the assumptions set forth in paragraph (g)(5)(i)(B) of this section, X determines that A's section 1254 costs with respect to natural resource recapture property held by X equal $4,500. Using written data provided by B, X determines that B's section 1254 costs with respect to Property P equal $1,500. Thus, the aggregate of X's shareholders' section 1254 costs equals $6,000. C's *pro rata* share of the $6,000 of section 1254 costs equals $3,000 (C's 50 percent interest in X multiplied by $6,000). Under paragraph (g)(1)(ii) of this section, A's section 1254 costs are reduced by $2,000 (A's actual section 1254 costs ($4,000) multiplied by 50 percent). B's section 1254 costs are reduced by $750 (B's actual section 1254 costs ($1,500) multiplied by 50 percent).

Example 3. Merger involving an S corporation that holds natural resource recapture property. X, an S corporation with one shareholder, A, holds as its sole asset natural resource recapture property that has a fair market value of $120,000 and an adjusted basis of $40,000. A has section 1254 costs with respect to the property of $60,000. For valid business reasons, X merges into Y, an S corporation with one shareholder, B, in a reorganization described in section 368(a)(1)(A). Y holds property that is not natural resource recapture property that has a fair market value of $120,000 and basis of $120,000. Under paragraph (c) of this section, A does not recognize ordinary income under section 1254 upon the exchange of stock in the merger because A did not otherwise recognize gain on the merger. Under paragraph (g)(2) of this section, Y must allocate to A and B a *pro rata* share of its $60,000 of section 1254 costs. Thus, A and B are each allocated $30,000 of section 1254 costs (50 percent interest in X, each, multiplied by $60,000).

(h) *Effective date.* This section applies to dispositions of natural resource recapture property by an S corporation (and a former S corporation) and dispositions of S corporation stock occurring after publication of these regulations as final regulations in the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30832 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 31

[IA–33–95]

RIN 1545–AT77

Effective Date of Temporary Backup Withholding Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the effective date of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, relating to backup withholding, statement mailing requirements, and due diligence. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 20, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA–33–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (IA–33–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Renay France, (202) 622–4910; concerning submissions, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the Federal Register amend the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR part 35a). The temporary regulations contain rules relating to the effective date of §§ 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T, and 35a.9999–5.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and

place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of the regulations is Renay France, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.9999–0 is added to read as follows:

§ 31.9999–0 Effective date.

[The text of this proposed section is the same as the text of § 35a.9999–0T published elsewhere is this issue of the Federal Register].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30734 Filed 12–20–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–015–FOR]

Oklahoma Abandoned Mine Land Reclamation Plan

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma abandoned mine land reclamation plan (hereinafter referred to as the ''Oklahoma plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to abandoned mine land reclamation (AMLR) goals and objectives, project ranking and selection, coordination between reclamation agencies, reclamation on private land, eligible lands and waters, public participation, agency administrative and management structure, reclamation set-aside trust funds, contractor eligibility requirements, and acid mine drainage projects. The amendment is intended to bring the Oklahoma AMLR Program into compliance with Federal AMLR regulations. It will allow the Oklahoma Conservation Commission to participate in AMLR activities authorized by the Omnibus Budget Reconciliation Act of 1990 and the Energy Policy Act of 1992.

DATES: Written comments must be received by 4:00 p.m., c.s.t., January 22, 1996. If requested, a public hearing on the proposed amendment will be held on January 16, 1996. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t., on January 5, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma plan, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma City, Oklahoma 73105–4210, Telephone: (405) 521–2384.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Plan

On January 21, 1982, the Secretary of the Interior approved the Oklahoma plan. Background information on the Oklahoma plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 21, 1982, Federal Register (47 FR 2989).

II. Description of the Proposed Amendment

By letter dated November 13, 1995 (Administrative Record No. OAML–63), Oklahoma submitted a proposed amendment to its AMLR plan pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a September 26, 1994, letter from OSM (Administrative Record No. OAML–65), in accordance with 30 CFR 884.15(d), concerning revisions to the AML regulations at 30 CFR Chapter VII, Subchapter R (59 FR 28136, May 31, 1994).

Oklahoma proposes to amend its administrative rules at OAC 155:15, Oklahoma Abandoned Mine Land Program. Oklahoma proposes to amend its Reclamation Plan at sections 884.13(c)1, Goals and Objectives; 884.13(c)2, Project Ranking and Selection; 884.13(c)3, Interagency Coordination; 884.13(c)5, Eligible Lands and Waters; 884.13(c)7, Public Participation; and 884.13(d)1, Administrative and Management Structure.

(1) OAC 155:15, Oklahoma Abandoned Mine Land Reclamation Program Rules

Subsection 1–2, is revised to clarify definitions used later in the rules. Subsection 1–3, subpart (4) is added to require that contracts for AML projects only be awarded to successful bidders who are determined eligible to receive funds by using OSM's Applicant Violator System. Subsection 1–3 is revised to ensure that certain coal mine sites damaged and abandoned after August 3, 1977, are eligible for reclamation funding if the mining (1) took place during the interim program or (2) ended on or before November 5, 1990, and the surety for the mining company became insolvent during that period. Changes to Subsection 1–6 revise the objectives of reclamation project funding and the priority of those objectives. Objectives (4), Research and Demonstration, and (7), Construction of Public Facilities, are eliminated. The priority of order of the other objectives remains unchanged. Subsection 1–14 is added to allow for the construction, repair or enhancement of facilities related to water supplies where such supplies have been adversely affected by coal mining practices. Subsection 1–15 adds requirements for the establishment of special trust accounts that will provide for coal reclamation after September 30, 1995. Once established, Oklahoma may then set aside 10% of its annual grant funding

for this use. Subsection 1–16 authorizes Oklahoma to receive and retain funds for Acid Mine Drainage Programs without regard to normal time limitations and establishes requirements for expenditure of granted funds.

(2) Section 884.13(c)1 Goals and Objectives

This section is revised to eliminate goal 4 (Research and Demonstration) and goal 7 (Construction of Public Facilities). The remaining goals and their priorities are unchanged.

(3) Section 884.13(c)(2) Project Ranking and Selection

A new sentence is added that (1) requires public notices to be published during the project selection process and (2) outlines requirements for public meetings and public comment during the selection process. The ''Project Selection Matrix'' is completely revised and Table 3 which outlines the project selection decision process is changed to place the general public into the project screening process.

(4) Section 884.13(c)(3) Coordination of Reclamation Work Between the State, the Soil Conservation Service and Other Reclamation Agencies

This section revises the description of the State Reclamation Committee and its role in the reclamation program.

(5) Section 884.13(c)(5) Policies and Procedures for Reclamation on Private Land

The subsection ''Eligible Lands and Water'' is revised to add eligibility for Interim Program and certain Insolvent Surety sites.

(6) Section 884.13(c)(7) Public Participation Policies

The public participation policies are revised to increase public input into the beginning of the project selection process.

(7) Section 884.13(d)(1) Administrative and Management Structure

Figure 7, which depicts the organizational structure of the Oklahoma Conservation Commission, is revised to reflect the current organization. The list of state agencies which may be involved in the reclamation program is changed to reflect current program operational practices. Figure 8, Oklahoma Executive Branch Organizational Chart, has been deleted.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Oklahoma plan.

Written Comments

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

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t., on January 5, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

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

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

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

Public Meeting

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

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) AND 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously

promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 936

Abandoned mine land reclamation, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 14, 1995.

Russell Frum,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–81050 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA27–1–7186b; FRL–5320–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Georgia for the adoption of the Clean Fuel Fleet program. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by January 22, 1996.

ADDRESSES: Written comments should be sent to Ben Franco, EPA Region 4, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia, 30365. Copies of the State of Georgia submittal are available for public review during normal business hours at the addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia 30365.

Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, GA 30354.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region 4 Air Programs Branch at (404) 347–3555, ext. 4211, and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: September 29, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–31039 Filed 12–20–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2810

[WO–420–6310–00]

Tramroads and Logging Roads—Subpart 2812—Over O. and C. and Coos Bay Revested Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: On November 16, 1995, the Bureau of Land Management (BLM) published an advance notice of proposed rulemaking in the Federal Register (60 FR 57561). The notice announced BLM's plans to revise regulations governing logging roads over revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands (collectively known as the O&C lands). The changes will bring the existing cost-sharing road program under the regulatory framework of Section 502 of the Federal Land Policy and Management Act of 1976 (FLPMA) and incorporate environmental protection and other requirements for rights-of-way over public lands found in Title V of FLPMA. The notice allowed 30 days for public comment. In response to a request from a representative of interested parties, the comment period is being extended until January 15, 1996.

DATES: Comments on this advance notice of proposed rulemaking must be received by January 15, 1996. Comments postmarked after this date may not be considered in the preparation of the proposed rule.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include ''ATTN: O&C'' and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Styduhar, Oregon State Office, Bureau of Land Management, (503) 952–6454.

Dated: December 13, 1995.

Patrick W. Boyd,

Regulatory Management Team.

[FR Doc. 95–30741 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF DEFENSE

48 CFR Parts 219, 236, and 252

[DFARS Case 95–D039]

Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule with request for comment; correction.

SUMMARY: This document contains corrections to a proposed rule on Small Disadvantaged Business Concerns, which was published in the Federal Register on December 14, 1995 (60 FR 64135).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0131.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Accordingly, the Department of Defense is correcting 48 CFR Parts 219, 236, and 252 as follows:

PART 219—SMALL BUSINESS PROGRAMS

1. On page 64137, middle column, section 219.7202, paragraph (c)(1), is corrected to read as follows:

219.7202 Applicability.

* * * * *

(c) * * *

(1) The contracting activity will meet its goal for SDB concerns, established pursuant to 10 U.S.C. 2323 and Departmental procedures, during the current fiscal year, without this preference;

* * * * *

2. On page 64137, middle column, section 219.7203, paragraphs (b) and (d), are corrected to read as follows:

219.7302 Procedures.

* * * * *

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

* * * * *

(d) When using the procedures in 236.303–70, additive or deductive items, the evaluation preference in this subpart shall be applied.

3. On page 64137, last column, section 219.7204, paragraph (2), is corrected to read as follows:

219.7204 Contract clause.

* * * * *

(2) Where work is to be performed inside the U.S., its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. On page 64137, last column, section 236.303–70, paragraph (c)(2), is corrected to read as follows:

236.303–70 Additive or deductive items.

* * * * *

(c) * * *

(2) Evaluate all bids, including those using the procedures in 219.7203, on the basis of the same additive or deductive bid items.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. On page 64138, first column, section 252.219–7010, paragraphs (b)(2) and (b)(3)(i) are corrected to read as follows:

252.219–7010 Notice of evaluation preference for small disadvantaged business concerns—construction acquisitions—Test program.

* * * * *

(b) * * *

(2) Offers will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no preference-based evaluation will be conducted.

(3) * * *

(i) Offers from SDBs which have not waived the evaluation preference; and

* * * * *

[FR Doc. 95–31110 Filed 12–20–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 5]

RIN 2127–AF73

Lamps, Reflective Devices and Associated Equipment; Advisory Committee Public Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Notice; schedule of advisory committee meetings.

SUMMARY: This notice announces the final dates and locations of the three remaining series of meetings of NHTSA's Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming).

DATES: Tuesday-Thursday, January 16–18, 1996; Monday-Wednesday, March 4–6, 1996; Tuesday-Thursday, April 23–25, 1996.

ADDRESSES: The January and March 1996 meetings of the Advisory Committee will be held at the Department of Transportation, Room 2230, Nassif Building, 400 Seventh Street SW., Washington, DC. The April 1996 meeting will be held at the Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC. Meetings will begin at 9:00 a.m., except for the meeting of Tuesday, January 16, 1996, which will begin at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–5276; FAX: 202–366–4329). *Mediator:* Lynn Sylvester, Federal Mediation and Conciliation Service, (phone: 202–606–9140; FAX: 202–606–3679).

SUPPLEMENTARY INFORMATION: On August 16, 1995, the National Highway Traffic Safety Administration (NHTSA) published a tentative schedule for its early 1996 meetings of the Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming) (60 FR 42496)). The notice announced that this schedule was subject to confirmation or modifications at the Committee's November 1995 meeting. It announced that if there were changes or additions to the schedule, NHTSA would publish a notice informing the public of the changes.

At its meeting on November 30, 1995, in order to complete its tasks by the end of April 1996, the Committee decided to expand its three remaining series of meetings from a schedule of two days each to one of three days each, to be held on the days and in the locations shown above. The dates are approximately those announced in the August notice.

The meetings are open to the public.

Issued: December 15, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–31051 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 642 and 659

[I.D. 120695B]

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold 13 public hearings on Draft Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). In conjunction with these hearings, the Council will also hold seven public hearings to solicit comments on management measures for Draft Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). Both Draft Amendment 8 and

Draft Amendment 2 include Supplemental Environmental Impact Statements (SEISs).

DATES: Written comments will be accepted until 5 p.m., January 19, 1996. The hearings will be held from January 1 to January 5, 1996, and from January 8 to January 12, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Copies of the draft amendments are available from Susan Buchanan, Public Information Officer, at (803) 571-4366. Written comments may be faxed or sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407. Fax: 813–225–7015. The draft amendments will be available to the public at the hearings.

The hearings for draft Amendment 8 (Coastal Pelagics) will be held in Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, New Jersey, and New York. The hearings for draft Amendment 2 (Shrimp) will be held in South Carolina, Florida, Georgia, and North Carolina. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and special accommodations.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, 803-571-4366.

SUPPLEMENTARY INFORMATION: The hearings are scheduled to begin at 7 p.m. and will end when all business is completed. The dates and locations are scheduled as follows:

1. Tuesday, January 2, 1996, (Coastal Pelagics) Ft. Pierce—Holiday Inn, 7151 Okeechobbe Road, Ft. Pierce, FL; telephone: (407) 464-5000;

2. Tuesday, January 2, 1996, (Coastal Pelagics & Shrimp) Murrell's Inlet—Murrell's Inlet Community Center, 4450 Murrell's Inlet Road, Murrell's Inlet, SC; telephone: (803) 651-7373;

3. Wednesday, January 3, 1996, (Coastal Pelagics & Shrimp) Jacksonville—Sea Turtle Days Inn, 10 Ocean Blvd., Atlantic Beach, FL; telephone: (904) 249-7402;

4. Wednesday, January 3, 1996, (Coastal Pelagics & Shrimp) Wilmington—Holiday Inn, 1706 N. Lumina Avenue, Wrightsville Beach, NC; telephone: (910) 256-2231;

5. Thursday, January 4, 1996, (Coastal Pelagics & Shrimp) Brunswick—Comfort Inn--I95, 5308 New Jesup Highway, Brunswick, GA; telephone: (912) 264-6540;

6. Thursday, January 4, 1996, (Coastal Pelagics & Shrimp) Morehead City—Carteret Community College, 3505 Arendell Street, Morehead City, NC; telephone: (919) 247-3094;

7. Friday, January 5, 1996, (Coastal Pelagics & Shrimp) Savannah—Holiday Inn-Mid-Town, 7100 Abercorn Street, Savannah, GA; telephone: (912) 352-7100;

8. Monday, January 8, 1996, (Coastal Pelagics & Shrimp) Charleston—Town & Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571-1000;

9. Monday, January 8, 1996, (Coastal Pelagics) Ronkonkoma—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY; telephone: (516) 585-9500;

10. Tuesday, January 9, 1996, (Coastal Pelagics) Tom's River—Holiday Inn, 290 Route 37 East, Tom's River, NJ; telephone: (908) 244-4000;

11. Wednesday, January 10, 1996, (Coastal Pelagics) Salisbury—Holiday Inn, 2625 N. Salisbury Blvd., Salisbury, MD; telephone: (410) 742-7194;

12. Thursday, January 11, 1996, (Coastal Pelagics) Norfolk—Quality Inn Lake Wright, 6280 Northampton Blvd, Norfolk, VA; telephone: (804) 461-6251;

13. Friday, January 12, 1996, (Coastal Pelagics) Manteo—North Carolina Aquarium, Airport Road, Manteo, NC; telephone: (919) 473-3494;

Draft Amendment 8 to the Coastal Migratory Pelagic FMP

The South Atlantic, Gulf of Mexico and Mid-Atlantic Fishery Management Councils will hold public hearings on draft Amendment 8 to the FMP and the draft SEIS. Amendment 8 proposes management measures for the fisheries for king and Spanish mackerel, cobia, and dolphin (fish). Amendment 8 proposes measures that (1) apply only to the South Atlantic and Mid-Atlantic Council's jurisdiction, (2) apply only to the Gulf Council's jurisdiction, or (3) apply to the three Councils' jurisdictions.

Proposed actions that would affect only the stocks and area under the jurisdiction of the South Atlantic and Mid-Atlantic Council are as follows: Harvest Spanish mackerel only with hook and line, run-around nets and stab nets (nets shall not exceed 600 yd (549 m) in length), and along Florida's east coast nets are limited to 1 hour soak time; harvest king mackerel with hook and line only; allow the harvest of other directed coastal pelagics with surface longline, hook and line including manual, electric, or hydraulic rod and reels, and bandit gear only; allow the use of cast nets and other nets with mesh sizes no larger than 2 1/2–inch (6.35 cm) stretch mesh and no longer than 50 yd (46 m) for the purpose of catching bait; allow the introduction of experimental gear; provide that non-conforming gear be limited to the bag limit for species with a bag limit; allow the transfer at sea of Spanish mackerel between permitted vessels; establish a 5-year moratorium beginning on October 16, 1995 on the issuance of commercial vessel permits with a king mackerel endorsement; provide for the transfer of vessel permits to other vessels; require that anyone applying for a commercial vessel permit demonstrate that 25 percent of annual income or $5,000 is from commercial fishing; require that as a condition for a Federal commercial or charter vessel permit, the applicant comply with the more restrictive of state or Federal rules when fishing in state waters; extend the range of cobia management through New York; establish the following commercial trip limits for Atlantic king mackerel of 3,500 lb (1.6 mt) for Volusia/Flagler County, FL to the New York/Connecticut border from April 1 - March 31, a 3,500 lb (1.6 mt) limit for Volusia/Flagler to Brevard/Volusia, FL from April 1 to October 31, and a 50–fish limit for Brevard/Volusia to Dade/Monroe, FL from April 1 to October 31.

Amendment 8 also includes the following measures that apply to the three Councils' jurisdictions: Require commercial dealer permits to buy and sell coastal pelagic fish managed under the FMP and require that dealers keep and make available records of purchase by vessel; recreational bag and commercial trip limit alternatives for cobia and dolphin (fish); retention of king mackerel damaged by barracuda bites by vessels under commercial trip limits; an alternative trip limit for Atlantic group king mackerel for Monroe County, FL of 125 fish from April 1 to October 31; changes to procedures used to set total allowable catch; and changes to definitions of overfishing and optimum yield.

Proposed measures in Amendment 8 applying only to the area and stocks under the jurisdiction of the Gulf of Mexico Council were published in the Federal Register on December 5, 1995.

Draft Amendment 2 to the Shrimp FMP

At its meeting of August 21-25, 1995, the Council approved draft Amendment 2 to the Shrimp FMP for public hearing. At its October 23-27 meeting, at the request of the Director, Southeast Region, NMFS (Regional Director), the Council approved additional options concerning a bycatch reduction device (BRD) certification protocol for inclusion in Amendment 2.

The Council is holding public hearings to solicit views on certain management measures in the draft amendment that are intended to reduce

bycatch in South Atlantic penaeid shrimp fisheries included in the amendment.

Draft Amendment 2 would also modify the management unit to include the populations of brown and pink shrimp occurring along the U.S. Atlantic coast from the east coast of Florida, including the Atlantic side of the Florida Keys, to the North Carolina/Virginia border. This amendment includes measures to reduce bycatch only in the penaeid shrimp fishery.

Shrimp trawls have a significant bycatch of non-target finfish and invertebrates, most of which are discarded dead. This may reduce ecosystem diversity, adversely impact other fauna, and significantly reduce yield in other fisheries directed at these discarded species. The Council is proposing regulations to address a mandate established by the Atlantic States Marine Fishery Commission to minimize the impact of bycatch on Spanish mackerel and weakfish resources.

Also, the South Atlantic states, North Carolina, South Carolina, Georgia, and Florida are directed under the interjurisdictional weakfish management plan to implement management measures that will reduce bycatch of weakfish in shrimp trawls by 50 percent for the 1996 shrimp season. The Council, in order to create compatible regulations with the South Atlantic states, is addressing bycatch in Federal waters to ensure effective reduction of weakfish bycatch throughout the range of the species.

Management Measures under Consideration

The following management measures are under consideration by the Council for inclusion in Amendment 2 to the Shrimp FMP:

1. Add brown and pink shrimp to the management unit,

2. Define overfishing for brown and pink shrimp,

3. Define optimum yield for the pink and brown shrimp fisheries,

4. Require the use of certified BRDs in all penaeid shrimp trawls in the South Atlantic Exclusive Economic Zone (EEZ). All shrimp nets (any net with mesh less than 2 1/2 inches (6.35 cm) stretch mesh) and all nets greater than 15 ft (4.6 m) in footrope length (or compatible with Turtle Excluder Device requirements for try nets) that are used as try (test) nets would be required to use a certified BRD.

A. Upon implementation of Amendment 2, BRDs that have passed the operational testing phase of the NMFS cooperative bycatch research program (fish eyes, extended funnels and large mesh) are de facto certified for use in the EEZ.

B. Other BRDs will subsequently be certified according to procedures and criteria specified in item 5.

5. Establish a BRD certification process and specify certification criteria for new or modified BRDs. The Council is specifically requesting input from industry members concerning protocol options for future BRD certification of new or modified BRDs:

A. The following are options for BRD certification protocol being considered by the Council:

Option 1: The Council makes final recommendations for certification to the NMFS Regional Director;

Option 2: The Regional Director makes the decision based on direct application to NMFS; and

Option 3: BRDs developed, tested and approved by state agencies, meeting the criteria specified in the amendment, may be used in the EEZ in lieu of BRDs certified by NMFS.

Three geographical sub-options are identified for Option 3 to specify where state-approved BRDs would be allowed for use in the EEZ:

i: Adjacent to the state in which the BRD was approved,

ii: Throughout the EEZ in the South Atlantic region, or

iii: In the EEZ by vessels registered in the state where BRDs have been approved.

B. The Amendment will also establish certification criteria for new or modified BRDs. New or modified BRDs must be certified or approved by NMFS for use in the South Atlantic penaeid shrimp fishery based on the following criteria:

i. The BRD must reduce the bycatch component of fishing mortality for Spanish mackerel and weakfish by 50 percent, and

ii. The shrimp loss rate (by weight) must be acceptable to fishermen.

The Council intends to finalize both Amendments at its meeting in St. Augustine, FL, from February 12-16, 1996. The public will have an opportunity to comment at the full Council session before the Council takes final action to adopt the amendment's management measures. Once finalized, the amendment will be submitted to NMFS for review, approval and implementation. NMFS will provide a 60-day public comment period on the amendment and a 45-day public comment period on the proposed implementing rule during its 110-day review period.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by December 27, 1995.

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

Dated: December 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30988 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 655

[Docket No. 951211295–5295–01; I.D. 111595C]

RIN 0648–XX37

Atlantic Mackerel, Squid, and Butterfish Fisheries; 1996 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1996 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 1996 fishing year for Atlantic mackerel, squid, and butterfish (SMB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and provide an opportunity for the public to comment. This action is intended to promote the development of the U.S. SMB fisheries.

DATES: Public comments must be received on or before January 17, 1996.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Comments should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope ''Comments—1996 SMB specifications.''

FOR FURTHER INFORMATION CONTACT: Myles Raizin, 508–281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP)

prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 655. These regulations stipulate that NMFS publish a document specifying the initial annual amounts of the optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to 3 consecutive years. Procedures for determining the initial annual amounts are found in § 655.22.

The following table contains the proposed initial specifications for Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish for 1996. These specifications are based on the recommendations of the Council.

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR SMB FOR THE FISHING YEAR

[January 1 through December 31, 1996 (mt)]

Specifications	Squids		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY [1]	44,000	30,000	[2] N/A	16,000
ABC [3]	30,000	30,000	1,175,500	7,200
IOY	25,000	21,000	[4] 105,500	5,900
DAH	25,000	21,000	105,500	5,900
DAP	25,000	21,000	50,000	5,900
JVP	0	0	35,000	0
TALFF	0	0	0	0

[1] Max optimum yield (OY) as stated in the FMP.
[2] Not applicable, see the FMP.
[3] IOY can increase to this amount.
[4] Contains 20,500 mt projected recreational catch based on the formula contained in the regulations (50 CFR part 655).

Atlantic Mackerel

The FMP provides that ABC in U.S. waters for the upcoming fishing year is that quantity of mackerel that could be caught in U.S. and Canadian waters minus the estimated catch in Canadian waters, while still maintaining a spawning stock biomass (SSB) in the year following the year for which catch estimates and quotas are being prepared, equal to or greater than 600,000 mt.

The Council recommended an ABC of 125,500 mt, derived by subtracting the estimated Canadian catch of 24,500 mt from the long-term potential yield of 150,000 mt, which was estimated at the 20th Northeast Regional Stock Assessment Workshop (20th SAW) concluded in August 1995. This recommendation for ABC was based on the provisions for deriving that value as contained in Amendment 5 to the FMP. However, NMFS has determined that ABC should be calculated in accordance with § 655.21 (b)(2)(i), while still using the most recent stock assessment. It would be premature to use the provisions of Amendment 5 to determine ABC for 1996 since the amendment is still undergoing Secretarial review and has not been approved or implemented. The 20th SAW concluded that productivity appears to decline when SSB falls below 900,000 mt. Therefore, the ABC specification for Atlantic mackerel is proposed at 1,175,500 mt. This level of ABC would leave an SSB of 900,000 mt for the following year (1997) from a mean starting value of SSB of 2,100,000 mt while also taking into account a projected Canadian catch of 24,500 mt.

The proposed IOY for the 1996 Atlantic mackerel fishery is set at 105,500 mt, equal to the proposed DAH. The specification for DAH is computed by adding the estimated recreational catch, the proposed DAP, and the proposed JVP. The recreational component of DAH is estimated to be 20,500 mt, using a formula found at § 655.21(b)(2)(ii). DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey. However, for the years 1994 and 1995, response was low and did not contain projections from the large, known processors. In addition, inquiries regarding the utilization of displaced Alaskan freezer trawlers and New England groundfish trawlers for possible entry into the Atlantic mackerel fishery have led the Council to recommend no change to the DAP and JVP for the 1996 fishery. It is generally agreed that joint ventures have had a positive impact on the development of the U.S. Atlantic mackerel fishery and should be encouraged.

The Council has recommended and NMFS proposes a DAH of 105,500 mt, which includes the 20,500 mt recreational component. The Council also recommended and NMFS proposes a DAP of 50,000 mt. The difference between DAH (minus the recreational component) and DAP allows for a JVP of 35,000 mt.

Zero TALFF is recommended for the 1996 Atlantic mackerel fishery by the Council and proposed by NMFS. In 1992, the Council used testimony from both the domestic fishing and processing industries and analysis of nine economic factors found at § 655.21(b)(2)(ii) to determine that mackerel produced from directed foreign fishing would compete directly with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the growth of the U.S. fishery. The Council sees no evidence that this evaluation has changed. Further, the Council believes that an expanding mackerel market and uncertainty regarding world supply, due to the economic and political restructuring in Eastern Europe, may substantially increase opportunities for U.S. producers to increase sales to new markets abroad. Although the U.S. industry has not been successful in capturing a substantial market share for mackerel in the Caribbean, North Africa, and Europe so far, several factors indicate that market expansion of Atlantic mackerel may occur soon. Atlantic mackerel stock abundance remains high. Also, the continued low abundance amounts of several important groundfish stocks in the Gulf of Maine, southern New England, and on Georges Bank are causing further restrictions in fishing effort for those species and the need for many

fishermen to redirect their effort to underutilized species. Atlantic mackerel is now considered a prime candidate for innovation in harvesting, processing, and marketing.

As a supplement to the quota paper for the 1993 and 1994 fisheries, benefit-cost and sensitivity analyses were prepared by the Council and NMFS. Results of the analyses indicated that in the long term a specification of zero TALFF will yield positive benefits to the fishery and to the Nation. In its 1996 quota paper, the Council provides an additional analysis of the costs and benefits of directed foreign fishing, which indicates that the conclusions reached in prior analyses of zero TALFF have not changed.

The Council also recommended and NMFS proposes that four special conditions imposed in previous years continue to be imposed on the 1996 Atlantic mackerel fishery as follows: (1) Joint ventures are allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Director, Northeast region, NMFS, should ensure that adverse impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year as described under § 655.21(b)(2)(iv) in consultation with the Council, but the total should not exceed 125,500 mt; and (4) applications from a particular nation for a joint venture for 1996 will not be approved until the Regional Director determines, based on an evaluation of performances, that the Nation's purchase obligations for previous years have been fulfilled.

Atlantic Squids

The maximum OY (Max OY) for *Loligo* is 44,000 mt. The recommended ABC for the 1996 fishery is 30,000 mt, representing a decrease of 6,000 mt from the 1995 ABC of 36,000 mt. This level of ABC is based on the most recent stock assessments and is determined to be at a level that will not harm the continued growth of the resource. The 17th SAW concluded that *Loligo* is an annual species and does not have a 3-year life span, as previously assumed. The 17th SAW recommended that a real-time assessment/management system be used to ensure an adequate level of spawning stock. This will be addressed in Amendment 5 to the FMP, which has been submitted to the Secretary of Commerce for review. Amendment 5 will also address the need to lower the Max OY, which is defined in the regulations governing the fishery to be 44,000 mt. This specification can be changed only with a plan amendment. In the interim, the Council believes that it would be prudent to reduce the ABC for conservation purposes, as suggested by the 17th SAW. The Council recommended and NMFS proposes an IOY of 25,000 mt, which is 5,000 mt less than ABC and equal to DAH and DAP. DAH and DAP have historically been estimated using the Council annual processor survey. However, for 1995, response was low and did not contain projections from the large, known processors. Furthermore, the Council believes that these stocks may be susceptible to recruitment overfishing due to the 1-year life span of the animals, and in the absence of real-time assessment/management, the Council has chosen a conservative strategy. The proposed IOY/DAH/DAP of 25,000 mt for the 1996 fishery represents a decrease of 11,000 mt from the final 1995 IOY/DAH/DAP of 36,000 mt.

The expansion of the U.S. freezer trawler and refrigerated sea water fleets that participate in this fishery and substantially increased U.S. landings indicate that there is no longer a justification for foreign participation. Therefore, zero JVP and TALFF are specified for the 1996 *Loligo* fishery.

The Max OY for *Illex* squid is 30,000 mt. The Council recommended and NMFS proposes an ABC of 30,000 mt, which is equal to the Max OY. However, the Council has recommended and the Regional Director proposes that the IOY for *Illex* be set at 21,000 mt, 9,000 mt below the ABC, due to the conclusion that *Illex* has a life span of only 1 year and is, therefore, susceptible to recruitment overfishing. Though the 17th SAW determined that *Illex* has a life span of 1 year, no recommendations to adjust Max OY ensued. The 17th SAW recommended that, since *Illex* is a transboundary stock between the United States and Canada, a joint assessment be conducted before a revised Max OY is recommended. However, the 17th SAW advised that the current MSY for *Illex* may be inappropriate and cautioned that, while the stock is under-exploited based on current MSY, the potential for recruitment overfishing may be substantial. No directed foreign fishery has been specified for *Illex* since 1986, which reflects the large increases in the capacity of the East Coast freezer trawler fleet and projected increases in the number of vessels using refrigerated seawater systems capable of landing high quality *Illex*. Because U.S. vessels have the capacity to harvest the IOY, no joint venture processing is proposed 1996 fishery.

Butterfish

The FMP sets the Max OY for butterfish at 16,000 mt. Based on the most current stock assessments, the Council recommends and the Regional Director proposes an ABC of 7,200 mt for the 1996 fishery, representing a decrease of 8,800 mt from the 1995 final initial specification. Commercial landings of butterfish have been low at 4,000 mt, 2,285 mt, 4,430 mt, and 3,537 mt for the 1991 through 1994 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market size fish have caused severe reductions in the supply of butterfish. Discard data from the offshore fishery is lacking and high discard rates could be reducing potential yield.

The Council recommended and NMFS proposes an IOY for butterfish of 5,900 mt. The U.S. industry has the potential to fully utilize this IOY. Thus, there is no TALFF available. The Council recommends and the Regional Director proposes a DAH of 5,900 mt. There has been no interest expressed in joint ventures, thus, the IOY is proposed at a level that does not allow for a JVP. The Council recommended and NMFS proposes that both JVP and TALFF be specified at zero for the 1996 fisheries. However, a 1,300 mt difference between ABC and IOY is available to accommodate an increase in IOY if economic conditions dictate.

Classification

This action is authorized by 50 CFR part 655, and these proposed specifications are exempt from review under E.O. 12866.

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

Dated: December 15, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–31119 Filed 12–18–95; 2:30 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 60, No. 245
Thursday, December 21, 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

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

December 13, 1995.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

December 15, 1995.

Federal Crop Insurance Corporation

Title: Castrophic Risk Protection Plan, Crop Insurance Application and Continuous Contract and Related Requirements.

Summary: This proposed action allows Federal Crop Insurance Crop to improve the insurance coverage now available for producers and provide a new option allowing open market producers to obtain insurance for their malting barley. Approximately 5,000 additional producers will have the opportunity to participate due to this option.

Need and Use of the Information: This information is required to be able to purchase crop insurance and to determine program eligibility for crop coverage under the Malting Barley Price and Quality Endorsement.

Description of Respondents: Farms.

Number of Respondents: 1,760,015.

Frequency of Responses: Annually.

Total Burden Hours: 2,676,752.

Emergency processing of this submission has been requested by December 29, 1996.

December 15, 1995.

National Agricultural Statistics Service

Title: Agricultural Surveys Program.

Summary: The Agricultural Surveys Program obtains basic agricultural data from farmers and ranchers throughout the nation. The data provides the basis for estimates of the current season's crop and livestock production and supplies of grain in storage.

Need and Use of the Information: Crop and livestock statistics help develop a stable economic atmosphere and reduces risk for production, marketing, and distribution operations. Users of statistical information include producers, farm organizations, agribusiness, state and national farm policy makers, and foreign buyers of agricultural products.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 146,500.

Frequency of Responses: On occasion.

Total Burden Hours: 138,217.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–31019 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Information Collection for Public Involvement Research Study

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 approval of an information collection related to the research of public involvement programs on National Forest System lands.

EFFECTIVE DATE: Comments must be received in writing on or before February 20, 1996.

ADDRESSES: All comments should be addressed to: Christine Overdevest, Outdoor Recreation and Wilderness Research Staff, Southern Forest Experiment Station, 320 Green Street, Athens, GA 30602.

FOR FURTHER INFORMATION CONTACT: Christine Overdevest, Outdoor Recreation and Wilderness Research Staff, at (706) 546–2451.

SUPPLEMENTARY INFORMATION:

Background

The social science community has evaluated the character, quality, and success of the Forest Service's Public Involvement activities since the passage of the National Forest Management Act (NFMA); however, no studies have been conducted at the ranger district-level of the agency. In order to meet the information needs of the Wayah Ranger District on the Nantahala National Forest, a survey study has been commissioned to obtain information on how non-participants differ from participants in the district's Public Involvement process. This survey is a one-time information collection by the Forest Service and the University of Georgia Department of Sociology.

Description of Forms

The following information describes the forms to be approved:

Titles: Public Involvement Participant Survey. Public Involvement Non-Participant Survey.

OMB Number: Application pending.

Expiration Date of Approval: Not applicable.

Type of Request: New Approval.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be 15 minutes per response.

Type of Respondents: Random sample of community members of Franklin, North Carolina; participants involved in planning process for the district.

Estimated Number of Respondents: 436.

Estimated Number of Responses per respondent: 1.

Estimated Total Annual Burden on respondents: 109 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 the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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.

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 15, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–31022 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–11–M

Extension of Currently Approved Information Collection for Baseline and Trend Information on Wilderness Use and Users

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 of questions and sampling alternatives used to develop baseline and trend information about the changing role of wilderness in rural communities and the behavior of urban residents who visit wilderness for recreation, education programs, or scientific study.

DATES: Comments must be received in writing on or before February 20, 1996.

ADDRESSES: All comments should be addressed to: Alan Watson, Aldo Leopold Wilderness Research Institute, Forest Service, USDA, P.O. Box 8089, Missoula, MT 59807.

FOR FURTHER INFORMATION CONTACT: Alan Watson, Aldo Leopold Wilderness Research Institute, (406) 542–4197.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The currently approved information collection comprises a pool of questions and sampling alternatives (for example, on-site surveys and mailback questionnaires); the following describes the information collection to be extended:

Title: Baseline and Trend Information on Wilderness Use and Users.

OMB Number: 0596–0108.

Expiration Date of Approval: May 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The Wilderness Act (Pub. L. 88–577) directs that wilderness be managed to preserve natural conditions and to provide outstanding opportunities for solitude or a primitive and unconfined type of recreation. To make informed decisions on appropriate management methods that mediate recreational users' impact on natural resources and on other visitor experiences, Forest Service and other Federal land managers need information on visitors' behavior in the area, their preferences for various types of social interaction, and their support for various management strategies. It is difficult for wilderness managers to obtain accurate information on these topics because information currently available is limited to only a few wilderness areas. Established baselines and monitoring trends for visitor characteristics, behavior, and preferences throughout the country are needed by Federal agencies managing wilderness, including the Forest Service and the USDI National Park Service, Bureau of Land Management, and Fish and Wildlife Service. The Forest Service has been using the previously approved collection of questions and sampling alternatives to establish baselines, monitor trends, and provide input to forest planning activities at several wildernesses managed by the agency.

Estimate of Burden: The response time is likely to vary from 3 to 5 minutes to respond to on-site surveys and from 15 to 20 minutes to complete mailback questionnaires.

Type of Respondents: Visitors to units of the National Wilderness Preservation System.

Estimated Number of Respondents: 1,000 per year for 3 years.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 410 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 15, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–31023 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–11–M

Intent To Prepare an Environmental Impact Statement for Land Use Authorization for Lakewood Raw Water Pipeline; Roosevelt National Forest, Boulder County, CO

AGENCY: Forest Service, Department of Agriculture.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Arapaho and Roosevelt National Forests and Pawnee National Grassland is proposing to issue an easement to the City of Boulder Colorado to cross 5 miles of National Forest System lands with a replacement pipeline. The easement would allow the City to replace, maintain and operate Lakewood Pipeline. The pipeline is a raw water transmission line used to transport municipal water nine miles from Lakewood Reservoir to Betasso Water Treatment Plant. The City proposes to install the replacement pipeline in the vicinity of the 1906 pipeline, with some specific deviations to avoid potentially adverse impacts to environmentally sensitive areas. The proposal is for a 27- to 33-inch inside-diameter steel pipeline to be buried with a minimum of 4 feet of cover.

DATES: Comments concerning the scope of the analysis should be received in writing by January 20, 1996. The Draft Environmental Impact Statement will be published mid-February, 1996 for a 45-day comment period. The final Environmental Impact Statement will be issued at the end of June 1996.

RESPONSIBLE OFFICIAL: The Regional Forester, Region 2 Rocky Mountain Region, will be the responsible official and will decide whether to grant an easement for a pipeline on National Forest System lands and at what location.

FOR FURTHER INFORMATION CONTACT: Submit written comments, suggestions and questions to: Jean Thomas, Project Coordinator; Arapaho and Roosevelt National Forests; 240 West Prospect; Fort Collins Colorado 80526; 970–498–1267.

SUPPLEMENTARY INFORMATION: The City of Boulder is proposing to maintain the historical water delivery function of the Lakewood Pipeline facility. Continued operation to serve this function will require reconstruction of the facility. The City's proposal consists of installing the replacement pipeline in the vicinity of the 1906 pipeline, with some specific deviations to avoid potentially adverse impacts to environmentally sensitive areas. The City will restore, to the extent reasonably possible, the contours and vegetation on National Forest System lands, estimated to be 18 acres, and the private lands, estimated to be 25 acres, along the Pipeline corridor. The City will require access to the pipeline for repair and maintenance.

The existing Lakewood Pipeline must be replaced because air entrainment, caused by the current pipeline, reduces the Betasso Water Treatment Plant's capability to remove drinking water contaminants. New stricter drinking water standards have been adopted by the EPA. The City will not meet the new standards based on water tests performed under current operating conditions. Also, the pipeline interior lining is deteriorating and collecting in the pipeline low points, restricting the flow in the pipeline. This has reduced the pipeline's capacity from the historical rate of 20 million gallons per day (mgd) to 14 mgd.

The Forest Service is considering analyzing five alternatives in the Lakewood Raw Water Pipeline Environmental Impact Statement. (1) A No Action Alternative, where the Forest Service would not authorize the use of National Forest System lands for the pipeline. The City would not be required to remove the existing pipeline because removal would create undesirable environmental impacts. (2) A Cleaning and Relining Alternative which entails refurbishing the existing pipeline, and reducing air entrainment to Betasso Water Treatment Plant through the use of vacuum deaeration equipment. (3) Sugarloaf Road or a Pump-Driven Replacement Pipeline alternative. The objective of the Sugarloaf Road Alternative is to confine pipeline construction to established road corridors, thereby avoiding the potential environmental effects from construction disturbance along the existing pipeline and North Boulder Creek, but would require pumping. (4) The Existing Pipeline Alignment is the City of Boulder's proposed action. This alternative closely follows the existing and 1906 Lakewood Pipeline alignment along North Boulder Creek. (5) Peewink Alignment—Gravity-Fed Replacment Pipeline. This alternative seeks to address concerns regarding impacts to the North Boulder Creek riparian zone and to reduce pumping and traffic concerns associated with the Sugarloaf Road alternative.

Lakewood Pipeline reconstruction has been considered since 1988. Over the years both the City of Boulder and the Forest Service have asked the public to express their concerns and issues. The primary concerns are about impacts of reconstruction to aquatic and riparian ecosystems in North Boulder Creek if the pipeline follows the historical right-of-way, or concerns for personal safety and convenience if Sugarloaf Road is closed for periods of time for construction along the road. The environmental analysis will also address impacts to air, soils, forested and nonforested terrestrial ecosystems, recreation and visual resources, cultural resources and private properties and residents.

The Arapaho and Roosevelt National Forests and Pawnee National Grassland intend to publish the Draft Environmental Impact Statement for public comment in mid-February, 1996. The Comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. versus NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon versus Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. versus Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participated by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act as 40 CFR 1503.3 in addressing these points.

The Arapaho and Roosevelt National Forests and Pawnee National Grassland intend to issue the final Environmental Impact Statement the end of June 1996.

Dated: December 13, 1995.

M.M. Underwood, Jr.,

Forest Supervisor.

[FR Doc. 95–31070 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Hickory Creek Watershed, Newton County, Missouri; Finding of No Significant Impact

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hickory Creek Watershed, Newton County, Missouri.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, State Conservationist, Natural Resources Conservation Service, Parkade Center Suite 250, 601 Business Loop 70 West, Columbia, Missouri, 65203, (314) 876–0901.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roger A. Hansen, State

Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood prevention, flood damage reduction, fish and wildlife habitat development, and recreational development. The planned works of improvement include construction of 11 single-purpose floodwater retarding dams, acquisition of 40 flood plain properties, demolition or relocation of buildings from the acquisition area, and construction of recreational facilities in the stream corridor and flood plain.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Michael D. Wells, Assistant State Conservationist (WR).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,

State Conservationist.

[FR Doc. 95–31112 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–16–M

Aua Watershed, Ma'oputasi County, American Samoa

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: Joan B. Perry, responsible Federal Official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the Territory of American Samoa, is hereby providing notification that a record of decision to proceed with the installation of the Aua Watershed project is available. Single copies of this record of decision may be obtained from Joan B. Perry at the address below.

FOR FURTHER INFORMATION CONTACT: Joan B. Perry, Director, Pacific Basin Area, Natural Resources Conservation Service, Suite 301, FHB Building, 400 Route 8, Maite, Guam 96927, telephone 671–472–7490.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: December 6, 1995.

Joan B. Perry,

Director, Pacific Basin Area.

[FR Doc. 95–31066 Filed 12–20–95; 8:45 am]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, January 9–10, 1996 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 9, 1996

9:00 am–10:30 am Briefing on Rulemaking (Closed Session)
10:45 am–12:00 Noon Planning and Budget Committee
1:30 pm–3:15 pm Vision Statement Work Group
3:30 pm–5:00 pm Technical Programs Committee

Wednesday, January 10, 1996

9:00 am–12:00 Noon Ad Hoc Committee on Bylaws and Statutory Review
1:30 pm–3:30 pm Board Meeting

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the July 12 and September 14 Board Meetings.
- Executive Director's Report.
- Vision Statement Work Group Report.
- Ad Hoc Committee on Bylaws and Statutory Review Report.
- Fiscal Year 1996 Spending Plan.
- Fiscal Year 1997 Budget Request.
- Fiscal Years 1994 and 1995 Research Projects Status.
- Fiscal Year 1996 Research Projects.
- Extension of Detectable Warnings Suspension.
- Election of Officers.

All meeting are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–31107 Filed 12–20–95; 8:45 am]

BILLING CODE 8150–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:30 p.m. on Thursday, January 11, 1996, at the Pavilion Office Building, 4th Floor Conference Room, 109 State Street, Montpelier, Vermont 05609. The purpose of the meeting is to plan a project for fiscal year 1996.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Samuel B. Hand, 802–656–3180, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–31062 Filed 12–20–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the

Maryland Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Thursday, January 25, 1996, at the Omni Hotel, 101 W. Fayette Street, Baltimore, Maryland 21201. The purpose of the meeting is to choose a project topic and plan a project for fiscal year 1996.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Chester L. Wickwire, 410–825–8949, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 14, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–31071 Filed 12–20–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:30 p.m. on Friday, January 26, 1996, at the La Mansion Del Rio Hotel, San Maguel Room, 112 College Street, San Antonio, Texas 78205. The purpose of the meeting is to plan for future projects and hear presentations on civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adolph Canales, 214–653–6779, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 11, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–31061 Filed 12–20–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications for the proposed consolidations of:

(1) Residual New York City Weather Service Office (WSO) into the future New York City and Philadelphia Weather Forecast Offices (WFO);

(2) Providence WSO into the future Boston WFO;

(3) Worcester WSO into the future Boston WFO;

(4) residual Kansas City WSO into the future Kansas City/Pleasant Hill WFO;

(5) Detroit WSO into the future Detroit WFO;

(6) Concordia WSO into the future Topeka, Wichita, and Hastings WFOs;

(7) West Palm Beach WSO into the future Miami and Melbourne WFOs;

(8) Daytona Beach WSO into the future Melbournes and Jacksonville WFOs;

(9) Waco WSO into the future Dallas/Fort Worth and Houston/Galveston WFOs;

(10) Beaumont/Port Arthur WSO into the future Lake Charles and Shreveport WFOs;

(11) Knoxville WSO into the future Knoxville and Nashville WFOs;

(12) Havre WSO into the future Great Falls and Missoula WFOs; and

(13) Helena WSO into the future Great Falls WFO.

In accordance with Public Law 102–567, the public will have 60 days in which to comment on these proposed consolidation certifications.

DATES: Comments are requested by February 20, 1996.

ADDRESSES: Requests for copies of the proposed consolidation packages should be sent to Janet Gilmer, Room 12316, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0276. All comments should be sent to Janet Gilmer at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: NWS anticipates consolidating:

(1) the residual New York City Weather Service Office (WSO) with the future New York City and Philadelphia Weather Forecast Offices (WFOs);

(2) the Providence WSO with the future Boston WFO;

(3) the Worcester WSO with the future Boston WFO;

(4) the residual Kansas City WSO with the future Kansas City/Pleasant Hill WFO;

(5) the Detroit WSO with the future Detroit WFO;

(6) the Concordia WSO with the future Topeka, Wichita, and Hastings WFOs;

(7) the West Palm Beach WSO with the future Miami and Melbourne WFOs;

(8) the Daytona Beach WSO with the future Melbourne and Jacksonville WFOs;

(9) the Waco WSO with the future Dallas/Fort Worth and Houston/Galveston WFOs;

(10) the Beaumont/Port Arthur WSO with the future Lake Charles and Shreveport WFOs;

(11) the Knoxville WSO with the future Knoxville and Nashville WFOs;

(12) the Havre WSO with the future Great Falls and Missoula WFOs; and

(13) the Helena WSO with the future Great Falls WFO. In accordance with section 706 of Public Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) a draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) a comparison of the services provided within the service area and the services to be provided after such action;

(4) a description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) an identification of any area within the affected service area which

would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) evidence, based upon operational demonstration of modernization NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s) User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable); and

(7) a letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. At its December 14, 1995 meeting the Committee concluded that the information presented did not reveal any potential degradation of service and decided not to issue a report.

Documentation supporting the proposed certifications is too voluminous to publish in its entirety. Copies of the supporting documentation can be obtained through the contact listed above.

Attached to this Notice are draft memoranda by the respective meteorologists-in-charge recommending the certifications.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating the offices.

Dated: December 15, 1995.

Louis J. Boezi,

Deputy Assistant Administrator for Modernization.

U.S. Department of Commerce

National Oceanic and Atmospheric Administration

National Weather Service

175 Brookhaven Avenue, Building NWS–1, Upton, NY 11973

Memorandum For: W/ER—John T. Forsing

From:

Michael E. Wyllie, AM/MIC NWSFO New York City

Chet Henricksen, AM/MIC NWSFO Philadelphia, PA

Peter Ahnert, MIC NWSO Binghamton, NY

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Residual New York City Weather Service Office (RWSO) with the future New York City and Philadelphia Weather Forecast Offices (WFO) will not result in any degradation in weather services to the New York City service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the New York City service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future New York City and Philadelphia WFOs will not degrade these services.

2. A detailed list of the services currently provided within the New York City service area from the Residual New York City WSO location and a list of services to be provided from the future New York City and Philadelphia WFO locations after the proposed consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the RWSO New York City Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO New York City Area of Responsibility. AD discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the RWSO New York City service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for New York and portions of surrounding areas is included as attachment D. NWS operational radar coverage for the New York City service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D RADAR Commissioning Reports from New York City, Philadelphia and Binghamton, attachment E validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect. Note: Binghamton, NY is used as a backup but no Residual New York City services were transferred to Binghamton.

B. The User Confirmation of Services from New York City, Philadelphia and Binghamton, attachment F, document that three negative comments were received from New York City, Philadelphia and Binghamton related to the RWSO New York City service area. All negative comments have been answered to the satisfaction of the users as reflected in the reports.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing New York City WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the New York City service area is included at attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, John T. Forsing, Director, Eastern Region, endorse this consolidation certification.

_____

John T. Forsing

_____

Date

Attachments

October 3, 1995.

Memorandum For: W/ER—John T. Forsing

From: Robert M. Thompson, NWSFO Boston AM/MIC

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Providence Weather Service Office (WSO) with the future Boston Weather Forecast Office (WFO) located in Taunton, MA, will not result in any degradation in weather services to the Providence service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and

application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Providence service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the Boston WFO will not degrade these services.

2. A detailed list of the services currently provided within the Providence service area from the Providence WSO location and a list of services to be provided from the Boston WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Providence Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Boston Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Providence service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Rhode Island is included as attachment D. NWS operational radar coverage for the Providence service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed. There were two national work-arounds. One of these has been satisfied while the other one remains in effect.

B. The User Confirmation of Services, attachment F, documents that several responses required explanation. This included two negative comments. Two other responses expressed concern over the new radar. Telephone calls were placed to the four responders and their comments and concerns were addressed. All four responsers are now satisfied with our service, as stated in the Confirmation of Services Report.

C. The Providence Weather Service Office does not have a network or local warning radar.

6. A memorandum assigning the liaison officer for the Providence service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments received during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, John T. Forsing, Director, Eastern Region, endorse this consolidation certification.

_____

John T. Forsing

_____

Date

Attachments

October 3, 1995.

Memorandum for: W/ER—John T. Forsing
From: Robert M. Thompson, NWSTFO Boston AM/MIC
Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Worcester Weather Service Office (WSO) with the future Boston Weather Forecast Office (WFO) located in Taunton, MA, will not result in any degradation in weather services to the Worcester service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Worcester service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the NWSFO Boston will not degrade these services.

2. A detailed list of the services currently provided within the Worcester service area from the Worcester WSO location and a list of services to be provided from the NWSFO Boston location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Worcester Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Boston Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Worcester service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhanced services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for southern New England including central and west central Massachusetts is included as attachment D. NWS operational radar coverage for the Worcester service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed. There were two national work-arounds. One of these has been satisfied while the other one remains in effect.

B. The User Confirmation of Services, attachment F, documents that several responses required explanation. This included two negative comments. Two other responses expressed concern over the new radar. Telephone calls were placed to the four responders and their comments and concerns were addressed. All four responsers are now satisfied without service, as stated in the Confirmation of Services Report.

C. The Decommissioning Readiness Report, attachment G, verified that the existing Worcester local warning WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Worcester service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments received during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, John T. Forsing, Director, Eastern Region, endorse this consolidation certification.

_____

John T. Forsing

_____

Date

Attachments

1803 North 7 Highway, Pleasant Hill, MO 64080

October 27, 1995.

Memorandum for: Richard P. Augulis, Director, Central Region

From: Lynn P. Maximuk, MIC NWSO Kansas City/Pleasant Hill

Subject: Recommendation for Consolidation Certification

In December 1993 a change of operations occurred when most personnel and most services provided by the WSO at Kansas City International Airport were transferred to the future WFO site in Pleasant Hill, Missouri. At that time a Residual Weather Service Office (RWSO) was left at the airport site to continue the surface and radar observational programs. Since that time the Kansas City International Airport ASOS has been commissioned, and the WSR–57 radar has been decommissioned.

After reviewing the attached documentation, I have determined, in my professional judgement, that consolidation of the Kansas City Residual Weather Service Office (RWSO) with the future Kansas City/ Pleasant Hill Weather Forecast Office (FWO) in Pleasant Hill, Missouri will not result in any degradation in weather services to the Kansas City service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the pre-modernized Kansas City service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Kansas City/ Pleasant Hill WFO will not degrade these services.

2. A detailed list of the services currently provided from the Kansas City RWSO location and a list of comparable services to be provided from the future Kansas City/ Pleasant Hill WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the pre-modernized WSO Kansas City area of responsibility (i.e., ''affected service area'') and the future WFO Kansas City/Pleasant Hill area of responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Kansas City service area is included as attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Kansas and Missouri is included as attachment D. NWS operational radar coverage for the Kansas City service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D Radar Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national workarounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that all comments have been answered to the satisfaction of the commentors as stated in the service Conformation Report. Three of the commentors had concerns about the automated coded radar observation product (ROB). They were specifically concerned about the lack of movement speed and direction, and the inclusion of AP in the reports. We have discussed these problems with those people and they are satisfied that the NWS is working toward a solution. These three users have stated that those limitations do not diminish the capabilities of the WSR–88D from providing superior radar information through their video feeds. An emergency management agency responded negatively due to the cost of obtaining a NIDS drop. They have since completed negotiations with a NIDS vendor to receive the WSR–88D data. Four other respondents had negative responses but followed with comments not directly related to the WSR–88D. Those comments dealt with inadequate NWR coverage and other NWS products or services.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Kansas City WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Kansas City service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Richard P. Augulis, Director, Central Region, endorse this consolidation certification.

_____

Richard P. Augulis

_____

Date

U.S. DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL WEATHER SERVICE

9200 White Lake Rd White Lake, MI 48386

October 25, 1995.

Memorandum for: Richard P. Augulis, Director, Central Region

From: Dean P. Gulezian, MIC, WSFO DTX

Subject: Recommendation for Consolidation Certifiction

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Detroit Weather Service Offices (WSO) with the future Detroit Weather Forecast Office (WFO) in White Lake, Michigan will not result in any degradation in weather services to the Detroit service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Detroit service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from future Detroit WFO will not degrade these services.

2. A detailed list of the services traditionally provided within the Detroit service area from the Detroit WSO location and a list of services to be provided from the future Detroit WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Detroit area of responsibility (i.e. ''affected service area'') and the future WFO Detroit area of responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Detroit service area is

included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Michigan is included as attachment D. NWS operational radar coverage for the Detroit service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D Radar Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that three negative comments were received. All comments have been answered to the satisfaction of the commentors as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Detroit WSR–74S radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Detroit service area is included at attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Richard P. Augulis, Director, Central Region, endorse this consolidation certification.

_____

_____

Richard P. Augulis

Date

Memorandum for: Richard P. Augulis, Director, Central Region.

From:

Curtis S. Holderbach, MIC (AM) NWSFRO Topeka, KS

Richard H. Elder, MIC, NWSO Wichita, KS

Steven D. Schurr, MIC, NWSO Hastings, NE

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, we have determined in our professional judgment, consolidation of the Concordia Weather Service Office (WSO) with the future Topeka, Wichita, and Hastings Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Concordia service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, we are recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

Our recommendation is based on our review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Concordia service area is included as attachment A. As discussed below, we find that providing the services which address these characteristics and concerns from the future Topeka, Wichita, and Hastings WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Concordia service area from the Concordia WSO location and a list of services to be provided from the future Topeka, Wichita, and Hastings WFO locations after the proposed consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Concordia Area of Responsibility (i.e., ''Affected Service Area'') and the future Topeka, Wichita and Hastings WFOs' Areas of Responsibility. As discussed below, we find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWF) operations which will enhance services in the WSO Concordia service area is included as attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Kansas and portions of surrounding areas is included as attachment D. NWS operational radar coverage for the Concordia service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D RADAR Commissioning Reports from Topeka, Wichita, and Hastings, attachment E validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services from Topeka, Wichita, and Hastings, attachment F, document that no negative comments were received from Topeka, seven negative comments were received from Wichita, and one negative comment from Hastings. All negative comments have been answered to the satisfaction of the commentors as reflected in the reports.

c. The Decommissioning Readiness Report, attachment G, verifies that the existing Concordia WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Concordia service area is included as attachment H.

We have considered recommendations of the Modernization Transition Committee (attachment I) and the _____, public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). We believe all negative comments have been addressed to the satisfaction of our customers and we continue to recommend this certification.

4Endorsement

I, Richard P. Augulis, Director, Central; Region, endorse this consolidation certification.

_____

Richard P. Augulis

_____

Date

Attachments

Weather Service Forecast Office

11691 S.W. 17 Street, Miami, FL 33165–2149

Memorandum for: Harry S. Hassel, Director, Southern Region

From:

Paul J. Hebert, AM/MIC, Miami, FL

Bart Hagemeyer, MIC, Melbourne, FL

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the West Palm Beach Weather Service Office (WSO) with the future Miami and Melbourne Weather Forecast Offices (WFOs) will not result in any degradation in weather services to the West Palm Beach service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and

application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the West Palm Beach service area is included as Attachment A. As discussed below, I find that providing the services which address these characteristics and concerns by the Miami and Melbourne WFOs will not degrade these services.

2. A detailed list of the services currently provided within the West Palm Beach service area from the West Palm Beach location and a list of services to be provided from the Miami and Melbourne WFO locations after consolidation is included in Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO West Palm Area of Responsibility (i.e., ''Affected Service Area'') and the future WFO Miami Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO West Palm Beach service area is included as Attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Florida is included as Attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSO Melbourne, Attachment E–1, and NWSFO Miami, Attachment E–2, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, Attachments F–1 and F–2, document that only one negative comment was received for the Miami WSR–88D. The negative comment has been answered to the satisfaction of the commenter as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, Attachment G, verifies that the existing West Palm Beach WSR–74S radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the West Palm Beach service area is included as Attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Memorandum for: Harry S. Hassel, Director Southern Region

From: Bart Hagemeyer, MIC, NWSO Melbourne, FL; Steve Letro, MIC, NWSO Jacksonville, FL

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Daytona Beach Weather Service Office (WSO) with the future Melbourne and Jacksonville Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Daytona Beach service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Daytona Beach service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from Melbourne and Jacksonville WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Daytona Beach service area from the Daytona Beach WSO location and a list of services to be provided from the Melbourne and Jacksonville WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Daytona Beach Area of Responsibility (i.e. Affected Service Area) and the future WFO Melbourne Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations that will enhance services in the WSO Daytona Beach service area are included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Florida is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports, attachment E, validate that the Melbourne and Jacksonville WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed, but two national work-arounds remain in effect.

B. The User Confirmation of Services reports, attachment F, document that no negative comments were received from the WSO Daytona Beach service area.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Daytona Beach WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Daytona Beach service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comment(s) received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Memorandum for: Harry S. Hassel, Director Southern Region

From:

Gifford Ely, MIC, NWSFO Dallas/Fort Worth, TX

Bill Read, MIC, NWSO Houston/Galveston, TX

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Waco Weather Service Office (WSO) with the future Dallas/Fort Worth and Houston/Galveston Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Waco service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Waco service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Dallas/Fort Worth and Houston/Galveston WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Waco service area from the Waco WSO location and a list of services to be provided from the future Dallas/Fort Worth and Houston/Galveston WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Waco Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Dallas/Fort Worth Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Waco service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Texas is included as attachment D. The combination NWS and DOD operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSFO Dallas/Fort Worth and NWSFO Houston/Galveston, attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services for Dallas/Fort Worth and Houston/Galveston, attachment F, document that one negative comment was received from both the Dallas/Fort Worth and Houston/Galveston Radar Service Confirmations related to the WSO Waco Service Area. These negative comments have been answered to the satisfaction of the commentors as stated in the two attached Radar Service Confirmation Reports.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Waco WSR–74 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Waco service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the (_____) public comments received during the comment period (attachment J). On (_____), the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Memorandum for: Harry S. Hassel, Director, Southern Region

From:

David C. McIntosh, MIC, NWSO Lake Charles, LA

Lee Harrison, MIC, NWSO Shreveport, LA

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, that consolidation of the Beaumont/Port Arthur Weather Service Office (WSO) with the future Lake Charles and Shreveport Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Beaumont/Port Arthur service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Beaumont/Port Arthur service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from future WFOs Lake Charles and Shreveport will not degrade these services.

2. A detailed list of the services currently provided within the Beaumont/Port Arthur service area from WSO Beaumont/Port Arthur and a list of services to be provided from the future WFO Lake Charles and Shreveport locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Beaumont/Port Arthur Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Lake Charles Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Beaumont/Port Arthur service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Texas is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernization NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSO Lake Charles and Shreveport, attachment E, validate that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment, along with trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services for NWSO Lake Charles and Shreveport, attachment F, documents that two negative comments were received from NWSO Lake

Charles. However, neither of the negative comments came from the Beaumont/Port Arthur service area. The negative comments were addressed and answered to the satisfaction of the users as stated in the Service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, has already been approved and the WSR–57 radar has been decommissioned.

6. A memorandum assigning the liaison officer for the Beaumont/Port Arthur service area is included as attachment H.

I have maintained a close association with the emergency management community in southeast Texas and they have all expressed appreciation for the improved warning services they have received.

I have considered recommendations of the Modernization Transition Committee (Committee) (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I have tried to answer all negative comments and responses to the satisfaction of our customers and, based upon their later actions and comments, I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Memorandum for:
Harry S. Hassel, Director, Southern Region, NWS
From:
Jerry O. McDuffie, MIC, NWSO Knoxville/Tri-Cities, TN
Derrel R. Martin, MIC, NWSO Nashville, TN
Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, that consolidation of the Knoxville Weather Service Office (WSO) with the future Knoxville/Tri-Cities and Nashville Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Knoxville area. This proposed certification is in accordance with the advanced notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Knoxville service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Knoxville/Tri-Cities and Nashville WFOs will not degrade these services.

2. A detailed list of the service currently provided within the Knoxville service area from the WSO Knoxville location and a list of services to be provided from the future Knoxville/Tri-Cities and Nashville WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. The enclosed map shows the WSO Knoxville service area and the future WFO Knoxville/Tri-Cities service area. As discussed below, I submit that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the modernization of National Weather Service (NWS) operations which will enhance services in the WSO Knoxville service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned WSR–88D radar coverage at an elevation of 10,000 feet for east Tennessee is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSO Knoxville/Tri-Cities and NWSO Nashville, attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment, along with trained operations and maintenance personnel are available on site. Training was completed; but, two national work-arounds remain in effect.

B. The User Confirmation of Services for Knoxville/Tri-Cities and Nashville, attachment F, document that only one (1) negative comment was received. Followup with Monroe County indicates the main concern was NOAA Weather Radio coverage from the Chattanooga transmitter in regard to warnings, not really the WSR–88D. The County Director of EMA stated on October 17, 1995, after several months of evaluation, that the radar coverage and service to Monroe County is very good. Several positive comments were given.

6. A memorandum assigning the liaison officer for the Knoxville service area is included as attachment G.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment H) and the _____ public comments received during the comment period (attachment I). On _____, the Committee voted to endorse the proposed consolidation (attachment j). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certifications.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Memoradum for: Thomas D. Potter, Director, Western Region
From: Kenneth Mielke, AM/MIC, NWSFO Great Falls, MT
Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Havre Weather Service Office (WSO) with the future Great Falls Weather Forescast Office (WFO) will not result in any degradation in weather services to the Havre service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congresss.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Harve service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Great Falls WFO will not degrade these services.

2. A detailed list of the services currently provided within the Havre service area from the Havre WSO location and a list of services to be provided from the future Great Falls WFO after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Havre Area of Responsibility (i.e. ''Affected Service Area''), and the future WFO Great Falls Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Havre service area is

included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Montana is included as attachment D. NWS operational radar coverage for the Havre service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but, two national work-arounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that three negative comments were received, but none impacted the WSO Havre service area. These negative comments were answered to the satisfaction of the commentors, as stated in the service Confirmation Report.

6. A memorandum assigning the liaison officer for the Havre service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments recieved during the comment period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

_____

Thomas D. Potter

_____

Date

Attachments

Memorandum for: Thomas D. Potter, Director, Western Region

From:

Kenneth Mielke, AM/MIC, NWSFO Great Falls, MT

Brenda Brock, MIC, NWSO Missoula, MT

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Helena Weather Service Office (WSO) with the future Great Falls Weather Forecast Office (WFO) and the Missoula Weather Forecast Office will not result in any degradation in weather services to the Helena service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application for the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather–related concerns affecting the weather services provided in the Helena service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Great Falls and Missoula WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Helena service area from the Helena WSO location and a list of services to be provided from the future Great Falls and Missoula WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Helena Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Great Falls Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Helena service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Montana is included as attachment D. NWS operational radar coverage for the Helena service area will be increased.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D RADAR Commissioning Reports for Great Falls and Missoula, attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but, two national work-arounds remain in effect.

B. The User Confirmation of Services for NWSFO Great Falls and NWSO Missoula, attachment F, document that only three negative comments were received from Great Falls. All three of the negative comments have been answered to the satisfaction of the commentors, as stated in the service Confirmation Report. Two negative comments were received from Missoula and both were answered to the satisfaction of the commentors.

6. A memorandum assigning the liaison officer for the Helena service area is included as attachment H.

I have considered recommendations of the Modernation Transition Committee (Committee) (attachment I) and the _____ public comments received during the comments period (attachment J). On _____ the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

_____

Thomas D. Potter

_____

Date

_____

Attachments

[FR Doc. 95–30987 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–12–M

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 Qatar

December 15, 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 Governments of the United States and the State of Qatar agreed to extend their Bilateral Textile Agreement, effected by exchange of notes dated February 11, 1995 and May 30, 1995, for two consecutive one-year periods, beginning on January 1, 1996 and extending through December 31, 1997.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1996 period.

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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 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 February 11, 1995 and May 30, 1995, as amended and extended, between the Governments of the United States and the State of Qatar; 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 Qatar 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	365,170 dozen.
341/641	168,540 dozen.
347/348	415,732 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 current bilateral agreement between the Governments of the United States and the State of Qatar.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–31028 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–M

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 Sri Lanka

December 15, 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: Helen L. LeGrande, 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 Sri Lanka 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 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 331/631, 334/634, 335/835, 336/636/836, 338/339, 340/640, 341/641, 341 (sublimit), 347/348/847, 351/651, 352/652, 635 and 840 have been reduced for special 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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 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 Sri Lanka 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
237	275,884 dozen.
314	4,118,559 square meters.
331/631	2,503,111 dozen pairs.
333/633	51,932 dozen.
334/634	523,224 dozen.
335/835	242,735 dozen.

Category	Twelve-month limit
336/636/836	288,416 dozen.
338/339	1,160,240 dozen.
340/640	1,018,301 dozen.
341/641	1,792,827 dozen of which not more than, 1,175,777 dozen shall be in Category 341 and not more than 1,234,099 dozen shall be in Category 641.
342/642/842	632,910 dozen.
345/845	163,910 dozen.
347/348/847	963,800 dozen.
350/650	113,599 dozen.
351/651	285,227 dozen.
352/652	1,237,589 dozen.
359–C/659–C [1]	1,250,003 kilograms.
360	1,372,853 numbers.
363	11,765,652 numbers.
369–D [2]	883,335 kilograms.
369–S [3]	736,110 kilograms.
434	7,163 dozen.
435	15,350 dozen.
440	10,233 dozen.
611	5,377,008 square meters.
635	323,648 dozen.
638/639/838	867,307 dozen.
644	486,855 numbers.
645/646	194,741 dozen.
647/648	1.044,135 dozen.
670–L [4]	7,950,000 kilograms.
840	277,281 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.2025, 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, 6210.40.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[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 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Imports charged to the category limits for the periods June 23, 1995 through December 31, 1995 (Category 670–L) and January 1, 1995 through December 31, 1995 (remaining categories) shall be charged to 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 adjustments 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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–31029 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–M

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 Hong Kong

December 15, 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 Hong Kong 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. These limits have been increased, variously, for adjustments permitted under the flexibility provisions of the ATC.

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 available 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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 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 Hong Kong 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
Group I	
200–229, 300–326, 360–369, 400–414, 464–469, 600–629 and 665–670, as a group.	231,732,646 square meters equivalent.
Sublevels in Group I	
219	39,616,503 square meters.
218/225/317/326	71,092,259 square meters of which not more than 3,915,484 square meters shall be in Category 218(1) [1] (yard dyed fabric other than denim and jacquard).
611	6,246,076 square meters.
617	3,940,835 square meters.

Category	Twelve-month restraint limit
Group I Subgroup	
200, 226/313, 314, 315, 369(1) and 604, as a group.	105,114,569 square meters equivalent.
Within Group I Subgroup	
200	341,558 kilograms.
226/313	71,063,499 square meters.
314	19,164,973 square meters.
315	9,475,228 square meters.
369(1) [2](shoptowels)	778,672 kilograms.
604	234,457 kilograms.
Group II	
237, 239, 330–359, 431–459 and 630–659, as a group.	843,523,844 square meters equivalent.
Sublevels in Group II	
237	1,145,602 dozen.
239	5,251,589 kilograms.
331	4,165,089 dozen pairs.
333/334	294,115 dozen.
335	340,319 dozen.
338/339 [3] (shirts and blouses other than tank tops and tops, knit).	2,892,609 dozen.
338/339(1) [4] (tank tops and knit tops).	2,173,232 dozen.
340	2,769,978 dozen.
345	447,394 dozen.
347/348	6,711,062 dozen of which not more than 6,621,062 dozen shall be in Categories 347–W/348–W [5]; not more than 5,017,693 dozen shall be in Category 348–W.
352	6,738,277 dozen.
359(1) [6] (coveralls, overalls and jumpsuits).	599,433 kilograms.
359(2) [7] (vests)	1,249,341 kilograms.
433	10,241 dozen.
434	10,994 dozen.
435	76,149 dozen.
436	99,181 dozen.
438	814,560 dozen.
442	90,835 dozen.
443	62,577 numbers.
444	41,130 numbers.
445/446	1,346,359 dozen.
447/448	67,709 dozen.
631	635,826 dozen pairs.
633/634/635	1,319,253 dozen of which not more than 493,430 dozen shall be in Categories 633/634 and not more than 1,013,038 dozen shall be in Category 635.
638/639	4,856,092 dozen.
641	839,112 dozen.
644	43,126 numbers.
645/646	1,330,963 dozen.
647	528,923 dozen.
648	1,146,530 dozen of which not more than 1,131,740 dozen shall be in Category 648–W [8].
649	814,328 dozen.
650	168,400 dozen.
652	4,823,852 dozen.
659(1) [9] (coveralls, overalls and jumpsuits).	662,530 kilograms.
659(2) [10] (swimsuits)	268,913 kilograms.
443/444/643/644/843/844(1) (made-to-measure suits).	56,914 numbers.
Group II Subgroup	
336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group.	153,947,658 square meters equivalent.
Within Group II Subgroup	
336	221,261 dozen.
341	2,803,856 dozen.
342	546,882 dozen.
350	136,354 dozen.
351	1,184,223 dozen.
636	297,779 dozen.
640	933,490 dozen.
642	236,806 dozen.
651	322,488 dozen.
Group III	
831–844 and 847–859, as a group.	46,838,216 square meters equivalent.
Sublevels in Group III	
834	12,118 dozen.
835	111,840 dozen.
836	161,029 dozen.
840	664,341 dozen.
842	257,003 dozen.
847	356,774 dozen.
Limits not in a group	
845(1) [11] (sweaters made in Hong Kong).	1,126,525 dozen.
845(2) [12] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,696,471 dozen.
846(1) [13] (sweaters made in Hong Kong).	182,170 dozen.
846(2) [14] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	438,960 dozen.

[1] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[4] Categories 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[5] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[6] Category 359(1): 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.

[7] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[8] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[9] Category 659(1): 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.

[10] Category 659(2): 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.

[11] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[12] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[13] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[14] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

Imports charged to these category limits, except made-to-measure suits in Categories 443/444/643/644/843/844(1), 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 conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, 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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–31030 Filed 12–20–95; 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 Indonesia

December 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 18, 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) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing.

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 17325, 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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on December 18, 1995, you are directed to amend the directive dated March 30, 1995 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 twelve-month limit [1]
Levels in Group I	
300/301	3,436,220 kilograms.
313	12,999,037 square meters.
315	20,854,102 square meters.
340/640	1,356,534 dozen.
342/642	331,632 dozen.
359–C/659–C [2]	1,187,058 kilograms.
359–S/659–S [3]	1,026,046 kilograms.
360	853,748 numbers.
369–S [4]	810,029 kilograms.
433	10,698 dozen.
604–A [5]	312,623 kilograms.
618	1,123,311 square meters.
634/635	274,344 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] 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.

[3] 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.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 604–A: only HTS number 5509.32.0000.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–31031 Filed 12–20–95; 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 Macau

December 15, 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: Helen L. LeGrande, 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) 927–6709. 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 Macau 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 333/334/335/833/834/835,

336/836, 338, 339, 340, 347/348/847, 351/851, 359–C/659–C, 359–V, 633/634/635, 638/639/838, 642/842 and 647/648 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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 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), 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 cotton, wood, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau 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	
219	2,646,000 square meters.
225	9,261,000 square meters.
313	6,615,000 square meters.
314	1,102,500 square meters.
315	3,307,500 square meters.
317	6,615,000 square meters.
326	2,646,000 square meters.
333/334/335/833/834/835.	231,554 dozen of which not more than 129,162 dozen shall be in Categories 333/335/833/835.
336/836	54,883 dozen.
338	298,088 dozen.
339	1,248,586 dozen.
340	282,141 dozen.
341	192,699 dozen.
342	87,176 dozen.
345	53,306 dozen.
347/348/847	705,568 dozen.
350/850	58,117 dozen.
351/851	65,861 dozen.
359–C/659–C [1]	332,535 kilograms.
359–V [2]	109,767 kilograms.
611	2,646,000 square meters.
625/626/627/628/629	6,615,000 square meters.
633/634/635	490,334 dozen.
638/639/838	1,546,815 dozen.
640	114,963 dozen.
641/840	197,591 dozen.
642/842	108,711 dozen.
645/646	269,484 dozen.
647/648	513,377 dozen.
659–S [3]	116,236 kilograms.
Group II	
400–469, as a group	1,484,449 square meters equivalent.
Sublevel in Group II	
445/446	80,029 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, 6211.00.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.904, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] 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.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–31032 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–C

Request for Public Comments on Bilateral Textile Consultations with the Government of Nepal on Certain Man-Made Fiber Textile Products

December 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

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 categories for 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).

On November 28, 1995, in accordance with Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Nepal with respect to man-made fiber skirts in Category 642, produced or manufactured in Nepal.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Nepal, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber textile products in Category 642, produced or manufactured in Nepal and exported during the twelve-month period which began on November 28, 1995 and extends through November 27, 1996, at a level of not less than 92,081 dozen.

A statement of serious damage concerning Category 642 follows this notice.

Anyone wishing to comment or provide data or information regarding

the treatment of Category 642, or to comment on domestic production or availability of products included in Category 642, is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Nepal.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Category 642. Should such a solution be reached in consultations with the Government of Nepal, further notice will be published in the Federal Register.

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).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Nepal

Man-made Fiber Skirts—Category 642

November 1995

Import Situation and Conclusion

U.S. imports of manmade fiber skirts, Category 642, from Nepal reached 92,081 dozen for the year-ending August 1995, three times the 29,006 dozen imported during the same period a year earlier. Imports from Nepal during the year-ending August 1995 were 1.9 percent of total U.S. imports of Category 642 and were equivalent to 2.1 percent of U.S. domestic production of Category 642 for the year-ending June 1995.

U.S. imports of manmade fiber skirts from Nepal in Category 642 during the first eight months of 1995 entered the U.S. at an average landed duty-paid value of $49.59 per dozen, 67 percent below the average U.S. producers' price for manmade fiber skirts.

The sharp and substantial increase of low-valued Category 642 imports from Nepal is causing serious damage to the U.S. domestic industry producing manmade fiber skirts.

U.S. Production, Import Penetration, and Market Share

U.S. production of manmade fiber skirts, Category 642, increased from 5,119,000 dozen in 1992 to 5,227,000 dozen in 1993, an increase of 2 percent. Domestic production of Category 642 fell to 4,610,000 dozen in 1994, 12 percent below the 1993 level and 10 percent below the 1992 level. Domestic production of Category 642 continued to decline in 1995, falling to 2,347,000 dozen in the first half of 1995, 7 percent below the January-June 1994 level. In contrast, imports of Category 642 increased from 3,819,000 dozen in 1992 to 4,177,000 dozen in 1994, a 9 percent increase. Category 642 imports continue to increase in 1995, reaching 3,657,467 dozen during January-August 1995, 28 percent above the January-August 1994 level.

The ratio of imports to domestic production increased from 75 percent in 1992 to 91 percent in 1994, and reached 113 percent in the first half of 1995. The share of the U.S. market for manmade fiber skirts held by domestic manufacturers fell from 60 percent in 1992 to 55 percent in 1994, and to 48 percent during January-June 1995.

[FR Doc. 95–31033 Filed 12–20–95; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of a Final Environmental Impact Statement for Kennecott Utah Copper Corporation's Proposed North Expansion Tailings Modernization Project in Salt Lake County, UT.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The Sacramento District, Utah Field Office of the U.S. Army Corps of Engineers (Corps) has prepared a Final Environmental Impact Statement (FEIS) for the Kennecott Utah Copper Corporation (Kennecott) proposed North Expansion Tailings Modernization Project (Project) in Salt Lake County, Utah. The proposed Project provides tailings storage capacity required for the next 25 to 30 years of Kennecott's operation. The FEIS is available for public review at the Salt Lake City Library, Main Branch, 209 East 500 South and the Salt Lake County Library System, Magna Branch, 8339 West 3500 South. Copies for distribution are available from Mr. Michael A. Schwinn, Project Manager, U.S. Army Corps of Engineers, Sacramento District, Utah Regulatory Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010.

DATES: A public hearing will be held at 6:00 pm on January 18, 1996 at the Olympus Hotel and Conference Center, Wasatch 2 Conference Room, 161 West 600 South, Salt Lake City, Utah.

The 30 day waiting period prior to the Record of Decision ends January 18, 1996.

ADDRESSES: To obtain a copy of the FEIS, contact Mr. Michael A Schwinn, Project Manager, U.S. Army Corps of Engineers, Sacramento District, Utah Regulatory Office, 1403 South 600 West, Suite A, Bountiful, Utah 84010.

FOR FURTHER INFORMATION CONTACT: Direct requests for a copy of the FEIS or questions to Mr. Michael A. Schwinn, Project Manager, (801) 295–8380.

SUPPLEMENTARY INFORMATION: Kennecott is proposing to expand its existing tailings impoundment by approximately 3500 acres. The proposed Project site is directly to the north and northwest of the existing tailings impoundment. Kennecott has identified two primary needs for the proposed Project. First, as the existing tailings impoundment is nearing its operational capacity, Kennecott requires approximately 1.9 billion tons of storage capacity to support mining and concentrating operations for the next 25 to 30 years. Since only approximately 0.3 to 0.4 billion tons of this material will be stored in the existing impoundment, additional capacity is required. The second need is for a seismic upgrade to the existing tailings impoundment. As more information has recently become available regarding the seismic nature of the Salt Lake Valley, Kennecott has identified a need to upgrade the existing facility. Accordingly, the proposed action includes various engineering measures to upgrade the existing facility in the event of a large earthquake.

The proposed Project would provide approximately 3500 acres of additional tailings storage area. Approximately 1.6 billion tons of tailings would be stored

in the proposed impoundment with an ultimate height of approximately 250 feet. Site preparation activities would include relocation of the Union Pacific Railroad mainline tracks, relocation of the C–7 Ditch, relocation of utility lines, the construction of a new bridge on Highway 202 over the relocated railroad lines, and modification of the Interstate 80 on and off ramps at the intersection with Highway 202.

Since the proposed action affects jurisdictional waters of the United States, Kennecott submitted a Clean Water Act Section 404 Permit Application to the Corps on June 10, 1994. The Corps determined that an EIS was required prior to making a permit decision.

The Corps published a notice of intent to prepare a DEIS for the proposed action on August 19, 1994 in the Federal Register. A public scoping meeting was held on September 19, 1994 and the written comment period remained open until November 7, 1994. A Draft EIS was released on April 28, 1995 and the public comment period closed on June 27, 1995.

Twelve alternatives are identified and analyzed in accordance with the U.S. Environmental Protection Agency Section 404(b)(1) guidelines for their technical, logistic, and economic practicability in the FEIS. The North Expansion West, the North Expansion East, and the No Action alternatives are carried forward for complete analysis in the FEIS.

The FEIS has been prepared in compliance with the National Environmental Policy Act (NEPA), the Corps implementing procedures in 33 CFR 230, the Council for Environmental Quality regulations for implementing NEPA in 40 CFR 1500, and U.S. Environmental Protection Agency (EPA) 404(b)(1) guidelines in 40 CFR 230.

The FEIS was filed with the U.S. Environmental Protection Agency for publication of its availability.

Dated: December 12, 1995.

Jack V. Scherer,

LTC, EN, Deputy Commander.

[FR Doc. 95–31172 Filed 12–20–95; 8:45 am]

BILLING CODE 3710–GH–M

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Office of School-to-Work Opportunities, Advisory Council for School-to-Work Opportunities; Notice of Open Meetings

SUMMARY: The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Departments on implementation of the School-to-Work Opportunities Act. The Council shall assess the progress of School-to-Work Opportunities systems development and program implementation; make recommendations regarding progress and implementation of the School-to-Work Opportunities initiative; advise on the effectiveness of the new Federal role in providing venture capital to States and localities to develop School-to-Work systems and act as advocates for implementing the School-to-Work framework on behalf of their stakeholders.

TIME AND PLACE: The Advisory Council for School-to-Work Opportunities will have an open meeting on Tuesday, January 9, 1996 from 1:00 p.m. to approximately 2:15 p.m. and on Thursday, January 11 from 1:00 p.m. to approximately 3:00 p.m. at the Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC 20001–1527. During the interim, Council members will work in small groups to develop and present strategic plans for the consideration of the whole Council.

AGENDA: The agenda for the meeting on Tuesday, January 9 from 1:00 p.m. –2:15 p.m. will include opening remarks, an overview of the role of the Advisory Council and introduction of participants. The agenda for the meeting on Thursday, January 11 from 1:00 p.m. – 3:00 p.m. will include reports from the various work groups, a conference summary and a discussion of future actions.

PUBLIC PARTICIPATION: The meetings on January 9 from 1:00–2:15 p.m. and on January 11 from 1:00 – 3:00 p.m. will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT: JD Hoye, Designated Federal Official (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, SW, Room 210, Washington, DC 202/401–6222, (This is not a toll free number.)

Signed at Washington, D.C., this 15th day of December 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Patricia W. McNeil,

Assistant Secretary of Education.

[FR Doc. 95–31095 Filed 12–20–95; 8:45 am]

BILLING CODE 4510–30–M

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an ''Application for Institutional Participation'' (ED Form E40–34P, OMB #1840–0098) to participate in the Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs for the 1996–97 award year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) in one or more of the ''campus-based programs'' for the 1996–97 award year to submit to the Secretary an ''Application for Institutional Participation'' and all documents required for an eligibility and certification determination.

The campus-based programs are the Federal Perkins Loan Program, the Federal Work-Study Program, and the Federal Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965, as amended. The 1996–97 award year is July 1, 1996, through June 30, 1997.

DATE: Closing Date for Filing Application and Required Documents. To participate in the campus-based programs in the 1996–97 award year, a currently ineligible institution must mail or hand-deliver its ''Application for Institutional Participation'' on or before January 22, 1996. The application along with all documents required for an eligibility and certification determination must be submitted to the Institutional Participation Division at one of the addresses indicated below.

ADDRESSES: Applications and Required Documents Delivered by Mail. An institutional participation application and required documents delivered by mail must be addressed to the U.S. Department of Education, Office of Postsecondary Education, Institutional

Participation Division, Room 3522, ROB–3, 600 Independence Avenue, S.W., Washington, D.C. 20202–5323.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use certified or at least first class mail. Institutions that submit institutional participation applications and required documents after the closing date will not be considered for funding under the campus-based programs for award year 1996–97.

Applications and Required Documents Delivered by Hand. An institutional participation application and required documents delivered by hand must be taken to the U.S. Department of Education, Office of Postsecondary Education, Institutional Participation Division, Room 3522, ROB–3 (GSA Building), 7th and D Streets, S.W., Washington, D.C. 20407. We will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An institutional participation application for the 1996–97 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1996–97 to any currently ineligible institution unless the institution files its ''Application for Institutional Participation'' and other required documents by the closing date. If the institution submits its institutional participation application or other required documents after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1997–98 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary but has previously filed a FISAP; or

(2) An additional location of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution but has been included in the institution's 1996–97 FISAP.

The Secretary wishes to advise institutions that the institutional eligibility form, ''Application for Institutional Participation,'' should not be confused with the FISAP form that institutions were required to submit electronically as of September 29, 1995, in order to be considered for funds under the campus-based programs for the 1996–97 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Perkins Loan Program, 34 CFR Part 674.

(3) Federal Work-Study Program, 34 CFR Part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(6) New Restrictions on Lobbying, 34 CFR Part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(8) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact: Karen W. Kershenstein, Acting Director, Institutional Participation Division, U.S. Department of Education, Room 3923, ROB–3, 600 Independence Avenue, S.W., Washington, D.C. 20202–5323. Telephone: (202) 708–4906.

For technical assistance concerning the FISAP or other operational procedures of the campus-based programs, contact: Judy Norris, Acting Chief, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Room 4714, ROB–3, 600 Independence Avenue, S.W., Washington, D.C. 20202–5458. Telephone: (202) 708–9757. 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.

(Authority: 20 U.S.C. 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.;* and 20 U.S.C. 1070b *et seq.*)

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program)

Dated: December 15, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–31024 Filed 12–20–95; 8:45 am]

BILLING CODE 4000–01–P

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for Comments on Agencies applying to the Secretary for Initial Recognition or Renewal of Recognition.

DATES: Commentors should submit their written comments by February 5, 1996 to the address below.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and State Liaison Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes as reliable authorities as to the quality of education offered by institutions or programs within their scope accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the criteria for recognition. In order for Department staff to give full consideration to the

comments received, the comments must arrive at the address listed above not later than (Insert 45 days after date of publication in the Federal Register). Comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies.

The National Advisory Committee on Institutional Quality and Integrity (the ''Advisory Committee'') advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet May 22–24, 1996 in Washington, D.C. All written comments received by the Department in response to this notice will be considered by both the Advisory Committee and the Secretary. A subsequent Federal Register notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

The following agencies will be reviewed during the May 1996 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Initial Recognition

1. American Polygraph Association (requested scope of recognition: the accreditation of private, postsecondary, non-degree-granting institutions that prepare students to become Polygraph examiners).

2. National Association of Nurse Practitioners in Reproductive Health (requested scope of recognition: the accreditation of women's health nurse practitioner education programs in reproductive health).

3. Pacific Association of Schools and Colleges (requested scope of recognition: the accreditation of smaller specialized degree-granting institutions of higher education that specialize in limited and identified areas of social sciences and humanities).

4. Respiratory Care Accreditation Board (requested scope of recognition: the accreditation of respiratory care education programs).

Petitions for Renewal of Recognition

1. Commission on Accreditation of Allied Health Education Programs (requested scope of recognition: As a coordinating agency for the accreditation of institutions and programs under the following allied health education committees:

a. Cytotechnology Programs Review Committee.

b. Joint Review Committee on Education in Diagnostic Medical Sonography.

c. Joint Review Committee on Education in Electroneurodiagnostic Technology.

d. Joint Review Committee on Educational Programs for the EMT-Paramedic

e. Accredition Committee for Perfusion Education (perfusionist)

f. Accredition Committee for Education for the Physician Assistant

g. Joint Review Committee for Respiratory Therapy Education

h. Accreditation Review Committee for the Surgical Technologist

The Commission is also requesting an expansion of scope of recognition to include the accredition of institutions and programs under the following allied health education committee:

i. Joint Review Committee on Education in Cardiovascular Technology.

2. Middle States Association of Colleges and Schools, Commission on Secondary Schools (requested scope of recognition: the accreditation and preaccreditation of public vocational and technical schools offering non-degree postsecondary education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands)

3. National Accrediting Agency for Clinical Laboratory Sciences (requested scope of recognition: the accreditation of programs for the histologic technician/technologist)

4. National League for Nursing, Inc. (requested scope of recognition: the accredition of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. American Bar Association, Council of the Section of Legal Education and Admission to the Bar

2. Accrediting Council for Continuing Education and Training

3. American Psychological Association, Committee on Education

4. Commission on Opticianry Accreditation

5. Distance Education and Training Council, Accrediting Commission

6. National Environmental Health Science and Protection Accreditation Council

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition—

1. Puerto Rico State Agency for the Approval of Public Postsecondary Vocational Technical Education Institutions and Programs

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Montana Board of Nursing

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, S.W., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Dated: December 18, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–31073 Filed 12–20–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering Laboratory; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory (INEL).

DATES: Tuesday, January 16, 1996 from 8:00 a.m. until 6:00 p.m. Mountain Standard Time (MST) and Wednesday, January 17, 1996 from 8:00 a.m. until 5:00 p.m. MST. There will be a public comment availability session Tuesday, January 16, 1996 from 5:00 to 6:00 p.m. MST.

The Board will be participating in a public outreach program hosted by Boise State University and the University of Idaho Engineering Programs Tuesday afternoon.

ADDRESSES:

Main Meeting:
Boise Centre on the Grove, 850 Front Street, Boise, Idaho 83701
Outreach Program:
BSU Student Union Building, 1910 University Drive, Boise, Idaho 83701 (tentative location)

FOR FURTHER INFORMATION CONTACT:
Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Meeting Purpose: EM SSAB, INEL will be following up on a study of the Environmental Management Prioritization of FY 1998 funds, studying the environmental restoration scoping process, prioritizing its own activities for the remainder of FY 1996, and participating in an educational activity highlighting research and development capabilities of INEL.

Tentative Agenda

Tuesday, January 16, 1996

7:30 a.m.—*Sign-in and Registration*
8:00 a.m.—*Miscellaneous Business: Old Business*

- Jerry Bowman—Deputy Designated Federal Official Report.
- Joy Myers—Chair Report.

Member Reports

Standing Committee Reports

- Member Selection Committee—Dean Mahoney (chair), Gen Paroni, Chuck Rice.
- Budget Committee—Chuck Rice (chair), Larry Boam, Terry Perez.
- Public Communication Committee—Ben Collins (chair), Clarence Bellem, Chuck Broscious, Wayne Pierre (ex-officio).

9:00 a.m.—Environmental Management Budget Prioritization

Committee Members—Dieter Knecht (chair), Gen Paroni, Linda Milam, Terry Perez, and Jerry Bowman (ex-officio).
10:15 a.m.—Break
10:30 a.m.—*Environmental Management Budget Prioritization*
12:00 p.m.—*Discussion—EM SSAB INEL Prioritization Activity*
12:30 p.m.—Lunch
2:00 p.m.—*Public Outreach Program—INEL Research and Development*
5:00 p.m.—*Public Comment Availability*

Wednesday, January 17, 1996

7:30 a.m.—*Sign-In and Registration*
8:00 a.m.—*Miscellaneous Business*
8:30 a.m.—*EM SSAB INEL Prioritization Process*
10:30 a.m.—*Break*
10:45 a.m.—*Environmental Management Budget Prioritization*
12:00 p.m.—Lunch
1:00 p.m.—Environmental Restoration Scoping Discussion

Committee Members—Chuck Broscious and Brett Hayball (co-chairs), Chuck Rice, Terry Perez, Joel Hamilton, and ex-officios Jerry Bowman, DOE-ID, Wayne Pierre, EPA, and Bob Ferguson, INEL.

3:00 p.m.—Break
3:15 p.m.—*Environmental Restoration Scoping Discussion*
4:15 p.m.—*Meeting Evaluation*
5:00 p.m.—Adjourn

This agenda is subject to change as the Board meeting nears. For a most current copy of the agenda, contact Woody Russell, DOE-Idaho, (208) 526–0561, or Marsha Hardy, Jason Associates, (208) 522–1662. The final agenda will be available at the meeting.

Public Comment Availability: The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, January 16, 1996 from 5:00 p.m. to 6:00 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on December 18, 1995.

Rachel M. Samuel,
Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–31102 Filed 12–20–95; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–1625–000]

USGen Power Services, L.P.; Notice of Issuance of Order

December 15, 1995.

On August 24, 1995, as amended on October 17, 1995, USGen Power Services, L.P. (USGen) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, USGen requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by USGen. On December 13, 1995, the Commission issued an Order Accepting Market-Based Rates For Filing, Granting Waivers And Authorizations And Revising Policy Regarding Sales Of Power By Affiliated Power Marketers (Order), in the above-docketed proceeding.

The Commission's December 13, 1995 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by USGen should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, USGen is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by

continued Commission approval of USGen's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 12, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31045 Filed 12–20–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses are revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

Lecense Number: 3788

Name: Global Maritime, Inc.

Address: 421 S. 9th Street, Suite 117, Lincoln, NE 68508

Date Revoked: November 28, 1995

Reason: Failed to maintain a valid surety bond.

Lecense Number: 2142

Name: All Transport, Inc.

Address: 6510 N.W. 84th Ave., Miami, FL 33166

Date Revoked: December 6, 1995

Reason: Failed to maintain a valid surety bond.

Lecense Number: 1814

Name: Vijaya Maldonado dba General Cargo International Forwarders

Address: 12322 SW 10 Lane, Miami, FL 33184

Date Revoked: December 8, 1995

Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–31041 Filed 12–20–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Grupo Financiero Banamex Accival, S.A. de C.V.; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects the notices (FR Doc. 94-467 and FR Doc. 95-28824) published on pages 1400 and 1401 of the issue for Monday, January 10, 1994, and on page 58361 of the issue for Monday, November 27, 1995.

Under the Federal Reserve Bank of San Francisco heading, the entry for Grupo Financiero Banamex Accival, S.A. de C.V., is revised to read as follows:

1. Grupo Financiero Banamex Accival, S.A., de C.V., Mexico City, Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Nacional de Mexico, S.A., Mexico City, Mexico, and thereby indirectly acquire 100 percent of the voting shares of California Commerce Bank, Los Angeles, California.

In connection with this application, Applicant proposes to acquire ACCI Securities, Inc., New York, New York, and thereby engage in full service securities brokerage activities, pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y. Applicant also proposes to engage in the following activities which the Board previously has determined by order to be closely related to banking: (1) acting as agent in the private placement of all types of securities; and (2) acting as a riskless principal in the purchase and sale of all types of securities on the order of investors. Applicant has stated that it will conduct the proposed activities within the limitations and prudential guidelines established by the Board in its previous orders. *See Bank of Nova Scotia*, 76 Fed. Res. Bull. 545 (1990); *J.P. Morgan & Co., Incorporated*, 76 Fed. Res. Bull. 26 (1990); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989).

Comments on this application must be received by January 19, 1996.

Board of Governors of the Federal Reserve System, December 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30992 Filed 12–20–95; 8:45 am]

BILLING CODE 6210–01–F

ABNA Holding, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-3034) published on page 64064 of the issue for Wednesday, December 13, 1995.

Under the Federal Reserve Bank of Dallas heading, the entry for Community Bankshares, Inc., is revised to read as follows:

1. ABNA Holdings, Inc., Denton, Texas; to become a bank holding company by acquiring 97.6 percent of the voting shares of American Bank, N.A., Dallas, Texas.

Comments on this application must be received by December 27, 1995.

Board of Governors of the Federal Reserve System, December 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30991 Filed 12–20–95; 8:45 am]

BILLING CODE 6210–01–F

GOVERNMENT PRINTING OFFICE

The Federal Register Online via GPO Access; Meeting and Demonstration for Federal Agencies

The United States Government Printing Office (GPO) will hold 2 days of demonstrations for Federal agencies interested in an overview and demonstration of the GPO's award-winning online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstrations will be held at the National Archives Building, 5th Floor Theater, 7th and Pennsylvania Avenue NW., Washington, DC, on Wednesday, January 10, 1996, and again on Wednesday, January 17, 1996. There are three sessions each day: from 8:30 a.m. to 10:00 a.m.; 11:00 a.m. to 12:30 p.m.; and 1:30 p.m. to 3:00 p.m. The National Archives Building is located at the Archives-Navy Memorial Metro stop on the Green and Yellow Lines. There is no charge to attend.

The online Federal Register service offers access to the Federal Register by 6 a.m. on the day of publication at no charge to the user. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database. Documents are available as ASCII text files and in typeset form as Adobe Acrobat Portable Document Format (PDF) files. Graphics are included in the PDF files and are also available as

separate files in TIFF format. The Federal Register online via *GPO Access* is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Government Manual, Congressional Record, Congressional Record Index*, including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code; GAO Reports;* and a growing list of important Government documents on the same day of publication.

Seating is limited. Individuals interested in attending may reserve a space by contacting John Berger, Product Manager, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@eids21.eids.gpo.gov; by telephone on 202–512–1525; or by fax on 202–512–1262. Seating reservations for Federal agencies will be accepted for the January 10th sessions through Friday, January 5, 1996; and for the January 17th session through Friday, January 12th. From January 8–9 and from January 15–16, reservations will be accepted from the general public on a *space available basis* for the January 10th and January 17th sessions, respectively.

Michael F. DiMario

Public Printer

[FR Doc. 95–31042 Filed 12–20–95; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Ruth Lupu, Ph.D., Georgetown University Medical Center: On December 6, 1995, based on an investigation conducted by Georgetown University Medical Center, ORI found that Ruth Lupu, Ph.D., committed scientific misconduct by submitting a false letter of collaboration in an unfunded application to the Public Health Service (PHS). Letters of collaboration are a significant factor in the evaluation of applications.

Dr. Lupu has entered into a Voluntary Exclusion Agreement with ORI in which she has accepted ORI's finding and has agreed to exclude herself voluntarily, for the period beginning December 6, 1995, and ending January 30, 1997, from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

In addition, Dr. Lupu has voluntarily agreed to accept the administrative sanctions imposed by Georgetown University Medical Center, which include requirements that:

(1) a letter of reprimand be issued and retained in her personnel file for two years; and

(2) her future grant applications, proposals, and other publications be subject to special monitoring and review for two years.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–31048 Filed 12–20–95; 8:45 am]

BILLING CODE 4160–17–P

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Ms. Victoria Santa Cruz, University of Arizona: Based on an investigation conducted by the institution, ORI found that Ms. Victoria Santa Cruz, former Program Coordinator, College of Nursing, University of Arizona, engaged in scientific misconduct by fabricating interview data on a questionnaire intended for use in two studies funded by two Public Health Service (PHS) grants.

Ms. Santa Cruz did not contest the ORI findings or administrative actions, which require that, for a period of three years, any institution that proposes her participation in PHS-supported research must submit a supervisory plan designed to ensure the scientific integrity of her contribution. Ms. Santa Cruz is also prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years.

Because the studies involved are ongoing, no publications were affected by the fabricated data, and no clinical treatment has been based on the results of the studies.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–31049 Filed 12–20–95; 8:45 am]

BILLING CODE 4160–17–M

Administration on Children and Families

Local Research Partnerships for Early Head Start Programs: Availability of Funds and Request for Applications

AGENCY: Head Start Bureau, Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Availability of funds and request for applications to conduct research in Early Head Start programs.

SUMMARY: The Head Start Bureau, Administration on Children, Youth and Families has recently awarded grants to provide comprehensive services to families with infants and toddlers. A cross-site evaluation of a subsample of the total 68 Early Head Start programs will be performed by Mathematica Policy Research Institute which was designated as the National Early Head Start Evaluation contractor. Additional site-specific research will be conducted by research partners who reside in or near the same subset of Early Head Start programs and will attempt to determine the interrelationships of child, family, program and community variables and program outcomes (local research). This announcement describes the requirements to be met by applicants seeking to conduct the local research.

DATES: The closing time and date for receipt of applications is 5 p.m. (Eastern Time Zone) February 20, 1996. Applications received after 5 p.m. will be classified as late.

ADDRESSES: Mail applications to: Early Head Start Local Research, Department of Health and Human Services, ACF/Division of Discretionary Grants, 6th floor, 370 L'Enfant Promenade, SW, Washington, DC 20447, Mail Stop 6c-462, Attn: Application for Early Head Start Local Research.

Hand Delivered, Courier or Overnight Delivery applications are accepted during the normal working hours of 8 a.m. to 5 p.m., Monday through Friday, on or prior to the established closing date at: Program Announcement: ACYF/HS, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center, Technical Assistance Team (1–800–351–2293), is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions.

In order to determine the number of expert reviewers that will be necessary, if you are going to submit an application, please send a post card with or call in the following information: the name, address, and telephone and fax number of the contact person and the name of the organization four weeks prior to the submission deadline date to: Administration on Children, Youth and Families Operations Center, Ellsworth Associates, Inc., 3030 Clarendon Blvd., Suite 240, Arlington, VA 22201, (1–800–351–2293).

If you decide to submit after the notification date, you may still submit a proposal.

Part I. General Information

A. Table of Contents

This announcement is divided into four parts, plus appendices:

Part I provides information on the purpose of the local research effort and a discussion of issues particularly relevant to the local research under this announcement.

A. Table of Contents
B. Definitions
C. Purpose
D. Background
E. Local Research Studies

Part II contains key information such as eligible applicants, project periods, special conditions and other information.

A. Statutory Authority
B. Eligible Applicants
C. Special Conditions
D. Cooperative Agreements
E. Project Duration and Federal Share

Part III presents the criteria upon which the proposals will be reviewed and evaluated.

A. Criteria
B. Review Process

- Part IV contains information for preparing the fiscal year 1996 application.

A. Availability of Forms
B. Proposal limits
C. Check List for a Complete Application
D. Due Date
E. Paperwork Reduction Act of 1980
F. Required Notification of State Single Point of Contact

Appendix A contains a list of the Early Head Start grantees.

Appendix B–1 contains the Request for Proposal for contract to conduct the evaluation of Early Head Start as originally published and now funded.

Appendix B–2 contains the tentative measures proposed for the cross-site evaluation.

Appendix C includes the relevant forms necessary for completing the application.

B. Definitions

Research Partner: The initial university or non-profit organization designated in the Early Head Start grantee's proposal or a university or non-profit organization which formed a partnership with an Early Head Start grantee for the purpose of conducting the research under this announcement after the Early Head Start grant was awarded.

Cooperative Agreement: A cooperative agreement is a funding mechanism which allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships, and governance of the cooperative agreement will be spelled out in the terms and conditions of the award. The specific responsibilities of the Federal staff and grantee staff are tentatively listed in Part II-D and will be agreed upon prior to the award of each cooperative agreement.

C. Purpose

The purpose of this announcement is to invite universities and non-profit organizations who agree to be the research partners of Early Head Start program grantees to submit proposals for competitive Cooperative Agreements to (1) conduct local research studies on issues related to Early Head Start which will enrich and expand the National Early Head Start Research and Evaluation Study and benefit the field, and (2) establish the foundation for a possible longitudinal study of the mediating and moderating influences on the developmental progress of Early Head Start and Head Start children and families.

D. Background

On March 17, 1995, ACF announced the availability of funds on a competitive basis for Early Head Start Programs. Sixty-eight applicants were successful and became Early Head Start grantees on the effective date of September 30, 1995. (Applicants should be familiar with this document in order to prepare a responsive proposal. Copies of this announcement are available from the Technical Assistance Team at (1–800 351–2293.) Along with the development of the program specifications for Early Head Start, ACYF designed a set of research and evaluation initiatives to establish the efficacy of the Early Head Start program and to contribute new knowledge to the field on factors which influence the developmental progress of low-income infant and toddlers and their families. The plan for the Early Head Start research and evaluation activities is based on the premise that the first set of Early Head Start programs are prototypes of the Early Head Start concept of state-of-the-art services for families with infants and toddlers. They will operate during a period which will almost assuredly see major social reforms and reconfigurations in services including welfare, health and child care. Therefore, the lessons learned and the models that will be developed will shape the direction of services for families with infants and toddlers well into the 21st century. The plan features (1) a dynamic and iterative formative evaluation process, designed to be used in subsequent Early Head Start programs, that will serve as the instrument for continuous program improvement; (2) an impact evaluation to determine whether and under what conditions program prototypes were effective, and (3) an integrated research base consisting of local research studies as well as the cross-site study for generating further hypotheses around a broad array of potential development and service issues and possibilities; and (4) an intended longitudinal study of both Early Head Start and Head Start.

On May 19, 1995, the first phase of the competitive award process for the conduct of the research and evaluation activities was initiated as a Request for Proposal for a national contractor to perform the cross-site evaluation of Early Head Start (Appendix B–1). The contract resulting from the competition for the national contractor was awarded to Mathematica Policy Research, Inc. This announcement is the second phase, in which cooperative agreements will be awarded on a competitive basis to the research partners of Early Head Start grantees to conduct local research studies.

E. Local Research Studies

1. Local Research Under This Announcement

a. Role of Local Researchers

Under the total Early Head Start Research and Evaluation effort local researchers will have two significant roles:

(1) Under this announcement they will conduct research relevant to the issues addressed in section E.2.b. below; and (2) under a subcontract to the national contractor they will be responsible for the collection of data for the cross-site study. The local researchers will form a consortium with the other local researchers and the national contractor to insure that all the parts of this study form a cohesive whole. A Technical Review Panel will by appointed by ACYF to review all the research and evaluation efforts as a whole and provide additional input. (See Appendix B–1 for a more detailed description.) In order to ensure the minimum of intrusion for the Early Head Start programs and to ensure a cohesive study, no applicants will be considered for an award under this announcement unless they agree to serve as subcontractors to the national contractor.

b. Concepts

Local research studies are intended to supplement, complement and enrich the research that will be conducted in the cross-site study. (See Appendix B–1 The Statement of Work for the Cross-site Evaluation and Appendix B–2 for a list of the tentative measures proposed for the cross-site evaluation.) With full access to the cross-site data collected in their respective sites, local investigators will have an opportunity to explore mediating events or the theoretical pathways that explain the results that are obtained. In addition, local research provides an opportunity to identify outcomes, that because of data constraints, are not explored in the cross-site study or are specific to an individual site. It also expands the possibilities for multiple measures of the same construct. Another advantage of local research is the enhanced opportunity for the use of observational, ethnographic, case study and other qualitative approaches that inform our understanding of how the program functions and explain the particular outcomes that are achieved.

Four outcome domains and specific outcomes under each were preliminarily identified by the Advisory Committee on Services for Families with Infants and Toddlers for Early Head Start. Although no one program is expected to be equally successful across all outcomes, these outcomes were identified by the Committee as particularly important for continued child, family and program development.

Child: Health and physical development; social competency; secure attachments with parents and other caregivers; language and cognitive development; resiliency factors; benefits to siblings.

Family: Attitudes towards parenting; parent-child interaction; reduction in teenage pregnancy and positive birth outcomes; having a medical home; parenting, employability and progress towards self-sufficiency; training and education; housing; physical and mental health; substance abuse; home environment; safety; involvement in the Early Head Start program; knowledge of child development; child guidance beliefs and practices.

Community: Collaboration among agencies serving children and families; seamlessness in referrals and actual service provision; quality of services for children and families; increase in services for infants and toddlers; safety.

Staff: Staff-parent/child relationships; staff continuity; staff professional development; staff compensation; staff physical and mental health; staff qualifications; and staffing patterns.

The major question for the local studies is ''What mediates and moderates positive child and family development within the context of the specific Early Head Start program and the local community?'' Each of the local research studies may focus on variables within one of the four outcome domains listed above. Positive child and family development are the ultimate objectives of Early Head Start, and thus, must have a prominent focus. However, well-designed local research studies which focus on particular staff or community outcomes will be considered if their relationship to the well-being of children and families can be theoretically linked through the existing literature and investigated within the time frame of the five-year cooperative agreement. Investigators focusing on the same outcome domain may find additional opportunities for cooperative research. Depending on the questions for the local research, investigators may choose or not choose to incorporate the control group, which will be part of the cross-site evaluation, in the local research study.

Within the framework of the Early Head Start program design, each site represents a unique model based upon the needs, values, resources and cultural climate of its community. Therefore, within the array of possible outcomes, it is highly likely that each program will place different emphases among them and work toward additional objectives that are unique to the particular local site. It is therefore important for the local research studies to identify site-specific outcomes which are not explored in the cross-site study and to study intra-site differential impacts and the reasons for them. The local studies will enhance the cross-site analysis by the provision of additional explanatory material for inter-site differences and by the identification of additional effects of Early Head Start programs. The first data collection point for the child's developmental status, attachment, mother/child interaction and other child and family measures for the cross-site analysis will be around the time of the child's first birthday. (See Appendix B–2 for a list of tentative measures.) If applicants see a need for earlier data collection for their local research studies, they may propose such data collection using the same or other measures as part of the local research data collection and analyses.

c. Study Parameters

—Design

The program sites whose local research partners receive awards under this announcement will be sites in which both local research and the national cross-site evaluation are conducted. However, if less than 12 proposals receive an acceptable rating, additional sites may be selected to participate only in the national cross-site evaluation to ensure 12 sites for the cross-site effort. The sites with local researchers will become the potential sites to continue on with the follow-up longitudinal studies. For the cross-site evaluation, all 12 sites, whether they are additionally local research sites or not, will be required to participate in random assignment of those families who have applied to the Early Head Start program and in which there is a pregnant woman or a child under one year of age. Such families will be randomly assigned to either the program or control group under a system designed by the national contractor with participation from the local researchers. The Early Head Start program must agree to fully cooperate with the random assignment as a condition for the research partner to receive an award under this announcement.

As noted above, applicants are not required to utilize the control group in their local research designs unless the proposed research questions require such a design. However, since the cost

of the data collection on a number of child and family measures for the program and control group will be covered by the national contractor, the applicant may wish to consider adding an additional sample, such as a random sample of the Early Head Start eligible population, or other types of scientifically sound samples. These samples could contribute valuable information to the Early Head Start research and evaluation effort and would considerably strengthen longitudinal follow-up efforts.

—*Sample*

In order to be considered for an Early Head Start research cooperative agreement, the applicants must be able to guarantee that their Early Head Start program partners have the ability to recruit a minimum of 150 families meeting the designated criteria for the random assignment pool. Specifically, the families to be recruited must include a child who is born between June 1, 1995 and June 30,1997 and must not have had a child enrolled in Head Start and PCC (Parent and Child Centers) within the last 12 months, or, in the case of CCDP (Comprehensive Child Development Program), the last five years. Neither may the families to be recruited have been enrolled in any other Federal, State or local program with similar comprehensive services for the last 12 months. Exceptions to these requirements will be considered on a site by site, or family basis after the research sites have been selected. (*Note:* Enrollment in other programs is defined as participating for a minimum of three months.) The families in the random assignment pool, as the term implies, will be randomly assigned to either the program or the control group. (A minimum of 75 in each.) Therefore the Early Head Start program must have the ability to enroll a minimum of 75 families who meet the research requirements during the research recruitment period of March 1, 1996 and June 1, 1998 (27 months). The families must be enrolled some time during the mother's pregnancy or before the child is one year of age. The Early Head Start programs will be continuously enrolling families during the course of their operation. Therefore, the research sample will be an additive sample rather than a cohort sample. However, no family will be recruited into the research sample if the child is born before June 1, 1995 or after June 30, 1997. If a research sample family leaves the program during the 27 month research recruitment period, replacement of families can only be made within the parameters stated above.

Although there is a 27 month recruitment and enrollment period for the research sample, sites may wish to use all or part of that period to recruit the requisite sample in accordance with what works best for their program. (For example, some programs may not be ready to recruit or enroll families by March and other programs may wish to enroll the majority of their research sample families as early as possible.) However, to ensure that the site will reach the requisite sample size, the earliest possible enrollment of the full research sample is encouraged. In addition, any site which anticipates that it can secure a sample of over 75 program families and 75 control families over the recruitment period that meet the research criteria, may enroll other families, in excess of the 75 families, which do not meet the research criteria. These additional families will not be included in the research sample. Programs are encouraged, however, to achieve the largest research sample possible, up to 125 families each for the program and comparison group. Larger samples would be a major advantage for any future longitudinal research.

2. Considerations for the Longitudinal Studies

Longitudinal studies beyond the five years of the Early Head Start research and evaluation effort are outside the scope of the present announcement. However, it is ACYF's intent to engage in such longitudinal studies, given availability of future funds and the feasibility of such efforts in five years time. It will be necessary to lay the groundwork for such studies from the beginning of the Early Head Start research and evaluation effort in order to ensure that early data necessary for the longer effort is collected.

Although the longitudinal studies are related to and embedded in the Early Head Start Research and Evaluation Study, they have a number of sufficiently unique considerations to warrant a separate discussion.

a. Eligibility—It is anticipated that universities and non-profit organizations which receive Early Head Start research grants under this announcement will be potential candidates for follow-on longitudinal research grants. The exact number of grants that will be awarded for the follow-on longitudinal studies will depend on the availability of funds and other criteria such as the size of the sample left at the site, the quality of the research conducted to date, and the level of program implementation.

b. Studies—The longitudinal follow-ons can be conceptualized as two studies which serve different purposes.

Longitudinal Studies of Early Head Start

Longitudinal studies of Early Head Start will address the contributions of earlier intervention to the child and family's later development.

Longitudinal Studies of Head Start

Since Early Head Start programs are required to establish formal linkages with local Head Start programs in order to provide for the continuity of services for children and families, the Early Head Start research sites provide a unique opportunity for the conduct of longitudinal studies of Head Start. Presently, there are no existing studies of Head Start where the early service patterns and experiences of children and families either enrolling in Head Start or serving as comparisons or controls are known to the extent that they will be known in Early Head Start. That data will be available, at least for part of the Head Start population, in the Early Head Start research sites by the time Longitudinal Studies of Head Start are underway. In addition, the studies can make progress in addressing the question of whom among the Head Start population Head Start serves.

Design and sampling issues for both studies will need careful consideration.

Part II Program Information and Requirements

A. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

B. Eligible Applicants

Universities and other non-profit institutions which have been designated by the Early Head Start grantees listed in Appendix A as their research partner for the purposes of the impact evaluation.

A research partner may be the institution identified in the Early Head Start grantee's proposal or a new or additional research partner that the Early Head Start grantee has selected for the purposes of conducting the research under this announcement.

Note: Only one university or non-profit institution per each Early Head Start grantee may apply. An applicant must be certified by the Early Head Start grantee as the designated research partner. In addition, if a university or non-profit institution applies on behalf of one or more investigators as the research partner of an Early Head Start grantee, the university or non-profit institution may only apply as the partner of any other Early Head Start grantee if applying in behalf of different investigators.

C. Additional Special Requirements

1. In order to be accepted for review, applications must contain a letter from the Program Director of the Early Head Start program certifying that the applicant is the designated research partner of that program.

2. The proposed local research study must not overlay additional interventions for children, families or staff which are designed by the local research partner for research purposes beyond the existing Early Head Start intervention designed by the program for that site. (For example, the local research may not investigate research hypotheses that would require the assignment of families enrolled in the program to treatment and control groups.

3. Applicants must agree to enter a subcontractual or other arrangement with the national contractor for the purposes of collecting the data for the cross-site study and for site-specific analysis of the cross-site data. *The subcontract with the national contractor will be in addition to the funds received under this announcement* and will primarily consist of providing input to the cross-site design; supervision of cross-site data collection at the local site; ensuring quality control; and site specific data analyses of the cross-site data.

4. Applicants must agree to work in a consortium with the other local researchers and the national contractor in order to produce an integrated set of studies.

5. Applicants must present their proposal to and receive approval from the Early Head Start program policy councils (or other appropriate policy group) prior to submission.

6. Successful applicants must form a local advisory committee consisting of staff and parents of the Early Head Start program, other community agencies and researchers with expertise in areas relevant to the local research.

7. Applicants' Early Head Start program partner must be able to recruit and enroll the required number and types of families as described in Part I, section E–1–c above.

8. The principal investigator and at least one other key research team member must attend a minimum of one two-day meeting of the local researchers in Washington, DC in addition to the two-day meetings with the national contractor and the Technical Review Panel. A third day will be provided at the national contractor meetings in order for the local researchers to meet on the issues and coordination of the local research projects. Successful applicants must also plan to attend Head Start's Third National Research Conference in Washington, DC June 20–23, 1996. The applicant will be responsible for all travel expenses related to these meetings. These travel expenses may be included in the applicant's budget.

9. Since the research will be conducted at the Early Head Start program site, applicants must use their off-campus research rates for indirect costs. If the applicant is a non-profit organization, the applicant is limited to an indirect cost rate of no more than 15 percent.

10. In submitting an application, the applicant understands that the data resulting from the local research is the property of the ACYF. Therefore, a copy of the raw data set with accompanying documentation must be submitted to the Government in a manner and frequency that will be specified in consultation with the consortium during the first year of the cooperative agreement. It is not the intention of the Government to inhibit or restrict presentations and publications of the results of the local research by the grantee beyond any publishing restrictions that will be agreed upon by the Consortium and ACYF.

12. The applicant must provide all required assurances and certifications including a Protection of Human Subject Assurance as specified in the policy described on the HHS Form 596 (attached in Appendix A).

D. Cooperative Agreements

ACYF is utilizing a cooperative agreement mechanism to support local research as a means of ensuring close cooperation and coordination between and among local researchers, Early Head Start programs and the National contractor. Together, these three entities form the research team. Although the three entities have equal status on the research team, each has an area of primary responsibility: (1) The Early Head Start program has primary responsibility for the design and implementation of program services and activities; (2) the National contractor has primary responsibility for the cross-site study; and (3) the local researcher has primary responsibility for the local research study. In applying for a cooperative agreement under this announcement, the applicant pledges close cooperation and coordination with the other research partners.

1. Responsibilities of the Grantee

The Grantee

- Conducts a local research study which enhances, enriches or expands the cross-site data and focuses on one of the four Early Head Start outcome domains.
- Designs and conducts the preliminary research for the Longitudinal Study of Early Head Start and the Longitudinal Study of Head Start.
- Participates as a member of the consortium of local researchers and the national contractor.
- Conducts local analyses and interpretations of the cross-site data.
- Agrees to enter a subcontract or other financial arrangement with the national contractor for purposes of collecting data for the cross-site study.
- Agrees to work as a member of the research team consisting of the Early Head Start program, the national contractor and the local researcher.

2. Responsibilities of the Federal Staff

Federal Staff

- Provide guidance in the development of the final study design.
- Participate as members of the national consortium or any policy, steering or other working groups established at the consortium level to facilitate accomplishment of the project goals.
- Facilitate communication among consortium members, Early Head Start grantees and the Federal staff.
- Provide logistical support to facilitate meetings of the local researchers.

E. Project Duration and Federal Share

1. Project Duration

Awards, on a competitive basis, are for a project period of five years. Continuation applications beyond the first 12 month budget period, but within the five-year project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress and a determination that continued funding is in the best interests of the Government.

2. Federal Share of Project Costs

Federal share of project costs shall not exceed $150,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed $150,000 for the second and third 12-month budget period. The Federal share of the fourth and fifth budget period shall be negotiated prior to the fourth and/or fifth year of funding.

3. Matching Requirements

There is no matching requirement; however, applicants must apply their indirect cost rate for off-campus

research or no more than 15 percent for non-profit research institutions.

4. Anticipated Number of Projects to be Funded

It is anticipated that 12 projects will be funded.

Part III Evaluation Criteria

The criteria presented below will be applied by the reviewers to the applicants submission in order to select the successful applicants. ACYF has prepared a document entitled ''Helpful Tips for Preparing a Successful Research Grant Application.'' This document can be obtained from the Technical Assistance Team at (1–800–351–2293).

A. Criteria

1. Objectives and Significance 25 points

- The extent to which the objectives of the local research are important and relevant to the overall Early Head Start Research and Evaluation effort.
- The extent to which the local research study makes a significant contribution to the overall study and to the broader field.
- The extent to which the related literature review supports the study objectives, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.

2. Approach 40 points

- The extent to which the planned approach reflects sufficient input from and partnership with the Early Head Start program.
- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which the planned approach allows for the identification and differentiation of site-specific outcomes.
- The extent to which the planned research includes quantitative and qualitative methods.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the-art.
- The adequacy of the anticipated research sample size for the requirements of the cross-site study and for the local research study.
- The extent to which the site in which the research will be conducted has a recruitment and enrollment strategy that meets the requirements set forth in the design section of the announcement.
- The extent to which planned site activities are sufficient preparation for potential longitudinal studies.
- The extent to which the applicant's proposals for resolution of the data collection issues as a result of the two types of data collection are realistic and feasible.
- The applicant has provided all required assurances.
- The reasonableness of the budget for the work proposed.

3. Staffing 35 points

- The extent to which the principal investigator and other key research staff possess the research expertise necessary to conduct the local research including infant/toddler and family development; the application of advanced statistical analysis for quantitative and qualitative data; and the use of quantitative and qualitative methods as demonstrated by the technical portions of the applications and the information contained in their vitae.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with program staff and parents.
- The extent to which the proposed staff reflect a multi-disciplinary team.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.
- The extent to which the staffing is sufficient for conducting the local research and the data collection and site analysis of the cross-site evaluation.

B. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part III of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACYF may also solicit comments from ACF Regional Office staff and other Federal agencies. These comments, along with those of the expert reviewers, will be considered in making funding decisions. In selecting successful applicants, consideration may be given to achieving an equitable distribution among geographic regions of the country and other considerations necessary to achieve, to the greatest extent possible, a research and evaluation sample that is representative of all Early Head Start programs.

Part IV Instructions for Submitting Applications

A. Availability of Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement in Appendix C. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs'' (approved by the Office of Management and Budget under control number 0348–0340). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Pub.L. 103–227, Part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the Federal Register notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

All applicants for research projects must provide a Protection of Human

Subjects Assurance as specified in the policy described on the HHS Form 596 (approved by the Office of Management and Budget under control number 0925–0137) in Appendix C. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301)-496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673.

B. Proposal Limits

The proposal should be double-spaced and single-sided on 8½″×11″ plain white paper, with 1″ margins on all sides. Use only a standard size font such as 10 or 12 pitch throughout the announcement. All pages of the narrative (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification as page number one. Applicants should not submit reproductions of larger sized paper that is reduced to meet the size requirement. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required.

The length of the narrative section, including appendices, should not exceed 60 pages. Anything over 60 pages will be removed and not considered by the reviewers. Applicants are encouraged to submit curriculum vita using ''Biographical Sketch'' forms used by some government agencies.

Please note that applicants that do not comply with the requirements in the section on ''Eligible Applicants'' will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.

—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.

—A complete application consists of the following items in this order:

(1) Application for Federal Assistance (SF 424, REV. 4–88);

(2) Budget information—Non-Construction Programs (SF424A&B REV.4–88);

(3) Budget Justification, including subcontract agency budgets;

(4) Letter from the Director of the Early Head Start program certifying that the applicant is the designated research partner of the respective program;

(5) Application Narrative and Appendices (not to exceed 60 pages);

(6) Proof of non-profit status. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit organization can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of incorporation of the State in which the corporation or association is domiciled.

(7) Assurances Non-Construction Programs;

(8) Certification Regarding Lobbying;

(9) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–88;

(10) Certification of Protection of Human Subjects.

D. Due Date for the Receipt of Applications

1. *Deadline:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6c-462, Washington, DC 20447, Attention: Early Head Start Local Research, Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 5 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal Holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF cannot accomodate transmission of applications by fax. Therefore, applications faxed to ACF will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., widespread disruption of the mails or when it is anticipated that many of the applications will caome from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved under OMB Control Numbers 0348–0043, 0348–0044, 0348–0046 and 0925–0137.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

* All States and Territories except Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have

established Single Points of Contact (SPOCs). Applicants from these twenty-one jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447. A list of the Single Points of Contact for each State and Territory is included as an Appendix to this announcement.

Dated: December 14, 1995.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

Appendix A—List of Early Head Start Grantees

Alaska

Rural CAP Child Development, Karen King, P.O. Box 200908, Anchorage, AK 99520–0908, Telephone: (907) 279–2511, Fax: (907) 279–6343, E-mail: None

Arizona

Southwest Human Development Ginger Ward, 202 E. Earll, Suite 140, Phoenix, AZ 85012, Telephone: (602) 266–5976, Fax: (602) 274–8952, E-mail: SWHD@PRIMENET.COM

Arkansas

Child Development Inc., JoAnn Williams, P.O. Box 2110, Russellville, AR 72811, Telephone: (501) 968–6493, Fax: (501) 968–7825, E-mail: ARHYNE@CSWNET.COM

California

The Children First, Manuel Castellanos Jr., Venice Family Clinic, 604 Rose Avenue, Venice, CA 90291, Telephone: (310) 314–7320 x670, Fax: (310) 314–7641, E-mail: None

Northcoast Children's Services (NCS), Siddiq Kilkenny, P.O. Box 1165, Arcata, CA 95521, Telephone: (707) 822–7206, Fax: (707) 822–7962, E-mail: None

Sacramento Employment Training Agency (SETA), Head Start, Catherine Goins, 3750 Rosin Court, Suite 100, Sacramento, CA 95834, Telephone: (916) 263–5342, Fax: (916) 263–3779, E-mail: None

Colorado

Clayton Mile High Family Futures Project, Mitzi Kennedy/Adele Phelan, 3801 Martin Luther King Jr. Blvd., Denver, CO 80205, Telephone: (303) 355–2008, Fax: (303) 331–0248, E-mail: None

Community Partnership for Child Development, Terry Schwartz, 2132 E. Bijou, Colorado Springs, CO 80909, Telephone: (719) 635–1536 x217, Fax: (719) 634–8086, E-mail: Later date

Family Star, Lereen Castellano/Alicia Sheridan, 1331 E. 33rd Avenue, Denver, CO 80205, Telephone: (303) 295–7711, Fax: (303) 295–0958, E-mail: None

District of Columbia

Edward C. Mazique Parent Child Center, Cynthia Faust, 1719–13th Street, NW, Washington, DC 20009, Telephone: (202) 462–3375, Fax: (202) 939–8696, E-mail: None

United Cerebral Palsy of Washington and Northern VA (UCP), Stanley L. Pryor, 3135 Eighth Street, NE, Washington, DC 20017, Telephone: (202) 269–1500, Fax: (202) 526–0519, E-mail: STAN177640@AOL

Florida

Alachua County School District, Donna Omer, School Board of Alachua County, 620 East University Avenue, Gainesville, FL 32601, Telephone: (904) 955–7605, Fax: (904) 955–6700, E-mail: None

Metro Dade Community Action Agency, Regina M. Grace, 395 NW. 1st Street, Miami, FL 33128, Telephone: (305) 347–4640, Fax: (305) 372–8745, E-mail: None

Georgia

Berry Chattooga Early Development Center, Nancy Daniel, 702 South Congress Street, Summerville, GA 30747, Telephone: (706) 857–1651, Fax: (706) 857–6610, E-mail: None

Clark Atlanta University Head Start, Linda Hassan, 350 Autumn Lane, SW., Atlanta, GA 30314, Telephone: (404) 696–9585 x104, Fax: (404) 696–9524, E-mail: None

Georgia Early Head Start Network, Donna Overcash, Save the Children Child Care Support Ctr., 1447 Peachtree Street, NE, Suite 700, Atlanta, GA 30309, Telephone: (404) 885–1578, Fax: (404) 874–7427, E-mail: ATLANTA@SAVECHILDREN.ORG

Illinois

City of Chicago, Dept. of Human Services, Frank McGehee, 510 North Peshtigo Court, 8th Floor, Chicago, IL 60611, Telephone: (312) 744–0251, Fax: (312) 744–7530, E-mail: None

The Ounce of Prevention Fund, Portia Kennel, 188 W. Randolph Street, #2200, Chicago, IL 60601, Telephone: (312) 853–6080, Fax: (312) 853–3337, E-mail: None

Wabash Area Development, Inc., Donna Emmons, 100 N. Latham, Enfield, IL 62835, Telephone: (618) 963–2387, Fax: (618) 963–2525, E-mail: None

Indiana

Healthy Beginnings, Hamilton Center, Anita Lascelles, 620 8th Avenue, Terre Haute, IN 47804, Telephone: (812) 231–8335, Fax: (812) 232–8228, E-mail: None

Iowa

Mid-Iowa Community Action, Susan Fessler, 1001 South 18th Street, Marshalltown, IA 50158, Telephone: (515) 752–7162, Fax: (515) 752–9724, E-mail: None

Upper Des Moines Opportunity, Inc., Mary Jo Madvig, P.O. 519, 101 Robbins Avenue, Graettinger, IA 51342–0519, Telephone: (712) 859–3885, Fax: (712) 859–3892, E-mail: None

Kansas

Head Start Parent & Child Center, Glenda Wilcox, 931 South St. Francis, Wichita, KS 67211, Telephone: (316) 267–8314, Fax: (316) 267–7185, E-mail: None

Project EAGLE of the University of Kansas Medical Center, Martha Staker, Gateway Centre Tower II, Suite 1001, 4th & State Avenue, Kansas City, KS 66101, Telephone: (913) 281–2648, Fax: (913) 281–2680, E-mail: None

Salina USD #305, Korey Powell-Hensley, 700 Jupiter, Salina, KS 67401, Telephone: (913) 826–4868, Fax: (913) 826–4867, E-mail: None

Kentucky

Breckinridge-Grayson Programs, Inc., Cleo Lowery, P.O. Box 63, Leitchfield, KY 42755, Telephone: (502) 259–4054, Fax: (502) 259–4055 E-mail: None

Murray Head Start, Judy Whitten, 208 S. 13th Street, Murray, KY 42074, Telephone: (502) 753–6031, Fax: (502) 759–4906, E-mail: None

Maryland

The Family Services Agency, Inc., Mary C. Jackson, 640 E. Diamond Avenue, Suite A, Gaithersburg, MD 20877, Telephone: (301) 840–2000 x205, Fax: (301) 840–9621, E-mail: None

Friends of the Family, Inc., Linda R. Gaither, 1001 Eastern Avenue—2nd Floor, Baltimore, MD 21202–4364, Telephone: (410) 659–7701, Fax: (410) 783–0814, E-mail: None

Michigan

Region II Community Action Agency, Martha York, Center for Family, 817 W. High Street, Jackson, MI 49203, Telephone: (517) 784–2895, Fax: (517) 788–5998; 784–9226, E-mail: None

Mississippi

Friends of Children of Mississippi, Inc., Cathy Gaston/Marvin Hogan, 4880 McWillie Drive, Jackson, MS 39206, Telephone: (601) 362–1541, Fax: (601) 362–1613, E-mail: None

Missouri

Human Development Corporation, Lois A. Harris, 929 North Spring Avenue, St. Louis, MO 63108, Telephone: (314) 652–5100 x285, Fax: (314) 652–0813, E-mail: None

KCMC Child Development Corporation, Shirley Stubbs-Gillette, 2104 East 18th, Kansas City, MO 64127, Telephone: (816) 474–3751 x603, Fax: (816) 474–1818, E-mail: None

Nebraska

Central Nebraska Community Services, Suzan Obermiller, P.O. Box 509, Loup City, NE 68853, Telephone: (308) 745–0780, Fax: (308) 745–0824, E-mail: None

New Hampshire

Community Action Program Belknap-Merrimack Counties, Inc., Rebecca Johnson, P.O. Box 1016, Concord, NH 03302–1016, Telephone: (603) 225–3295, Fax: (603) 228–1898, E-mail: None

New Jersey

Babyland Nursery, Inc., Mary Smith/Martin Schneider, 755 South Orange Avenue Newark, NJ 07106, Telephone: (201) 399–3400, Fax: (201) 399–2076, E-mail: None

NORWESCAP Head Start Administration, Linda Kane, 481 Memorial Parkway, Phillipsburg, NJ 08865, Telephone: (908) 454–8830, Fax: (908) 859–0729, E-mail: None

New York

The Astor Home for Children, Elizabeth Colkin, 50 Delafield Street, Poughkeepsie, NY 12601, Telephone: (914) 452–4167, Fax: (914) 452–0718, E-mail: None

Chautauqua Opportunities, Inc. Head Start, Grace Knaak, Municipal Bldg—5th Floor, 200 E. Third Street, Jamestown, NY 14701, Telephone: (716) 661–9430 Fax: (716) 661–9436 E-mail: GKNAAK@EPI

Educational Alliance, Marion Lazar, 197 East Broadway, New York, NY 10002, Telephone: (212) 475–6200 x6200, Fax: (212) 982–0932, E-mail: None

Parent & Child Center, Coleen A. Meehan, 175 Hudson Street, Syracuse, NY 13204, Telephone: (315) 470–3324, Fax: (315) 474–6863, E-mail: None

Project Chance Early Head Start, Bart O'Conner, 136 Lawrence Street, Brooklyn, NY 11201, Telephone: (718) 330–0845, Fax: (718) 330–0846, E-mail: None

North Carolina

Asheville City Schools Preschool and Family Literacy Center, Robbie H. Angell 441 Haywood Road, Asheville, NC 28806, Telephone: (704) 255–5423, Fax: (704) 251–4913, E-mail: None

North Dakota

Little Hoop Community College, Beverly Graywater, P.O. Box 89, Fort Totten, ND 58335, Telephone: (701) 766–4070, Fax: (701) 766–1357, E-mail: None

Ohio

Child Focus—Clermont County Head Start, Terrie Hare, 1088 Hospital Drive, Suite A, Batavia, OH 45103, Telephone: (513) 732–5432, Fax: (513) 732–5440, E-mail: None

Cincinnati-Hamilton County Community, Action Agency, Verline Dotson, 2904 Woodburn Avenue, Cincinnati, OH 45206, Telephone: (513) 569–1840, Fax: (513) 569–1251, E-mail: None

Oregon

Southern Oregon Child and Family Council, Inc., Blair Johnson, 505 Oak Street, P.O. Box 3819, Central Point, OR 97502, Telephone: (503) 664–4730; 857–9255, Fax: (503) 664–6620, E-mail: Pending

Pennsylvania

Family Foundations, Laurie Mulvey/Heather Fisher, 1811 Boulevard of the Allies, Pittsburgh, PA 15219, Telephone: (412) 281–3511 Fax: (412) 281–3254, E-mail: MULVEY@VMS.CIS.PITT.EDU

Philadelphia Parent Child Center, Inc., Jewel Morrissette-Ndulula, 2515 Germantown Avenue, Philadelphia, PA 19133, Telephone: (215) 229–1800, Fax: (215) 229–5860, E-mail: None

Puerto Rico

Aspira Inc. of Puerto Rico, Edme Ruiz Torres, Box 29132, 65th Infantry Station, Rio Piedras, PR 00929, Telephone: (809) 768–1968, Fax: (809) 257–2725, E-mail: None

New York Foundling Hospital, Zaida Fernandez, P.O. Box 191274, San Juan, PR 00919–1274, Telephone: (809) 753–9082; 753–1321; 753–9080, Fax: (809) 763–9209, E-mail: None

South Carolina

District #17 Schools, Anita E. Kieslich, P.O. Box 1180, Sumter, SC 29150, Telephone: (803) 778–6433, Fax: (803) 469–6006, E-mail: None

SHARE Greenville-Pickens Head Start, Rubye H. Jones, 652 Rutherford Road, Greenville, SC 29609, Telephone: (803) 233–4128, Fax: (803) 233–4019, E-mail: None

Tennessee

Chattanooga Human Services, Head Start/PCC, Donna Ginn, 2302 Ocoee Street, Chattanooga, TN 37406, Telephone: (423) 493–9750, Fax: (423) 493–9754, E-mail: None

Tennessee CAREs, Barbara Nye, Tennessee State University, 330 Tenth Avenue N., Box 141, Nashville, TN 37203, Telephone: (615) 963–7231, Fax: (615) 963–7214 E-mail: None

Texas

Avance San Antonio Inc., Rebecca C. Cervantez, 2300 W. Commerce, Suite 304, San Antonio, TX 78207, Telephone: (210) 220–1788, Fax: (210) 220–3795, E-mail: None

Head Start of Greater Dallas, Inc., Rob Massonneau, 1349 Empire Central, Suite 900, Dallas, TX 75247, Telephone: (214) 634–8704 x484, Fax: (214) 631–5417, E-mail: None

Parent/Child Incorporated, Blanche A. Russ-Glover, 1000 West Harriman Place, San Antonio, TX 78207–7900, Telephone: (210) 226–6232, Fax: (210) 228–0071, E-mail: None

Texas Migrant Council, Inc., John E. Gonzales, 5102 N. Bartlett Avenue, P.O. Box 2579, Laredo, TX 78041, Telephone: (210) 722–5174, Fax: (210) 726–1301, E-mail: None

Utah

Bear River Head Start, Glenna Markey, 75 South 400 West, Logan, UT 84321, Telephone: (801) 753–0951, Fax: (801) 753–1101, E-mail: None

Vermont

CVCAC Head Start, Marianne Miller, PO. Box 747, 36 Barre-Montepelier Road, Barre, VT 05641, Telephone: (802) 479–1053, Fax: (802) 479–5353, E-mail: None

Early Education Services, Judith Jerald, 218 Canal Street, Brattleboro, VT 05301, Telephone: (802) 254–3742, Fax: (802) 254–3750, E-mail: None

Washington

Families First, Peg Mazen, P.O. Box 1997, Auburn, WA 98071, Telephone: (206) 850–2582, Fax: (206) 850–0220, E-mail: None

Port Gamble S'Klallam Tribe, Jaclyn Haight, 31912 Little Boston Road, NE, Kingston, WA 98346, Telephone: (360) 297–6258, Fax: (360) 297–7097, E-mail: None

Spokane County Head Start/ECEAP, Washington State Community College #17, Patt Earley, 4410 North Market, Spokane, WA 99202, Telephone: (509) 533–8500, Fax: (509) 533–8599, E-mail: None

Washington State Migrant Council, Carlos Trevino, 312 Division, Grandview, WA 98930, Telephone: (509) 882–5800, Fax: (509) 882–1605,E-mail: None

West Virginia

Monongalia County Head Start, Marie Alsop/Cheryl Wienke,1433 Dorsey Avenue,Morgantown, WV 26505, Telephone: (304) 291–9330, Fax: (304) 291–9324,E-mail: CWIENKE@ACCESS.K12.WV.US

Wisconsin

Renewal Unlimited, Inc. - Head Start of Central Wisconsin, Suzanne Hoppe, N6510 Hwy. 51 South, Portage, WI 53901–9603, Telephone: (608) 742–5329, Fax: (608) 742–5481, E-mail: None

Appendix B–1—Statement of Work for the Early Head Start Evaluation Contract

Request for Contract—The Early Head Start Research and Evaluation Project

I. Background

The Head Start Act, as amended May, 1994 (42 usc 9801 et seg.) established a new program for families with infants and toddlers within the framework of Head Start. Section 645A of the Head Start Act, Programs for Families with Infants and Toddlers states that (a) ''The Secretary shall make grants in accordance with the provisions of this section for—(1) programs providing family-centered services for low-income families with very young children designed to promote the development of the children and to enable their parents to fulfill their roles as parents and to move toward self-sufficiency.''

The Department of Health and Human Services calls this new program Early Head Start. In developing Early Head Start, the Administration on Children, Youth and Families (ACYF)/ Administration for Children and Families (ACF) engaged in an intensive consultation process to learn from parents, practitioners, researchers and academics about the state of the art of quality programming for pregnant women and families with infants and toddlers. As part of the consultation process, the Secretary of Health and Human Services formed the Advisory Committee on Services for Families with Infants and Toddlers. That committee issued a report in September, 1994, that provides the blueprint for the design of the Early Head Start program. The ACF issued a Program Announcement of in March, 1995, and is expected to begin funding programs by September 30, 1995.

The award of this contract will be followed by a competition among Early Head Start program research partners to establish a limited number of local research sites. The first part of this section describes the overall Early Head Start research and evaluation design, including activities to be completed both by the national Contractor and local researchers; the second part details the scope of work for the national evaluation contract.

The Need for Early Head Start Research and Evaluation

It will be important for the proposed evaluation, mandated by the Head Start legislation, to build upon the substantial body of knowledge that exists and to expand upon findings from related studies. The CCDP evaluation will present results of a rigorous evaluation of an intensive, comprehensive, multi-service intervention program for families of infants and toddlers, implemented across a number of communities nationwide. Additional studies currently underway, such as the National Institute of Child Health and Human Development (NICHD) Child Care study and the Healthy Start evaluation will provide findings and methods that will contribute to the Early Head Start research and evaluation. However, Early Head Start, while related programmatically to many predecessors, combines and/or extends elements in previous programs to present a unique program for evaluation. The Early Head Start program is individualized; intense; comprehensive; child-service oriented; two-generational; locally-adapted, utilizing parents in decision making, and designed to have four levels of effect, on infants and toddlers, families, communities and staff.

II. The Early Head Start Research and Evaluation Plan

The research and evaluation plan highlights the first Early Head Start programs as prototypes of the Early Head Start concept. The plan features (1) a dynamic formative evaluation process, designed to be used in subsequent Early Head Start programs, that will serve continuous program improvement; (2) an impact evaluation that will enable determination of whether and under what conditions program prototypes were effective, and (3) an integrated research base for generating further hypotheses around the broad array of potential program issues and possibilities.

This research and evaluation plan features an integrated local and national evaluation design with nested levels of program involvement. Level I, continuous program improvement, is for all sites; Level II, cross-site impact evaluation and site-specific, related research will occur at selected sites. The impact evaluation is designed to determine the attribution of outcomes to the intervention. The research portion of the study will examine the causally modeled and directional relationships among specific child, family, program and community variables and outcomes.

A. Purposes

Elaboration of the purposes and the proposed approach proposed for each follow:

1. *Continuous Program Improvement.* The Advisory Committee on Services for Families with Infants and Toddlers proposed a new role for program

evaluation that would be useful to programs seeking to develop to a standard of high quality. A systematic feedback procedure utilizing formative evaluation techniques will be developed as a tool for dynamic program improvement, and as a prototype formative evaluation tool in the event of Early Head Start program expansion. Thus, the first purpose of this effort is to support a process for generating and utilizing program qualitative and quantitative data, including management information system data, in continuous program improvement. This feature will be addressed programmatically at all Early Head Start sites, in most cases with the aid of local research partners. The national Contractor will provide support for this evaluation function through development of formative evaluation formats for continuous improvement.

2. *Impact.* The Head Start Act and the Advisory Committee on Services for Families with Infants and Toddlers called for a study of program effectiveness. A cross-site impact study will be conducted by a national Contractor in a sample of selected sites. Site-specific analyses, conducted by local research partners, will identify local program impacts and elucidate the processes, pathways, and conditions under which the program had an effect. Cross-site and local studies will complement each other.

3. *Additional Research.* The Advisory Committee on Services for Families with Infants and Toddlers sought to stimulate the research community to address the many questions we have about how best to enhance the development of low-income infants and toddlers and their families under conditions of changing policies and programmatic variations. The potential for research under the broad umbrella of the Early Head Start purposes and in connection with impact and continuous programmatic improvement is great. The Early Head Start research and evaluation plan thus seeks to bring forth a new generation of solid research to enhance current understandings of optimal developmental circumstances for low-income infants/toddlers, their families and communities. Further, questions related to the program are expected to be fitted to theoretical frameworks to encompass and extend beyond the realm of impact evaluation. This research will be conducted primarily at selected research sites by local research partners

4. *Longitudinal Study.* Early Head Start presents a unique opportunity to conduct longitudinal research on Early Head Start, Head Start and beyond. Thus, the research and evaluation plan emphasizes the underlying longitudinal nature of the study of Early Head Start, and is the beginning of a longitudinal study of Early Head Start children and families.

B. Studies

The specific studies this project is expected to generate and the approximate sequence are as follows:

Studies to Describe Early Head Start Programs
Studies of Program Quality and Program Implementation
Studies of Program Impact
Studies of Program Variation
Studies Directed Towards Specific Policy Concerns
Studies of Program Impact in a Longitudinal Context
Studies by Local Researchers on Multiple Topics Pertaining to Early Head Start

C. Questions

A series of preliminary research questions have been developed to guide the formation of the research and evaluation design.

What are the *characteristics* of Early Head Start children and families, communities and staff and programs? What are the origins of Early Head Start programs? Who attends Early Head Start? How representative are the children and families who attend Early Head Start of the Early Head Start-eligible population within their communities? What types of communities are Early Head Start programs in? What types of services are delivered? What are the characteristics and emphases of local programs?

What are the pathways to *quality* in Early Head Start Programs? How do programs achieve full implementation? How is quality in Early Head Start program components defined? What is the quality of Early Head Start programs and program components? How long does it take to attain quality in Early Head Start programs? What outcomes are associated with various aspects of program quality?

Is Early Head Start effective in supporting the development of children, family, communities and staff? Which Early Head Start practices maximize benefits for children, families, communities and staff under what kinds of circumstances? What are the collective and differentiated impacts of Early Head Start? How does Early Head Start support development under varying conditions of risk? Are there diffuse effects of the program? Are there effects that can be attributed to targeted programs or services in Early Head Start? Are there mediators between services and outcomes that can be identified? What are the benefits of Early Head Start that translate into dollars saved?

What child, family, program and community variables contribute to the optimal development of low-income *children* in Early Head Start programs? Which Early Head Start practices maximize benefits for which *children* under what conditions? What factors contribute to resiliency of children in Early Head Start? What factors associated with Early Head Start contribute to optimizing health, social or cognitive development? Is targeting specific services for children effective? Are there strategies that are particularly effective with high-risk infants? What are the programs that are achieving positive outcomes for children doing? What are the barriers to attaining positive outcomes for children in Early Head Start programs?

What Early Head Start factors, community, family and personal factors contribute to *parent and family-level outcomes?* What factors, under what conditions, enhance parenting skills including parent/child interactions for which parents? What factors contribute to the parents' ability to make progress toward self-sufficiency? What factors contribute to the health and well-being of Early Head Start parents? What factors contribute to male involvement in the lives of Early Head Start children? What factors contribute to parental involvement for which parents in the Early Head Start program? What family outcomes are associated with positive child outcomes, and what are the pathways from parent to child development in the context of Early Head Start? Are there targeted strategies that specifically benefit some parents?

What changes in *communities* occur as a result of the Early Head Start program? What were the baseline characteristics of Early Head Start communities at the time programs began? What Early Head Start practices maximize benefits for which communities under what types of circumstances? What new collaborations were established? What community factors supplemented or supplanted the Early Head Start success with families and children? How strong was the community effect on Early Head Start programs? Did Early Head Start have a positive effect on child care services, or on any other services, throughout the community?

What is the role of *staffing* in Early Head Start programs? What is the role of staffing and staff development in creating effective program processes and

bringing about positive outcomes for children, families and communities? What enables staff to create the environments and relationships that promote infant/toddler and family development? What factors contribute to staff continuity with children and families? What role does Early Head Start professional development play in staff effectiveness?

What are the effects of *program variations?* What are the identifiable program variations in Early Head Start? What can be said about the types of variations and their effects?

What can we learn through Early Head Start to maximize collective effectiveness of *policies* and programs that promote the development of low-income children and their families? What is the role of Early Head Start for promoting parents' pathways to work? How do comprehensive Early Head Start services add to the effects of child care on children and families? What are the barriers and pathways to the successful integration of children with special needs into Early Head Start? These questions will be addressed in a report directed towards specific policy concerns by the national Contractor and the Contractor may be asked to provide additional special reports around related issues.

How do Early Head Start and Head Start families and comparable groups who do not participate in Early Head Start develop over *time*? What are the developmental trajectories of Early Head Start and comparison group children and families under varying experiences and varying degrees of risk?

D. Design

The Early Head Start program is designed as a prototype of an on-going service program as opposed to an intervention designed by an investigator for theory building or hypothesis testing. Thus, while Early Head Start was planned to accommodate evaluation, the evaluation design primarily has been fitted to the program. This programmatic emphasis has shaped numerous research and evaluation design elements as well as the overall two-tier nature of the research and evaluation plan. All Early Head Start programs will participate in either one or both levels of the research and evaluation.

Level I: All program sites will participate in formative evaluation activities which are designed to assist programs in continuous improvement towards program quality. The Level I evaluation activities also will be instituted for all subsequent Early Head Start programs under conditions of program expansion. The following are features of Level I.

- Sites will use data from a uniform management information system, together with local qualitative and quantitative data in a formative evaluation process.
- In most cases, sites will utilize a local research partner for this aspect of the evaluation.
- The national Contractor will provide standard formats for the use of these data during the first year of the project, and will make the characteristics of this format available to sites added in subsequent years through collaboration with the Training and Technical Assistance Contractor.

Level II: A sample of sites (12) will participate in Level II activities focusing on evaluating the effectiveness of the Early Head Start utilizing approaches to generate both breadth and depth in impact evaluation . The following are characteristics of Level II activities.

- There will be a *cross-site* impact study, conducted by a national Contractor, that will be complemented by *local* studies of program impact.
- The local research partners may apply through a competitive process for grants to carry out research studies at their local sites. The sites whose local research partners receive these grants will become sites for the cross-site impact evaluation. In the event that there are not sufficient numbers of sites whose local research partners have submitted an acceptable proposal or if a better distribution of Early Head Start programs is required than the research site pool represents, as programs were alerted in the Early Head Start program announcement, ACYF may select further sites for evaluation. Data collection at these sites would be conducted directly by the national Contractor.
- The impact evaluation will follow an experimental model. The program will recruit double the number of families needed to fill program openings. Families then will be assigned into program and comparison groups by random assignment, most likely midway through the first fiscal year. The recruitment and random assignment process will continue until October 1, 1996, when programs are expected to attain full enrollment, and, thereafter, as openings occur.
- Only those programs that are fully implemented and operating as the program was designed, with criteria to be determined as an evaluation task, will be included in the final impact evaluation. Additional criteria for impact evaluation may be proposed by ACYF as well. It is anticipated that 12 sites will participate in the final impact evaluation, however, 15 sites will be selected as preliminary impact sites to provide an ample pool of sites for impact evaluation.
- To fit the service emphasis of the program, subjects will be continuously recruited into the program to fill program openings as they occur. That is, this is not a cohort study. Sample sizes will build over time.
- While programs are encouraged to give preference to subjects who are pregnant and have infants under a year of age, they may serve children up to three years of age. However, to focus the sample and to have a potential longitudinal sample of children who began the program early, the *research sample will be comprised only of pregnant women and families with infants up to one year of age.* This requirement will apply to families recruited at the time the program begins as well as to replacement families.
- Programs will range in size from 75 to 150 families. The impact evaluation sample, due to continuous recruitment, may exceed 150 program (and an equal number of comparison group) families but shall be capped at 175 program (and an equal number of comparison group) families for any one site. Site samples need to include at least 50 program families (with an equal number of comparison families).
- In addition to documenting the services received by program families in the Early Head Start program, it will be necessary to document the needs and service use by comparison families to determine if the individualized services provided by the Early Head Start program had an impact beyond what comparison families received in their communities. Therefore, the same needs assessment will need to be conducted on control families and their service usage will need to be tracked in a manner as similar to the experimental group as possible.
- Comparison group families will be given an annotated list of community services. Pregnant women will receive an initial referral to prenatal care. All families, program and comparison, participating in the evaluation study will receive approximately $20/interview period for their participation in the study. Both the national Contractor and local researchers are encouraged to solicit material goods to give to families for completing interviews. These goods may be donated locally or nationally and could include diapers, infant clothing, or educational toys.
- Program families who drop out will be followed, to the extent possible. An

evaluation task will be to develop a plan for tracking comparison and program group dropout research sample families and for defining the minimum amount of time that constitutes program involvement.

E. Desired Outcomes

The Early Head Start program targets specific outcome variables in the four program areas. It will be important for this evaluation to focus on those outcomes likely to be associated with involvement in Early Head Start, outcomes that realistically could be expected in a program of this nature. It will also be important to target potential interim outcomes, outcomes most likely to be apparent after the first 2–3 years of the study. Preliminary outcomes as proposed by the Advisory Committee on Services for Families with Infants and Toddlers include:

Child: Health and physical development; social competency; secure attachments with parents and other caregivers; language and cognitive development; resiliency factors; benefits to siblings.

Family: Attitudes towards parenting; parent-child interaction; reproductive sequelae; having a medical home; parenting employability and progress towards self-sufficiency; training and education; housing; physical and mental health; substance abuse; home environment; safety; involvement in the Early Head Start program; knowledge of child development; child guidance beliefs and practices.

Community: Collaboration among agencies serving children and families; seamlessness in referrals and actual service provision; quality of services for children and families; increase in services for infants and toddlers; safety.

Staff: Staff-parent/child relationships; staff continuity; staff professional development; staff compensation; staff physical and mental health.

F. Data Sources

For purposes of definition and discussion, data are referred to as either (1) process or (2) outcome data. Process data refer to those data that document program use and other experiences of families; outcome data refer to those qualities the program seeks to bring about. These data may be thought of, respectively, as independent and dependent variables. It is recognized that some data fit both definitions and that under different circumstances the same data element could be either process or product, independent or dependent, or, mediating, variables.

A family-level management information system will be introduced, with technical assistance, at the outset of Early Head Start. This information system, known as the Head Start Family Information System (HSFIS) will include data elements focused on intake; needs assessment; use of direct and referred services; family and child health information and other information related to parent employment, housing, education and services. Primarily, HSFIS data will be referred to as process data, however, some of the HSFIS data also can be viewed as interim outcome and outcome data. Program staff will enter and utilize HSFIS data. Program staff will enter initial family background data for all Early Head Start families prior to the random assignment process. HSFIS data will be available for the evaluation of the Early Head Start program.

Comparison family services use and health data will be recorded frequently in a special HSFIS module that will be identical to or parallel to HSFIS-entered program data. It is proposed that these data will be entered by a Community Family Coordinator/s, who will form a relationship with the comparison group families, paralleling to some extent the context in which HSFIS data for program families will be entered by program staff. The Community Family Coordinator services will be subcontracted by the national Contractor, as feasible, through the local researchers.

Additional process data (qualitative and quantitative) may be collected locally or nationally as determined by researchers at either level. This may include process data that cannot be collected through the HSFIS in comparable ways for the comparison and program families and will therefore have to be collected using the same, vs. parallel data collection procedures.

Outcome variables and the measurement for those variables will be identified and developed for the cross-site evaluation, for both project and comparison families, by the national Contractor with input from the local research team. Collection will be contracted through the national Contractor to the local researchers.

Local research data will be collected by local researchers through grants made directly from ACYF to the local researcher.

G. The Structure

In this research and evaluation design the primary responsibility of the national Contractor will be to coordinate and administer the cross-site evaluation in the 12 impact evaluation sites. This includes financial and administrative responsibility for all data collected for the cross-site-evaluation, including both process and outcome data for both comparison and project families. The national Contractor may use as much program-collected data (HSFIS) as the Contractor and ACYF deem appropriate and, as feasible, is encouraged to subcontract other local data collection to local researchers. The national Contractor has an additional responsibility to provide a standard format for continuous programmatic improvement.

The local program research partners will be responsible for designing and conducting local research in areas relating to the overall research and evaluation questions. Local researchers will be funded through individual grants with ACYF to carry out locally-relevant research. Local researchers will be expected to be reliable subcontractors for the cross-site project. These same local researchers will be expected to serve the continuous improvement needs of their sites and to provide local impact evaluation reports to accompany the cross-site reports required by this research and evaluation design.

A consortium will provide the mechanism for the coordination required by the project. A Technical Work Group, meeting with the consortium, will advise both the cross-site studies and the local research projects.

H. Challenges to the Evaluation

The unique design for the Early Head Start program and the requirements for research and evaluation present specific interesting challenges that both local researchers and the national Contractor will need to address. These include:

—Program variation within and between sites. The evaluation is expected to stimulate unique approaches for process data measurement to meet the challenge of documenting the variety of programs that will be offered across sites and the individualized nature of services within sites.

—Changing conditions over time. The evaluation is expected to take into account a shifting range of ages. The age range will shift from a less-than-two year range at the outset to nearly five years towards program completion, due to continuous enrollment. Further, the evaluation will need to accommodate the transition of children out of the program at age 3 into Head Start or other programs and to plan for extending this study longitudinally.

—Decoupling of parent and child data collection. Because Early Head Start is not a cohort study, the periodicity of child assessments by child age may

need to be decoupled from periodicity in assessing parent variables.

—Measuring the true nature of services delivered by Early Head Start at both the child and family levels. This challenge requires assessing a number of features associated with services, such as professional standards of quality, duration, intensity, quality of relationships and goodness of fit between the program services and individual needs.

—Delineating whether the services received are a function of the program or of the families' own initiative from other sources in the community. Since this study is not conducted in the isolation of a laboratory, families may seek and receive services from other community service providers. Therefore, it is important to determine what services families receive outside the program.

—Documenting services received by the comparison group. We cannot assume a no-treatment comparison group. While some comparison group data has been collected through parent interview, in other studies these data are usually collected at fairly long intervals with limited checking of reliability. The current study requires a careful documentation of comparison group services for interpretation of study findings.

—Framing the role of relationships. For very young children the relationships with parents and caregivers are central to development and these relationships are often influenced by the relationships between parents and program staff and the relationships of both to the community at large. The evaluation is challenged to assess the central role of relationships in this program.

—Measuring the effect of Early Head Start on communities and the effect of communities on Early Head Start. Early Head Start is designed to impact not only children and families but also communities. It is designed to have a ripple effect on all the programs for young children in a community. It is an important challenge for the evaluation to determine how to measure the community at baseline and how to measure change. Reciprocally, Early Head Start programs are nested in communities. The evaluation is challenged to reflect the variance of communities and to document the effect these communities have on Early Head Start's ability to carry out its purposes.

—Conducting impact evaluation exclusively at fully-implemented programs. The evaluation is challenged to determine criteria and timing for assessing full implementation in order to focus the evaluation on programs that are fulfilling the intent of the Early Head Start program.

—Determining meaningful effects. It will be important for the national Contractor and local researchers to go beyond the question of whether Early Head Start had a simple effect. Researchers are challenged to conceptualize the Early Head Start data set for use with complex analytical approaches involving meaningful aggregations and pattern analyses to account for varying degrees of risk, program variation and time.

—Fitting national and local evaluations together. The evaluation is challenged to bring two kinds of knowledge about Early Head Start together—that gathered across sites and that gathered from in-depth analyses within sites. A number of premises have been already made about this feature of the evaluation. For example, it is central to this project that local researchers and the national Contractor be equals in evaluating this project. It is presumed that there are questions that each can answer best from their unique perspectives. Local researchers are in a position to truly delve into the causes and effects and pathways to outcomes. They can use in depth and observational as well as qualitative measures to determine a program's effect. The local researchers are expected to address ''what's in the box'' at their site using multiple measures and methods in site-specific studies. The local researchers will also need to work together to lay the groundwork for continuation of the study beyond the five-year funding period. The national evaluation Contractor, on the other hand, will need to address those questions that cross-site data will enable answering, including those focused on program variation, and those requiring large samples for ample cells sizes required for examination of how the program worked for which children and families under which conditions. The research and evaluation was designed to bring forth both types of studies, and both types of studies are important to the story this evaluation is expected to tell. It will be necessary for every report to reflect this dual and complementary input and for the researchers at both levels to affirm the role of the other. Their task as partners in this evaluation will be to determine at each step of the project how their two efforts fit together.

—Attrition. Given the five year nature of this program and the intention to continue to follow the original Early Head Start families, it will be important for the partners in this project to coordinate to keep families in the sample. The evaluation is challenged to develop an array of sample-retention ideas that may range from local solicitation of gifts, newsletters and birthday cards to relationship-building to maintain subjects' interest. It will also be necessary to develop a clear plan for determination of which families who leave the project will be followed for research purposes under what conditions.

C–2 Scope of Work for the National Contractor

Specifically, the national Contractor will:

1. Provide a description of Early Head Start, from its inception through Year 1 for the Early Head Start programs, in all sites, with special emphasis on the 12 research sites, relying primarily on HSFIS data, but complemented by site profiles from research sites.

2. Conduct a study of program quality and implementation in Early Head Start (preliminary) impact study sites programs (estimate 12). This study will be used in the selection of fully-implemented sites for inclusion in the final impact evaluation, and to present a story of the development of quality for future Early Head Start programs;

3. Design and carry out an effective cross-site impact evaluation (estimate 12 sites) that addresses evaluation challenges and determines whether Early Head Start had an impact on children, families, communities or staff, and that addresses differential effectiveness by age of entry, need, sub-population, and by program features, duration and intensity;

4. Conduct a study of program variation in the impact evaluation sites (estimate 12 sites) and its effects;

5. Establish an infant sample for future longitudinal study in impact evaluation sites (estimate 12 sites), to carefully track all subjects to minimize attrition for the longitudinal study and to include cross-site analyses of data in a longitudinal context in the Final Report of this project;

6. Conduct timely analyses and reports (in all years) with Early Head Start data in the context of critical policy issues, e.g., examining the value added of Early Head Start comprehensive services for children in full-time child care and in the transition from welfare to work, as requested by

the ACYF and/or the Technical Work Group; and

7. Prepare an Interim Report in September, 1997, and a Final Report for this project which fully integrate the cross-site and local studies, drawing upon the strengths of each.

C–3 Tasks

As part of this Early Head Start evaluation effort, the Contractor shall access, collect, utilize, analyze and synthesize information regarding the implementation, operation and effectiveness of Early Head Start programs.

The work for this contract will be conducted in five sequential 12 month phases and the activities that will be accomplished include the following:

In Phase I, the Contractor shall:

(1) Participate in an orientation meeting;

(2) Develop a coordination strategy for working with other Contractors involved with Early Head Start;

(3) Conduct a literature review;

(4) Select a cadre of consultants;

(5) Select a Technical Work Group;

(6) Prepare a revised study design;

(7) Prepare a process data collection plan;

(8) Conduct a feasibility study;

(9) Prepare a logistical proposal for the consortium;

(10) Prepare a site visit protocol;

(11) Convene the consortium;

(12) Prepare a final study design;

(13) Conduct site visits to all impact evaluation sites;

(14) Prepare a protocol for the data collection instruments;

(15) Prepare a data collection and analysis plan;

(16) Prepare an Office of Management and Budget (OMB) clearance package;

(17) Prepare a revised work plan;

(18) Develop criteria for selection of impact sites.

In Phases II-V, the Contractor shall:

(19) Conduct annual site visits to impact evaluation sites.

In *ALL Phases*, the Contractor shall:

(20) Conduct cross-site data collection;

(21) Conduct a minimum of two consortium meetings a year in Washington, DC;

(22) Establish a protocol of all new or additional data collection instruments and prepare OMB clearance packages for all new or additional data collection instruments;

(23) Provide timely data entry and return of data disks to sites;

(24) Process and analyze the data collected;

(25) Provide a format for continuous program improvement and support its use.

In addition, in all phases the Contractor shall prepare deliverables as necessary for the work completed in each Phase, including monthly progress reports and in-depth annual progress reports, and the following reports within an agreed-upon time: ''Report of Characteristics of Early Head Start Programs,'' ''Pathways to Quality Study,'' ''Impact Study,'' ''Study of Program Variations,'' ''Studies Directed Toward Specific Policy Concerns,'' an Interim Report, and a Final Report which shall include a synthesis of the results of the final data analyses, reports of site researchers and a summary of the five-year project. In all Phase reports, the national impact study will be supplemented and integrated with the studies from the local research sites.

A. PHASE I

Task 1—Orientation Meeting With the Federal Project Officer (FPO)

Within *one week of the effective date of the contract*, the Contractor shall meet with the Federal Project Officer (FPO), and other relevant Federal staff to review the background of the project, and the work to be conducted. The FPO will provide the Contractor with available copies of the relevant grant proposals for ACYF-funded Early Head Start grantees. The Contractor shall propose an agenda for the meeting, indicate who would attend on behalf of the Contractor, list the types of study design modifications or other problems that would require FPO decisions at that meeting, and shall provide a project summary for distribution to ACYF staff. Specific topics to be discussed at the meeting include: Revisions to the proposed work plan in the Contractor's proposal; arrangements for maintaining regular contact with the FPO and relevant Federal staff via the INTERNET network and other means of communication; arrangements for initial contacts and ongoing cooperation with program sites; arrangements for information to be supplied upon selection of research sites and plans for carrying out the Phase I tasks. The meeting shall provide an opportunity to discuss any clarifications of the Contractor's proposed approach, the nature of the project, the schedule of work, and the progress report requirements and other deliverables. There shall be an additional meeting with the consortium in the second half of Phase I.

TASK 2—DEVELOP A COORDINATION STRATEGY FOR WORKING WITH OTHER CONTRACTORS—HSFIS and TRAINING/TECHNICAL ASSISTANCE CONTRACTORS

During all phases of the project, effective coordination with the Federal staff, Federal Contractors working on related projects and evaluations and outside stakeholders will be important to the success of the project. The Contractor shall work with the FPO and other Federal staff to establish and maintain cooperative working arrangements and in weeks *two through six* of Phase I shall establish a list of tasks and a communication plan for approval by ACYF. It is particularly important that procedures be coordinated with the HSFIS Contractor, including procedures for communication and bi-annual meetings in Washington, DC; procedures for ensuring readiness of grantees to utilize the HSFIS at the outset of Early Head Start; feasibility of HSFIS process data collection for project and comparison groups; procedures for transferring HSFIS reports to the national evaluation Contractor and for reports to the HSFIS Contractor. It will also be necessary to coordinate with Training and Technical Assistance personnel at ACYF and with the Contractor for Early Head Start Training and Technical Assistance, planning for two yearly meetings with that Contractor and ACYF staff in Washington, DC. Reports shall be given to ACYF from each of the meetings.

TASK 3—PREPARE A LITERATURE REVIEW

The Contractor shall conduct a thorough review of the existing literature on programs and evaluations of services to families with infants and toddlers, including documents produced by ACYF, foundations and reports of evaluations, published and not published. To place this evaluation in a national context, the Contractor shall review and synthesize relevant research and evaluation findings based on reliable research methodologies about the effects of services to families with infants and toddlers. This report shall synthesize findings from services to families for infants and toddlers and those from services related to any portion of Early Head Start, present methodological issues and creative solutions to those issues, identify gaps in the findings and methodologies and outline how this study will fill those gaps. This report shall also include the Contractor's recommendations for adding to or refining the evaluation research questions. The draft report

shall be submitted by the beginning of the *second month* of Phase I and the final report shall be submitted at the beginning of the *third month* of Phase I. The Contractor shall provide ACYF with copies of each document referenced in the literature review and shall deliver a an IBM PC-compatible 3–½ inch diskette. ACYF shall reserve the right to make the literature review, or parts of the document, available to the public.

TASK 4—SELECT A CADRE OF CONSULTANTS

The Contractor shall establish a cadre of consultants from relevant academic, professional, consulting and service-provider communities and recommend names *within two weeks* of the contract effective date. The intent is to have a cadre of professionals available for more intensive involvement on the design and implementation than is feasible with the Technical Work Group (TASK 5). Contractor shall provide the names and vitaes of potential consultants.

The Contractor shall not secure their formal commitment prior to the award of the contract, and without prior approval of ACYF. The Contractor shall provide the names and vitae of potential consultants, including their specific qualifications relevant to this study. Prior to final approval, the Contractor shall provide a sufficiently detailed description of the specific work (including total projected hours per task or subtask to be done by this cadre, and a timeline for its completion). The Contractor will be responsible for all expenses of these consultants, including air fare, per diem and honorarium. The number of persons in the cadre and the quantity of consultation shall be the decision of the Contractor in cooperation with ACYF. The Contractor shall propose an estimate of consultant use.

The Contractor shall report on expenditures for professional consultants as a separate line item in monthly expense vouchers and shall provide a separate monthly report on activities of consultants.

TASK 5: SELECT AND CONVENE A TECHNICAL WORK GROUP

The Technical Work Group will advise the entire Early Head Start research and evaluation project, including national impact and local research activities. Within *two weeks* following the contract effective date, the evaluation Contractor shall recommend eighteen experts in relevant fields, such as: Infant and toddler development; home visitation; child care; Head Start; parent-child relationships; family systems; teen parenting; services research; prevention and intervention research; ethnic diversity and minority issues; health delivery systems; parent education; mental health; adult education; family ecology; community development; staff development; assessment of child development; research methodology; statistics, instrument development, tests and measurement. The Contractor shall be prepared to make modifications in the list, as suggested by ACYF, based on additional and/or alternative candidates who might bring additional strengths to the Technical Work Group and to complete a group of twelve. All Technical Work Group members will require the approval of the ACYF Commissioner. In addition, the Technical Work Group must include rotating representation from research and program sites. Technical Work Group meetings will be held in conjunction with national-local research consortium meetings but there may be additional meetings called by the Contractor as needed. The Technical Work Group will provide guidance for this entire project, advising the cross-site evaluation study and local research, to produce a comprehensive picture of the complex story of the impact of Early Head Start. Therefore, available time of the Technical Work Group will need to be appropriated accordingly. A portion of each Technical Work Group meeting shall be allotted to local researchers issues.

Phase I meeting schedule: During Phase I of the project the Contractor shall convene the meetings of the Technical Work Group. With the exception of the first meeting, these meetings shall be held during the consortium meetings. Within *two months, or earlier if determined advisable in the orientation session,* of Phase I a meeting will be convened to solicit initial comments and suggestions regarding the overall scope of the evaluation and issues related to implementing the set of proposed evaluation activities; to review the draft of the literature and resource review plan; to review the draft design and sampling plan and process data collection plans and for consultation in selection of local research partners. Within *six months* (with final determination to be set by the Early Head Start program timetable) but *as early as within four months* of Phase I the Technical Work Group will convene in the consortium to be introduced to local researchers and their projects; advise local projects; establish representation from the consortium for the Technical Work Group; establish sampling plans; plan site visits; and to establish the preliminary data collection instruments protocol. *Nine months* following the beginning of Phase I, members will participate in and report on site visits, including creating site profiles; consult for process evaluation; recommend a final design; recommend a data collection instruments protocol for the cross-site studies; meet with local researchers to plan specifications for their studies; and review the overall research and evaluation plan for Early Head Start. All expenses of the Technical Work Group including honorarium, per diem, travel and lodging to Technical Work Group or consortium meetings shall be covered by the national Contractor. Any site-specific consulting done by the Technical Work Group at site locations, with the exception of that done during site visits, shall not be the responsibility of the national Contractor.

TASK 6—PREPARE A REVISED STUDY DESIGN

Within *four and one half months* after the beginning of Phase I, the Contractor shall prepare a revised design and sampling plan.

Design and Sampling Plan: The Contractor shall develop a design and sampling plan based on random assignment methodology. The design and sampling plan also shall specifically include:

- A discussion of the issues and approach the Contractor will use to manage and coordinate with program and research staff, the recruitment and random assignment of families into project and comparison groups in 12 (preliminary) evaluation sites, including discussion of issues pertaining to the implementation of experimental design in low-income communities, steps that will be taken to ensure comparability of program and comparison families and how to ensure minimization of differential response rates and bias, over time;
- A discussion of how the Contractor will meet ethical challenges for comparison families presented by an experimental design, to be addressed, to some extent by presenting an annotated list of community services to comparison families, by a referral process for families that have identified crises, and for pregnant women to receive a focused initial referral for prenatal services;
- A discussion of how the Contractor will resolve challenges related to the burden on families, compensation, and attrition, and a discussion of procedures to be put into place to maintain families' interest, including predetermined plans

for Contractor to provide a payment of approximately $20/interview period for project and comparison families; efforts of the national Contractor or efforts to encourage local sites to leverage additional material resources (such as diapers, infants clothing or toys); efforts of a part-time Community Family Coordinator at each site, who will be subcontracted by the national Contractor, to form relationships with and collect data from the comparison group families (and to some extent, program families). (See TASK 7, for elaboration);

- A discussion of how the Contractor will address the challenge of documenting the nature of services received by the program families, given program variation between and within sites in type of program delivered, quality, duration, intensity, and goodness of fit between program and need; and a discussion of how the Contractor will address the challenge of documenting the types of services comparison group families received.
- A discussion of how the Contractor will meet other challenges to the design as presented in Section C–1–II–H Challenges to the Evaluation, on page 19 of this document, and not directly addressed in any other segment of the Contractor's proposal, including measuring changing conditions over time; framing the role of relationships; measuring and determining full program implementation (See also TASK 18);
- A discussion of the importance of the Contractor's plan for determining the representativeness of the Early Head Start sample in impact evaluation communities, utilizing existing data sources;
- A discussion of the implications of the design and how the Contractor will collect data to place impact evaluation programs in a community context, including a baseline measure of community infrastructure; and
- A discussion of any other challenges the Contractor identifies for this evaluation and the Contractor's proposal for resolving those challenges.

TASK 7—PREPARE A PROCESS EVALUATION PLAN

There are multiple challenges to the process evaluation of the Early Head Start program that shall be addressed in a process evaluation plan to accompany the study design (TASK 6) *four months* after the beginning of Phase I. (1) In Level I sites the Contractor shall develop a process report, ''Characteristics of Early Head Start Programs Report,'' which will be a description of FY '95 and FY '96 programs, using HSFIS data. (2) In Level II sites it will be necessary to begin documenting the characteristics, needs and the nature of services for both program and comparison group families, including the characteristics of programs and communities from the outset of Early Head Start.

The Contractor shall have overall responsibility for collecting the process data required for this study, but shall coordinate with local researchers and program personnel. It is recommended that a part-time Community Family Coordinator be employed or subcontracted at each site who will coordinate local process data collection; maintain a relationship with comparison families; document the service use and provide emergency services for comparison families; and track families who have moved or have left the program. The Contractor shall also be responsible for the collection of:

- A baseline intake interview for comparison and program families in Level II sites. The baseline intake interview may be completed by program staff using the HSFIS, before random assignment of recruited families.
- A needs assessment for comparison and project groups, which may be gathered by the program personnel (program) and a Community Family Coordinator (comparison) families using identical formats, or utilizing an alternative format proposed by the Contractor.
- Establishing comparability of process data between program and comparison groups, utilizing a program-entered HSFIS data and parallel comparison group HSFIS data entry. It is anticipated that collection of service-use and health data will be conducted by the program personnel (for program families) and that a Community Family Coordinator will form a relationship with and enter such data for comparison group families, using a special module of HSFIS. However, the Community Family Coordinator will interview both project and comparison families for data for which comparability of parallel entry cannot be established or the Contractor shall propose an alternative format.
- Additional data collection procedures and a timetable for process data collection from comparison and project families.
- A plan for developing site-specific profiles that will characterize each of the FY '95 impact evaluation sites. This task may cross reference with TASK 10, PREPARE A SITE VISIT PROTOCOL. Year 1 site profiles for impact evaluation sites will be jointly authored by national and local researchers and local program personnel.
- An approach that would be used in drawing up a cross-site descriptive study of the FY '95 and FY '96 Early Head Start programs utilizing HSFIS data, supplemented by site profiles from research sites.
- Within *two months* after the beginning of Phase I, the Contractor shall be prepared to submit an OMB package. See TASK 16, PREPARE AN OMB CLEARANCE PACKAGE) of process data collection instruments in the eventuality all or part of a HSFIS evaluation module is not deemed comprehensive or desirable for process data collection.
- An approach that would be used in drawing up a cross-site descriptive study of FY 95 programs with special emphasis on describing the 12 research sites, using HSFIS data supplement by site profiles from research sites.

TASK 8—CONDUCT A FEASIBILITY STUDY IN 3 SITES

Within *two months* of the beginning of Phase I, the Contractor shall discuss rationale for and submit a protocol for an evaluation feasibility study protocol and within *three months* of Phase I shall conduct a feasibility study in 3 sites in order to determine if assumptions about the evaluation design are valid. This study shall involve site visits which shall have tasks to: determine the status of the HSFIS in the site; determine program-use needs assessment; determine viability of entering comparison and project group data with HSFIS software; determine feasibility of establishing adequate sample size for experimental design; and estimate the feasibility of measuring the level and quality of services available in the community for referral services. A report from this study shall be submitted within *four months* of Phase I.

TASK 9— PREPARE A LOGISTICAL PROPOSAL FOR A NATIONAL-LOCAL RESEARCH CONSORTIUM

Within *three months* of Phase I, the Contractor shall be responsible for proposing a consortium logistics plan which shall be submitted to ACYF for approval the *seventh month* after the beginning of Phase I, following review by the consortium members. This plan shall include the logistical approach to bi-annual consortium meetings in Washington, DC, to be attended by the Contractor, the Technical Work Group and local researchers from impact evaluation sites; a discussion of time-use divided into equal day-long segments in order to meet the three needs of the consortium (impact study planning; local research, and Technical

Work Group consultation); a discussion of areas of the impact study for which the Contractor will seek input from the local researchers, i.e., site visit protocols; data collection instruments; data collection procedures; workplan; a discussion of the areas for which the national Contractor, the Technical Work Group and the local researchers will need to work closely together as partners, i.e., preventing attrition, integrating the national and local research efforts, publication issues, and data use. The Contractor is encouraged in preparing these discussions to review other consortium arrangements such as that utilized by LONGSCAN. The Contractor will be responsible for logistical expenses associated with the consortium, as well as for all of the expenses of the Technical Work Group. Local researchers will cover their own travel, lodging, registration and other expenses. The national Contractor shall also provide for honoraria and expenses of any speakers, if necessary, and subject to prior approval from the FPO.

TASK 10— PREPARE A SITE VISIT PROTOCOL

The *third month of Phase I,* the Contractor shall develop a draft site visit protocol which details procedures for site visits. The purposes of the site visits will be to review continuous program improvement evaluation procedures at all FY '95 (and FY '96 research sites). In impact evaluation sites, additional purposes will be to establish site profiles, to review staffing for Community Family Coordinators; to establish relationships with the local researchers and to understand the local research projects; to establish the procedures for random assignment, and to establish local procedures for data collection. The FPO and other ACYF representatives will review the draft protocol and return it within one week to the Contractor who shall present a final protocol to ACYF by the *fourth month* of Phase I. As part of the protocol development process by the *third month of Phase I* the Contractor shall provide the FPO with a draft letter of introduction for the ACYF Commissioner to send to Early Head Start sites that will participate in site visits. The letter shall identify the Contractor, describe the purpose of the project, and inform the Early Head Start programs about plans for the site visits and specify other contacts, including community and research representatives. A letter shall also be provided to the FPO for the researchers at the sites, identifying their roles in the site visit and describing the purpose of the visit. *Prior to conducting the site visits,* the Contractor shall submit a memorandum to the FPO outlining a schedule for the visits and an outline of a standardized format for site visit reports that shall be submitted to the FPO within two weeks after each visit. Each proposed three-person site visit team shall be comprised of, but not limited to, representatives of the national Contractor; the Technical Work Group, and program or research staff from other sites. ACYF staff may be represented as well.

TASK 11—CONVENE THE CONSORTIUM

Upon selection of research sites, *within four months* of Phase I and/or *within one month* of the selection of research sites, the Contractor shall convene a meeting of the consortium in Washington, DC, including ACYF, the national Contractor, local researchers and the Technical Work Group. The Contractor shall carry out the logistical plan as proposed previously, dividing the consortium time into thirds for addressing needs of the cross-site impact evaluation, local research development and advise for both from the Technical Work Group. At the initial consortium meeting, the Contractor shall provide opportunities for identification of each of the local research sites' research purposes; discuss the logistical plan with the consortium; establish committees as identified by the logistical plan; establish a work plan; establish any subcommittees; discuss issues for immediate and future data collection; review process data to be collected by HSFIS and otherwise; review sample selection procedures; review the preliminary site visit protocol; and name site visit teams. The national Contractor shall communicate about this meeting with ACYF for a potential joint meeting with program staff. The national Contractor is responsible for all costs associated with consortium meetings, including hotel, break out rooms, expenses of Technical Work Group, except for the direct expenses of the local researchers and federal staff.

TASK 12—CONDUCT SITE VISITS TO ALL FY '95 EARLY HEAD START IMPACT EVALUATION SITES

From the *fifth through seventh month* of Phase I and/or within *two months* of the selection of research sites, the Contractor shall begin site visits as specified in the Site Visit Protocol. A draft report and sample site profiles shall be submitted to the FPO by the *sixth month* of Phase I. Site visit reports and profiles on every Early Head Start site evaluation site shall be submitted to ACYF by the *seventh month* of Phase I. For planning purposes, the Contractor shall allow for site visits of 2 days in length for each site (with the actual length of the visits varying somewhat as a function of the size and complexity of the program, as well as the intended tasks to be accomplished.) All expenses from the site visits shall be handled through the national contract.

TASK 13—PREPARE A FINAL DESIGN

It is anticipated that information provided by the Early Head Start site visits, by the interactions with the local researchers and by the meetings with the consortium, Technical Work Group and the FPO will call for changes and clarifications in the evaluation design and implementation plan. Based on this information the Contractor shall prepare a draft revised technical evaluation design and analysis report by the *seventh month* of Phase I and final plan by the *eighth month* of Phase I which consists of the following components:

A. Statement of Evaluation Outcomes

A list of research and policy questions, both general and specific, that the study shall address. Each specific question shall be logically connected with the general question to which it relates, as well as being organized according to the overall conceptual model of the study.

For each specific question the theoretical hypothesis, required data elements and data source(s) shall be identified.

For each specific question, a discussion of any measurement issues for obtaining realistic and valid outcomes and the approach to resolving those measurement issues shall be included.

B. Revised Study Design (See TASK 6)

C. Revised Process Data Collection Plan (See TASK 7)

TASK 14—ESTABLISH A PROTOCOL FOR ALL DATA COLLECTION INSTRUMENTS

By the *ninth month* following the award of this contract, the Contractor shall submit to the FPO a complete draft protocol for data collection instruments for studies for Phase II of the evaluation and a proposed protocol for data collection instruments for Phases III–V of this study. It is expected that the Contractor will seek input from local researchers through the consortium but that final responsibility for this protocol rests with the Contractor. This protocol will have multiple sets of data collection instruments (or interview guides). The first set includes

instruments to assess quality in site program activities and the second set will include instruments to measure the programs' impact on children, families, communities and staff. A third set will include instruments to determine the variations in programs and may overlap with other sets. It is anticipated that information shall be gathered through interviews with parents and staff as well as through observation of children, parents, home environments, and staff.

The Contractor's approach to measurement, including discussion of measurement issues, for the several studies of this evaluation shall be presented. The Contractor shall identify strategies for searching for measurement instruments, for including measurement instruments utilized in related studies of infant/toddler development or family services; and for pilot testing the data collection instruments. It is anticipated that community-level outcomes may involve the development of new data collection instruments. It is possible that some of the quality, variations or policy-related data may be collected by the national Contractor using cross-site survey methods or qualitative assessments.

The instruments selected or developed shall be clearly linked to the conceptual design of the study, services delivered and expected outcomes. The set of instruments for the quality study shall generate information in critical areas such as:

- Child relationships with caregivers.
- Child and parent continuity in relationship with program providers.
- Parent perceptions of, expectations of, and satisfaction with the program.
- Staff perceptions of the quality of their program.
- Parent relationships with case managers and other key Staff.
- Goodness of fit between parent/child needs and services delivered.
- Availability, access and quality of services in the community.
- Availability, access and quality of parent education activities.
- Quality of home visitation.
- Perceptions of the program by community members.
- Child care environment.

The studies of impact shall generate information in critical areas not contained in the HSFIS or gathered as process data and including:

- Child development.
- Child security of attachment.
- Child risk and resiliency factors.
- Home environment.
- Child care environments.
- Parent-child relationships.
- Other caregiver-child relationships.
- Parenting attitudes.
- Parent knowledge of child development.
- Parent attitudes about guidance.
- Support for parenting.
- Perceptions of conflict and/or violence in the neighborhood.
- Perception of parent involvement activities.
- Community collaboration.
- Community development of services.
- Staff professional development.
- Staff-children/family relationships.
- Sibling health and development.

For each of the proposed data collection instruments, the Contractor shall attach an analysis of the instruments with regard to any prior use in other studies of a similar nature, their psychometric properties and their acceptance by experts in the field as appropriate measures. The Contractor shall attach the results from pilot studies of each of the instruments in the final protocol. The Contractor shall prepare complete protocols of all instruments, and a training plan for all data collectors. The Contractor shall revise the instruments plan based on input from the FPO and the consortium, including the Technical Work Group, and shall submit final data collection instruments to the FPO for approval by the end of the *tenth month* of Phase I.

TASK 15—SUBMIT A DATA COLLECTION AND ANALYSIS PLAN

The Contractor shall prepare a data collection and analysis plan that links each study question to the data collection instruments, proposed respondents/data sources and study methods and the final design and sampling plan (TASK 11). The Contractor shall provide a graphic that displays this information.

The national Contractor shall be responsible for all the costs of data collection for all of the national studies as described in this document, including the cost of compensating families for interviews. Local researchers will also be encouraged to generate additional material resources for families. Impact data collection may be, and it is anticipated in most cases, will be, subcontracted to the local researcher, in response to the Contractor's call for an application containing data collection plan and qualifications of staff. The local researcher shall have first subcontracting opportunity at the first collection period. However, if, after that, due to a lack of quality or timeliness in previous data collection; or the local researcher does not want to subcontract; or there is no local researcher at the site, the national Contractor may subcontract with other qualified researchers for local data collection. Subcontracts shall be renewed on an annual basis.

The Contractor shall develop an overall data collection plan which clearly outlines timelines for all proposed data collection activities, including a theoretically-based justification for each proposed data collection activity. The data collection plan shall include:

- A discussion of issues around the timing of data collection and a proposed timetable for data collection. It is also anticipated that the impact data shall be collected at multiple points in time, to correspond with predetermined targets around children's age and parent and staff length of time in the program. Thus, data collection activities involving parents and children may need to be decoupled, leading to the likelihood that data collection in any one site may be relatively continuous. The Contractor shall discuss a preferred approach to this issue;
- Procedures for contacting and tracking families over time;
- A discussion of recommended procedures for the follow-up of incomplete data;
- Theoretical justification, procedures and timelines for assessment strategies proposed by the Contractor in additional areas not already mentioned in the presentation related to data collection of the program process;
- Theoretical justification, procedures and timelines for assessment strategies proposed by the Contractor related to data collection of child, family, community or staff outcomes;
- Theoretical justification, procedures and timelines for conducting observations and other data collection focused on program quality or variations;
- A discussion of a quality control component which addresses the training of data collection staff at the local Early Head Start program sites, continuity of data collection staff and methods for ascertaining reliability and effectiveness of data collectors;
- Procedures for identifying and assessing the quality of existing data, as well as procedures for negotiating with sites to access and utilize existing sources of data, particularly as they pertain to community data for determining the representativeness of the Early Head Start recruited families; and
- Procedures for establishing, maintaining and overseeing the subcontractors cooperative relationships with the Early Head Start programs that shall maintain the independence and objectivity required for a third party

evaluation, but will allow for the effective management of data collection activities.

The Contractor shall discuss the data analysis challenge (Section I–I), including a discussion focused on determining the magnitude of effect across diffuse program services, and propose solutions to these challenges. The Contractor shall identify the specific types of data analyses that will be employed for each phase of data collection and for each data element, within the context of the revised study design, including the unit of analysis, possible aggregations and method of display in the final report.

The draft data collection and analysis plan shall be submitted to the FPO by the end of the *eleventh month* after contract effective date. The FPO will review this plan with other ACYF staff and submit comments to the Contractor within one week. The Contractor shall make the required corrections and resubmit the plan in final form to the FPO by the end of *twelfth month* after contract effective date.

TASK 16—PREPARE AN OMB CLEARANCE PACKAGE

The Contractor shall develop an Office of Management and Budget (OMB) clearance package for the study, including all data collection instruments and transmittal memorandum in accordance with OMB and the ACF guidelines. The package shall include, but not be limited to, the following:

- A justification and introduction to the study. This includes a justification of why the study is needed; how, by whom and for what purpose the information will be used; why existing information cannot be used and a summary of study components;
- Data collection plan. This includes both a description of and a justification for the study design, including the sample plan; design of data collection instruments with a question by question justification; results of pretesting data collection instruments; and a data analysis plan;
- Tabulation and publication plans;
- Consultation with outside agencies;
- Respondent burden estimate;
- Confidentiality statement.

The OMB package shall be submitted to the FPO by the end of the eleventh month of Phase I. The FPO will provide up to four sets of comments to the Contractor over a period of three weeks. The Contractor shall then submit the final OMB package to the FPO by the end of the *twelfth month of Phase II.* The Contractor shall allow at least 120 days for OMB approval.

TASK 17—REVISE THE INITIAL WORK PLAN INCLUDED IN THE PROPOSAL

Based on the progress of work covered by Tasks 1–16, the Contractor shall produce a revised work plan for each of the remaining Phases of the contract (Phases II–V), by the twelfth month after the contract effective date. Key issues to be addressed in both the initial and revised work plan shall include:

- Effective coordination of this project with Federal staff and designated Contractors, including HSFIS Contractor; Training and Technical Assistance Coordinator; Early Head Start sites, the consortium and the Technical Work Group;
- Identification of issues to be resolved for data collection with plans and timelines for how those issues will be addressed;
- Identification of logistical issues in the workings of the consortium and plans for addressing these issues. A schedule of consortium meetings;
- A proposed protocol of measures with timelines and identification of data collectors for each data collection point;
- Data collection, analyses and reporting plans for later phases of this project;
- A schedule for subsequent site visits;
- Any other remaining tasks.

TASK 18—SELECT FINAL CRITERIA FOR INCLUSION IN IMPACT EVALUATION

The Advisory Committee on Services to Families with Infants and Toddlers recommended establishing criteria for Early Head Start program evaluation, including the recommendation that no Early Head Start program shall be evaluated that is not fully implemented. *Twelve months after the beginning of Phase I,* the Contractor, with input from the Technical Work Group, shall submit a draft plan for determining whether sites demonstrate viability for impact evaluation. This plan shall include criteria for defining the minimum threshold for program implementation; standards for demonstrating whether comparability between comparison and project families was maintained; adequate power, and any other criterion deemed important to a valid evaluation of impact, i.e., absence of saturation of Head Start-like services in the community. As criteria for full implementation, the review shall include consideration of measures of implementation associated with the Early Head Performance Standards; Head Start Performance Measures; and program quality in general. This review and the plan shall be submitted to ACYF. On approval of the criteria, site visit teams will rate sites, beginning with research sites, on each criterion; this rating shall involve a site visit which may be combined with a previously scheduled site visit or with other planned data collection. Ratings will be forwarded to ACYF, who will make the final determination of which sites shall be included in the evaluation. *Three months* after the beginning of Phase II or on a modified timetable as proposed by ACYF or the national Contractor and approved by ACYF, final determination shall be made by ACYF regarding which and how many sites to include in the final impact evaluation. As a conservative estimate, the Contractor shall plan to conduct an impact evaluation at 12 sites.

B. PHASES II–V

TASK 19—CONDUCT ANNUAL SITE VISITS

Within *one month* of each new Phase, the Contractor shall develop a revised protocol for annual site visits to, at a minimum, all sites included in the evaluation. Protocols for the site visits shall be developed with input from the consortium, including the Technical Work Group, and be submitted to ACYF for final approval within *three months* of each new Phase. Site visits shall follow the approved protocol and shall include verification of data collection procedures; availability and use of program data, including HSFIS data, for continuous program improvement; follow through on research plans, and continued documentation of the nature of the program. Written reports shall be submitted to ACYF and the site within *three weeks* of each visit. The written report shall include an updated site profile, authored jointly by the Contractor and the local researcher, where applicable. The Contractor may be asked to conduct site visits to new Early Head Start sites for purposes the same as for FY '95 program sites. The proposal shall include a per-site cost to cover the possibility of additional Early Head Start program site visits in subsequent years.

C. ALL PHASES

TASK 20—CONDUCT CROSS-SITE DATA COLLECTION

The Contractor shall conduct cross-site data collection for the national impact studies (for both the project and comparison groups) in an estimated 12 selected Early Head Start sites, either directly providing for data collection or by subcontracting with local evaluators, as determined on an annual basis.

Upon approval of the OMB Clearance Package, the Contractor shall conduct the appropriate data collection activities (outlined in the OMB clearance package) at the selected Early Head Start programs. The Contractor shall develop a plan to have senior evaluation staff conduct periodic site visits during data collection periods for the purpose of monitoring on-site evaluation staff, ensuring quality control and maintaining good working relationships with local research and program staff. The Contractor shall develop procedures for monitoring local staff to make sure they carry out their evaluation responsibilities.

Where appropriate, the Contractor also shall consider the potential need for the use of security guards to accompany researchers in cases where their safety is at risk.

As the data collection in this project has a longitudinal nature, whenever possible, data collectors with demonstrated effectiveness shall maintain continuity with families; the Contractor shall have developed compensatory procedures for maintaining reliability of measurement.

In each site, the Contractor shall continue to design and implement methods for understanding the services provided to both the treatment and comparison groups and at the community level. The Contractor shall continue to build the profile begun at each site to describe the general character of each program and shall continue to examine methods for documenting the program. Finally, the Contractor shall continue to explore methods for understanding the communities' impacts on and from Early Head Start programs. The Contractor shall work closely with researchers at local sites in these tasks.

TASK 21—CONDUCT A MINIMUM OF TWO MEETINGS A YEAR WITH THE CONSORTIUM

Within the *first three months* following the beginning of each new phase, the Contractor shall convene the consortium, including the local researchers and the Technical Work Group, in Washington, DC., to conduct the business of the consortium according to the consortium workplan. A minimum of two consortium meetings shall be convened each year, and no six month period shall pass without a consortium meeting. The possibility of meeting in connection with Early Head Start program personnel shall be considered for at least one of the two meetings and ACYF shall guide the decision on whether a program-research meeting is advised. There shall be support for at least two meetings of each of the consortium subcommittees per year, as necessary. The Contractor shall deliver ACYF consortium reports with embedded Technical Work Group reports *within one month* following each consortium meeting. The Contractor shall be responsible for all costs associated with consortium meetings (See TASK 11), except for the direct costs of local researchers and the federal staff. If the Contractor coordinates with program personnel, only the research and evaluation portion of the costs of the consortium shall be the responsibility of the national Contractor.

TASK 22—ESTABLISH A PROTOCOL OF ALL MEASURES FOR EACH NEW PHASE OF THE PROJECT AND PREPARE AND SUBMIT NEW CLEARANCE PACKAGES FOR SUBMISSION TO THE OFFICE OF MANAGEMENT AND BUDGET (OMB), AS NECESSARY

Within the *first three months* of each new phase, and as needed, the Contractor shall review the work plan to determine acceptability of the protocol for each new phase of measurement and the need to obtain OMB clearance. Measures added shall be submitted with input from the local researchers and the Technical Work Group, to ACYF, pilot tested and approved by the consortium according to procedures developed in the original protocol before being submitted to OMB. Procedures under TASK 14, TASK 15 and TASK 16 shall be adopted for subsequent measures.

TASK 23—PROVIDE SITES WITH DATA FILES AND SUMMARY REPORTS

The objective of continuous program improvement necessitates the timely turnaround of all data. Therefore, it will be necessary for impact data submitted from local sites to the national Contractor to be cleaned, entered and returned on disk to the local site within *three months* of its submission to the national Contractor. The national Contractor will need to develop procedures for working with sites that do not maintain quality and timeliness standards within the subcontracting structure.

Within *six months* of each Phase, a site-level printout for all impact evaluation sites shall be generated with sites identified only by number to maintain confidentiality, presenting the data, as predetermined in the data analysis plan, in summary form for each site and summed or averaged, as appropriate, across sites. From these printouts, sites shall be able to compare their own results with those of other sites. This report shall include HSFIS data. The national Contractor shall be required to submit, receive and report to ACYF a brief assessment of their own activities in the task of timely data turn around. To this end, initiated by the national Contractor, local programs will briefly evaluate the Contractor's timeliness and formatting of returned data. This brief report shall be due to ACYF by the *eleventh* month of each Phase, and will be submitted to the ACYF together with printouts of data returned to sites.

TASK 24—PROVIDE FORMATS FOR CONTINUOUS PROGRAM IMPROVEMENT

All Level I sites are expected to utilize formative evaluation procedures for continuous program improvement as a component of program management. Many Level I sites will identify a local university or research institution partner to assist them in completing this task; Level II sites will be expected to participate in continuous program improvement activities in addition to conducting research. The national Contractor shall be a partner in formative evaluation tasks for continuous program improvement by: Conducting site visits to all 12 evaluation sites in order to informally assess site preparedness for continuous program improvement and to provide on-site guidance for initiating this function at the local level; developing a standard format for orienting subsequent Early Head Start sites (FY '96 and beyond) to continuous program improvement activities; providing annual formative evaluation training, either directly or through the Training and Technical Assistance Contractor, to all program sites, during annual program consortium meetings in Washington, DC. or utilizing an alternative format; participating in bi-annual coordination meetings with the Training and Technical Assistance Contractor to ascertain that capacity for this new management function develops in all sites, and coordinating with the HSFIS Contractor through bi-annual meetings to assure that HSFIS data are being utilized for continuous program improvement. The Contractor shall provide a continuous program improvement report in the *twelfth month* of each Phase.

TASK 25—ANALYZE THE DATA

The Contractor shall conduct and complete analyses of national evaluation data on a timetable jointly agreed upon by ACYF and the Contractor, and based on the

methodology approved under TASK 15. After preliminary analyses during each Phase, the Contractor may revise the analytical plan based on the quality and completeness of the database or on refinements of the conceptual hypotheses. Procedures for data analysis shall be reviewed by the Technical Work Group after each Phase of data collection and analysis. Recommendations for any revisions in the data analysis plan shall be submitted to the FPO for review and approval. In addition, the Contractor shall reserve 5% of the budget for analyses requested by ACYF or the Technical Work Group for analyses focused on policy or not specified in the contract.

C–4 Deliverables

a. *Literature and Research Review, Draft and Final:* The Contractor shall produce a draft and final literature review. The draft report shall be submitted to the FPO by November 1, 1995. The FPO shall provide comments within two weeks. The final version of the revised literature review shall be submitted to the FPO by December 1, 1995.

b. *Revised Draft Study Design and Process Data Plan:* The Contractor shall submit a revised study design and sampling plan and process data plan by January 31, 1996. This shall be an updated version of the design and sampling plan submitted in the Contractor's Best and Final proposal and shall reflect input from the Technical Work Group and ACYF. It shall be in draft form. The process data plan shall reflect the progress of HSFIS implementation as well.

c. *Feasibility Study to Test Assumptions of the Design—Protocol and Report:* By November 31, 1995, the Contractor shall submit a feasibility protocol, updated from the proposal to reflect knowledge of sites available for the feasibility study. This shall be a pilot study of the sampling, design and process evaluation procedures proposed. Working with ACYF, program sites for this study will be selected and the Contractor shall report findings by January 31, 1996.

d. *Consortium Logistics Plan, Draft and Final:* The draft and final Logistics Plan shall be submitted, respectively, by December 31, 1995 and April 30, 1996. This document shall be an update from procedures submitted with this contract and shall propose operations procedures that will guide the coordination of consortium logistics for the cooperative aspects of this project.

e. *Site Visit Draft and Final Protocols, Draft and Reports:* After review by the Technical Work Group, the draft of the site visit protocol shall be submitted to the FPO by the end of December 1995. ACYF will make recommendations, and the final site visit protocol shall be submitted to the FPO for approval by January 31, 1996. By the beginning of the March 1996, (the week after the first site visit), the Contractor shall submit a draft site visit report for approval by the FPO. The draft report shall include a schedule of events, an analysis of data from interviews and assessments, a summary of any additional issues raised, and an updated and expanded profile of the program and its evaluation. The FPO shall provide feedback to clarify expectations about content and format within two weeks. The final version of the first site visit report shall be submitted to the FPO for approval by the end of the March 1996. For each remaining site visit, a draft of the site visit report shall be submitted to the FPO one week after the site visit. The final version of each report shall be submitted to the FPO for approval *three weeks* after the site visit. The report for the last of the site visits shall be submitted no later then the end of April 1996.

f. *Study Design, Draft and Final:* The study design report shall be due April 30, 1996, reflecting input from the Technical Work Group, the consortium, and from site visits. The FPO shall review the design, obtain comments from other ACYF staff, and provide comments to the Contractor within two weeks. The Contractor shall then make corrections to the design and submit a final study design for review and approval by the FPO. The final study design shall be submitted by May 31, 1996.

g. *Data Collection Instruments Protocol, Draft and Final:* With input from the consortium including the Technical Work Group, the Contractor shall develop, or select existing data collection instruments to be submitted to the FPO by the end of the June 1996. The Contractor shall attach an analysis of the instruments with regard to any prior use in other studies of a similar nature, their psychometric properties, their acceptance by experts in the field as appropriate measures, and their performance in pre-tests and field testing. The FPO shall provide comments to the Contractor within two weeks. The Contractor shall revise the instruments based on the comments by the FPO and shall submit final data collection instruments to the FPO for approval by July 31,1996.

i. *Data Collection and Analysis Plan, Draft and Final:* With input from the consortium including the Technical Work Group, the Contractor shall present a draft data collection and analysis plan to the FPO by August 31, 1996 that shall be a complete plan for the data collection for this project and shall present a plan for analysis to answer the original study questions. The FPO shall review this plan, returning it to the Contractor for revisions and request its return by the September 30, 1996.

j. *Revised Work Plan, Draft and Final:* A draft of the Phase I Revised Work Plan shall be submitted to the FPO for approval by July 31, 1996. The FPO shall provide feedback within one week. The final version shall be submitted by September 30, 1996. The work plan may be revised once the data collection is underway to make use of new information or strategies which emerge over time. Proposed changes shall be indicated in the monthly technical progress reports and shall require the prior written approval of the FPO before changes are implemented.

k. *OMB Clearance Package:* The draft OMB package shall be submitted to the FPO by August 31, 1996. The FPO shall provide up to four separate sets of comments to the Contractor over a period of two weeks. The Contractor shall then submit the final OMB package to the FPO for approval by the end of the September 1996. The Contractor shall allow at least 120 days for OMB approval. An early OMB package shall be developed within the first several months on a schedule to be determined by the Contractor and FPO.

l. *Report of Site Qualifications for Evaluation:* The draft criteria, finalized criteria and report of sites' qualification for criteria shall be submitted to ACYF respectively, September 30, 1996, November 30 and December 31, 1996.

m. *Phase II—V Site Visit Protocols, Reports:* Following the schedule established for the Phase I site visit reports, a draft of the site visit protocol shall be submitted to the FPO by the *third month* of each Phase and a draft report shall be submitted *one week* after the first site visit. The final version of each report shall be submitted to the FPO *three weeks* after the site visit.

n. *Monthly and Annual Progress Reports:* The Contractor shall provide brief monthly technical progress reports to the FPO which clearly indicate the contract tasks which were to be performed in the prior month, a description of the progress made in completing these tasks, problems encountered or remaining from the prior month, expected approach to resolve problems from the prior month, tasks for the current month, and any budgeting implications or significant concerns to

be addressed by the FPO. In addition, the monthly progress reports shall provide a brief review of the status of the contract budget for the respective Phase, with separate presentations (by tasks and subtasks) of the original amount budgeted, funds expended to date, funds expended in the prior month, and the remaining balance of funds in the contract. The *first two monthly* progress reports shall contain a communication plan which details how all relevant parties shall be updated regarding project activities. This communication plan shall be updated as necessary in the monthly progress report.

At the end of each project year, the Contractor shall prepare an in-depth annual progress report, summarizing the status of the evaluation cross sites and in each site as well as activities of the evaluation and the consortium, accomplishments, and problems encountered during the year. This report shall also include a detailed plan for activities in each site during the coming year. *Within one month* of submitting the annual report for approval, the Contractor shall provide an in-depth briefing on the progress of the study and initial findings in Washington, DC, for ACYF staff. Following those briefings, after receiving input from ACYF staff, the Contractor may be required to present a similar briefing for a Congressional audience. In all briefings, the Contractor may be required to collaborate with local researchers involved with Early Head Start evaluation.

o. *New Data Collection Instruments Protocols and OMB Clearance:* Within *three months* of the beginning of each new phase or as is necessary, the Contractor shall submit a protocol and OMB clearance for any new measures to be added to or changed from the originally approved protocols. The form of these deliverables shall be similar to form specified above for Data Collection Instruments Protocol, Draft and Final, and OMB Clearance Package.

p. *Consortium and Technical Work Group Reports:* Within *one month* after each consortium meeting and subcommittee meetings and within one month of each Technical Work Group meeting a written report shall be submitted to ACYF. All meetings of these bodies shall be reported in separate reports, even though Technical Work Group meetings may be embedded in the consortium meetings.

q. *Collaborative Contractor Coordination Reports: One week* following each meeting with the HSFIS or Training and Technical Assistance Contractor, a report shall be submitted to ACYF and to the relevant Contractor.

r. *Reports of Data Returned to Sites: Timeliness and Usefulness of Data Turnaround:* Reports of data disks returned to sites, site printouts, and reports of assessments of the Contractor's activities at local sites shall be submitted to ACYF by August 31st of each Phase.

s. *Reports of Activities to Support Continuous Program Improvement:* By September 30th of each Phase, a report shall be submitted summarizing the Contractor's role in Continuous Program Improvement activities and progress.

t. *Phase Reports:* For each Phase, the Contractor shall produce Draft and Final Report/s that shall incorporate data collected and analyzed around the intended purposes and plan of the project. These reports shall be due in draft form August 31 *and in final form September 30* of each Phase, *or as determined between ACYF and the Contractor.* Each report shall have attached relevant local researchers' reports, and provide an overview that integrates national and local findings. The reports shall be presented in the following approximate sequence:

''Report of Characteristics of Early Head Start Programs'' which shall be an analysis of first year HSFIS data together with site profiles from impact evaluation sites, co-authored by local researchers and program staff.

''Pathways to Quality Study'' which shall be an analysis of quality data from sites in describing the various procedures and successes of programs in attaining program quality. There shall be attached local studies focused on improving program quality. The national Contractor shall provide an overview that integrates findings from the national and local studies.

''Impact Studies'' of this project shall compare program to comparison groups and also address the question: for which children and families were there impacts under which conditions? Local research studies focused on this question shall be attached and the national Contractor shall provide an overview that integrates findings from the national and local studies.

The ''Study of Program Variations'' shall first describe, then examine in depth the site profiles in relation to impact data collected to examine the questions pertaining to which children and families benefitted under what conditions of Early Head Start program variations. Local research reports that address the question shall be included and integrated.

''Studies Directed Towards Specific Policy Concerns,'' shall examine potential studies nested in the data set, i.e., analyzing across sites the added effect of Early Head Start to child care and in transition from welfare to work.

''Studies of Impact in a Longitudinal Context'' shall be an analysis of findings in a longitudinal context. Local research reports that address the question of change over.

u. *Interim Report:* The Contractor shall produce an Interim Report, due September 1, 1997, which will summarize findings to date for the study. This report may require integration with other studies and evaluations of services for infants and toddlers, such as the CCDP evaluation.

v. *Final National Report:* The Contractor shall produce a Final Report which provides a national assessment of Early Head Start program implementation and program impacts across the programs examined. This report shall be comprehensive of the entire 5-year duration of the project and shall include and integrate findings from local studies, but maintaining the integrity of the separate studies.

The Report shall draw conclusions about the following issues (as well as other relevant issues raised during the course of the evaluation):

(1) Were nationally-defined Early Head Start objectives met?

(2) Were program implementation objectives realized?

(3) To what extent were continuous improvement objectives realized?

(4) To what extent and under what conditions were programs able to implement quality services?

(5) What short- and long-term impacts did Early Head Start programs have on children, families, communities and staff?

(6) For which children, families, communities and staff under which conditions was Early Head Start able to realize its objectives? What else was learned about child, family, community, staff effects through Early Head Start?

(7) To what extent did different prototypes of Early Head Start variation emerge and what kinds of outcomes were associated with various prototypes?

(8) What was learned through analyses of subgroups in Early Head Start with additional implications for public policy;

(9) What were the longitudinal effects of Early Head Start under a variety of conditions, including risk and program variation;

(10) How did the study of Early Head Start programs advance the methods of program evaluation?

In the Report, the Contractor shall discuss how the contents of this Report

relate to any findings and recommendations presented in previous work produced under this contract. The Contractor also shall provide a discussion of the findings in relation to the literature in the field. The discussion of the literature shall be based on a revised version of the preliminary literature review. These revisions shall take into account new work in the field as well as information produced by Contractors under related studies.

The Contractor shall submit a draft outline of the final report to the FPO by the end of the *ninth month* before the end of Phase V. The FPO will have four weeks to review and approve the outline. The outline shall include a framework for a stand-alone Executive Summary. The draft final report based on the approved outline shall be submitted by the end of the *tenth month* before the end of Phase V. The FPO shall have four weeks to comment on the report and to obtain comments from other HHS staff and the Technical Work Group and the consortium. The Contractor shall plan to revise the draft at least twice based on comments from the FPO and other ACYF staff prior to submitting the final report to the FPO for approval. The Contractor shall make a presentation to Federal staff *four weeks* after submission of the draft final report. Issues raised in response to the presentation shall be considered in preparing the final version of the report. The final report and a camera ready copy of the final report shall be submitted to the FPO for approval by the end of the 60th month after contract effective date. The final report shall include a stand-alone Executive Summary which must not exceed fifteen pages in length. A copy of the Report of Evaluation Outcomes and of the Executive Summary shall be submitted on IBM PC compatible 3.5 inch 1.4 megabyte DS/HD diskettes in Wordperfect 5.1. In order to accommodate a publishing plan, the Contractor shall submit line item quotes reflecting the exact costs of research, writing, editing and copy preparation associated with the copies of the Final National Report and the Executive Summary (including one unbound camera-ready copy of each report).

w. *Data Files:* The Contractor shall produce a public use data diskette for an IBM PC Compatible 3.5 inch 1.4 MB DS/HD diskette at the conclusion of each Phase and at the end of the project for purposes of data archiving. Documentation shall include file and record layout, data dictionary including coding keys, a dump of the first and last 20 records of the data set and a summary of the processing including edit conditions and software used for analysis. The file shall contain no personal identifiers or confidential information.

It is the intent of ACYF that data should be publicly available for secondary analysis and publication of results as soon as possible following the completion of the contract. Prior to the end of the five year project, however, approval of the FPO and consideration by the consortium shall be required for publications, presentations or other uses of the data that are based on that national evaluation, at either a national or local level. Data tapes may be released for analyses by phases with first priority for a six-month period of time going to the Technical Work Group and researchers involved with the project.

Appendix B–2

TABLE 1.—COMPONENTS OF PROPOSED CHILD AND FAMILY ASSESSMENTS

	Assessment point (child's age)		
	14 months	24 months	36 months
Direct Child Assessments:			
Cognitive and Language Development:			
Bayley Scales of Infant Development	X	X	X
Expressive Language	.....	.....	X
Receptive Language	.....	.....	X
Social Competence:			
Bayley Behavioral Rating Scale	X	X	X
Emotional and Self Regulation:			
Bayley Behavioral Rating Scale	X	X	X
Maternal Interview:			
Parenting and the Home Environment[a]	X	X	X
Social Support Networks for Families[b]	X	X	X
Child's Social and Emotional Outcomes[c]	X	X	X
Child's Language Development (MacArthur Communicative Development)	X	X	.....
Quality of Parent-Caregiver Relationship	X	X	X
Home and Family Observations:			
Home Observation for Measurement of the	X	X	X
Attachment Q-Sort (Mother-Child)	X	X	X
Videotaping—Mother-Child Tasks	.....	X	.....

[a] Proposed measures include Concepts of Development Questionnaire, Knowledge of Infant Development Inventory, Aggravation Related to Parenting Scale, Parent Attitude toward Child Expressiveness Scale, Parent Attributions Test, Home Observation for Measurement of the Environment, Family Functioning Style, and Family Environment Rating Scale.
[b] Proposed measures include Social Support Scale and Family Social Network Scale.
[c] Proposed measures include Infant Characteristics Questionnaire, Adaptive Social Behavior Inventory, and a behavioral problem checklist.

TABLE 2.—COMPONENTS OF PROPOSED PARENT SERVICES INTERVIEWS

Parent interviews	Timing (months since enrollment)					
	Baseline	6	12	18	24	36
Service Needs and Use	X	X	X	X	X	X
Family Health Outcomes	.....	X	X	X	X	X
Parent Involvement	.....	.....	X	.....	X	X
Progress Toward Economic Self-Sufficiency	.....	.....	X	.....	X	X

TABLE 2.—COMPONENTS OF PROPOSED PARENT SERVICES INTERVIEWS—Continued

Parent interviews	Timing (months since enrollment)					
	Baseline	6	12	18	24	36
Perceptions of Community	.....	.....	X	.....	X	X
Child Health and Physical Development Outcomes	X	X	X	X	X	X
Benefits to Siblings—Health	X	X	X	X	X	X

TABLE 3.—COMPONENTS OF PROPOSED CHILD CARE QUALITY ASSESSMENTS

	Assessment point (child's age)		
	14 months	24 months	36 months
Observation of Child Care Setting and Provider-Child Interactions[a]	X	X	X
Provider Survey	X	X	X
Attachment Q-Sort (Caregiver-Child)	X	X	X

[a] Proposed measures include Infant-Toddler Environment Rating Scale, Family Day Care Rating Scale, Early Childhood Environment Rating Scale, Adult Involvement Scale, and Arnett Scale of Provider Sensitivity.

Appendix C

DEPARTMENT OF HEALTH AND HUMAN SERVICES **PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION** ☐ ORIGINAL ☐ FOLLOWUP ☐ REVISION	☐ GRANT ☐ CONTRACT ☐ FELLOW ☐ OTHER ☐ NEW ☐ RENEWAL ☐ CONTINUATION APPLICATION IDENTIFICATION NUMBER *(If known)*

STATEMENT OF POLICY: Safeguarding the rights and welfare of subjects at risk in activities supported under grants and contracts from DHHS is primarily the responsibility of the institution which receives or is accountable to DHHS for the funds awarded for the support of the activity. In order to provide for the adequate discharge of this institutional responsibility, it is the policy of DHHS that no activity involving human subjects to be supported by DHHS grants or contracts shall be undertaken unless the Institutional Review Board has reviewed and approved such activity, and the institution has submitted to DHHS a certification of such review and approval, in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended, (45 CFR 46). Administration of the DHHS policy and regulation is the responsibility of the Office for Protection from Research Risks, National Institutes of Health, Bethesda, MD 20205.

1. TITLE OF PROPOSAL OR ACTIVITY

2. PRINCIPAL INVESTIGATOR/ACTIVITY DIRECTOR/FELLOW

3. DECLARATION THAT HUMAN SUBJECTS EITHER WOULD OR WOULD NOT BE INVOLVED

☐ A. NO INDIVIDUALS WHO MIGHT BE CONSIDERED HUMAN SUBJECTS, INCLUDING THOSE FROM WHOM ORGANS, TISSUES, FLUIDS, OR OTHER MATERIALS WOULD BE DERIVED, OR WHO COULD BE IDENTIFIED BY PERSONAL DATA, WOULD BE INVOLVED IN THE PROPOSED ACTIVITY. (IF NO HUMAN SUBJECTS WOULD BE INVOLVED, CHECK THIS BOX AND PROCEED TO ITEM 7. PROPOSALS DETERMINED BY THE AGENCY TO INVOLVE HUMAN SUBJECTS WILL BE RETURNED.)

☐ B. HUMAN SUBJECTS WOULD BE INVOLVED IN THE PROPOSED ACTIVITY AS EITHER: ☐ NONE OF THE FOLLOWING, OR INCLUDING: ☐ MINORS, ☐ FETUSES, ☐ ABORTUSES, ☐ PREGNANT WOMEN, ☐ PRISONERS, ☐ MENTALLY RETARDED, ☐ MENTALLY DISABLED. UNDER SECTION 6. COOPERATING INSTITUTIONS, ON REVERSE OF THIS FORM, GIVE NAME OF INSTITUTION AND NAME AND ADDRESS OF OFFICIAL(S) AUTHORIZING ACCESS TO ANY SUBJECTS IN FACILITIES NOT UNDER DIRECT CONTROL OF THE APPLICANT OR OFFERING INSTITUTION.

4. DECLARATION OF ASSURANCE STATUS/CERTIFICATION OF REVIEW

☐ A. THIS INSTITUTION HAS NOT PREVIOUSLY FILED AN ASSURANCE AND ASSURANCE IMPLEMENTING PROCEDURES FOR THE PROTECTION OF HUMAN SUBJECTS WITH THE DHHS THAT APPLIES TO THIS APPLICATION OR ACTIVITY. ASSURANCE IS HEREBY GIVEN THAT THIS INSTITUTION WILL COMPLY WITH REQUIREMENTS OF ***DHHS Regulation 45 CFR 46,*** THAT IT HAS ESTABLISHED AN INSTITUTIONAL REVIEW BOARD FOR THE PROTECTION OF HUMAN SUBJECTS AND, WHEN REQUESTED, WILL SUBMIT TO DHHS DOCUMENTATION AND CERTIFICATION OF SUCH REVIEWS AND PROCEDURES AS MAY BE REQUIRED FOR IMPLEMENTATION OF THIS ASSURANCE FOR THE PROPOSED PROJECT OR ACTIVITY.

☐ B. THIS INSTITUTION HAS AN APPROVED GENERAL ASSURANCE (DHHS ASSURANCE NUMBER _____) OR AN ACTIVE SPECIAL ASSURANCE FOR THIS ONGOING ACTIVITY, ON FILE WITH DHHS. THE SIGNER CERTIFIES THAT ALL ACTIVITIES IN THIS APPLICATION PROPOSING TO INVOLVE HUMAN SUBJECTS HAVE BEEN REVIEWED AND APPROVED BY THIS INSTITUTION'S INSTITUTIONAL REVIEW BOARD IN A CONVENED MEETING ON THE DATE OF_____ IN ACCORDANCE WITH THE REQUIREMENTS OF THE ***Code of Federal Regulations on Protection of Human Subjects (45 CFR 46).*** THIS CERTIFICATION INCLUDES, WHEN APPLICABLE, REQUIREMENTS FOR CERTIFYING FDA STATUS FOR EACH INVESTIGATIONAL NEW DRUG TO BE USED (SEE REVERSE SIDE OF THIS FORM).

THE INSTITUTIONAL REVIEW BOARD HAS DETERMINED, AND THE INSTITUTIONAL OFFICIAL SIGNING BELOW CONCURS THAT:

EITHER ☐ HUMAN SUBJECTS WILL NOT BE AT RISK; OR ☐ HUMAN SUBJECTS WILL BE AT RISK.

5. AND 6. SEE REVERSE SIDE

7. NAME AND ADDRESS OF INSTITUTION

8. TITLE OF INSTITUTIONAL OFFICIAL	TELEPHONE NUMBER
SIGNATURE OF INSTITUTIONAL OFFICIAL	DATE

HHS-596 (Rev. 5-80)

ENCLOSE THIS FORM WITH THE PROPOSAL OR RETURN IT TO REQUESTING AGENCY.

5. INVESTIGATIONAL NEW DRUGS - ADDITIONAL CERTIFICATION REQUIREMENT

SECTION 46.17 OF TITLE 45 OF THE Code of Federal Regulations states, "Where an organization is required to prepare or to submit a certification . . . and the proposal involves an investigational new drug within the meaning of The Food, Drug, and Cosmetic Act, the drug shall be identified in the certification together with a statement that the 30-day delay required by 21 CFR 130.3(a)(2) has elapsed and the Food and Drug Administration has not, prior to expiration of such 30-day interval, requested that the sponsor continue to withhold or to restrict use of the drug in human subjects; or that the Food and Drug Administration has waived the 30-day delay requirement; provided, however, that in those cases in which the 30-day delay interval has neither expired nor been waived, a statement shall be forwarded to DHHS upon such expiration or upon receipt of a waiver. No certification shall be considered acceptable until such statement has been received."

INVESTIGATIONAL NEW DRUG CERTIFICATION

TO CERTIFY COMPLIANCE WITH FDA REQUIREMENTS FOR PROPOSED USE OF INVESTIGATIONAL NEW DRUGS IN ADDITION TO CERTIFICATION OF INSTITUTIONAL REVIEW BOARD APPROVAL, THE FOLLOWING REPORT FORMAT SHOULD BE USED FOR EACH IND: (ATTACH ADDITIONAL IND CERTIFICATIONS AS NECESSARY).

— IND FORMS FILED: ☐ FDA 1571, ☐ FDA 1572, ☐ FDA 1573

— NAME OF IND AND SPONSOR _____

— DATE OF 30-DAY EXPIRATION OR FDA WAIVER
(FUTURE DATE REQUIRES FOLLOWUP REPORT TO AGENCY) _____

— FDA RESTRICTION _____

— SIGNATURE OF INVESTIGATOR _____ DATE _____

6. COOPERATING INSTITUTIONS - ADDITIONAL REPORTING REQUIREMENT

SECTION 46.16 OF TITLE 45 OF THE *Code of Federal Regulations* IMPOSES SPECIAL REQUIREMENTS ON THE CONDUCT OF STUDIES OR ACTIVITIES IN WHICH THE GRANTEE OR PRIME CONTRACTOR OBTAINS ACCESS TO ALL OR SOME OF THE SUBJECTS THROUGH COOPERATING INSTITUTIONS NOT UNDER ITS CONTROL. IN ORDER THAT THE DHHS BE FULLY INFORMED, THE FOLLOWING REPORT IS REQUESTED WHEN APPLICABLE.

USE FOLLOWING REPORT FORMAT FOR EACH INSTITUTION OTHER THAN GRANTEE OR CONTRACTING INSTITUTION WITH RESPONSIBILITY FOR HUMAN SUBJECTS PARTICIPATING IN THIS ACTIVITY: (ATTACH ADDITIONAL REPORT SHEETS AS NECESSARY).

INSTITUTIONAL AUTHORIZATION FOR ACCESS TO SUBJECTS

— SUBJECTS: STATUS (WARDS, RESIDENTS, EMPLOYEES, PATIENTS, ETC.) _____

NUMBER _____ AGE RANGE _____

NAME OF OFFICIAL (PLEASE PRINT) _____

TITLE _____ TELEPHONE _____

NAME AND ADDRESS OF COOPERATING INSTITUTION _____

— OFFICIAL SIGNATURE _____

NOTES: *(e.g., report of modification in proposal as submitted to agency affecting human subjects involvement)*

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B,C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Column (e) and (f).

For supplemental grants and changes to existing grants, do not use Column (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Column (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Secton C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Secton D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need to be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provides any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

BILLING CODE 4184–01P

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace 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).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction.'' provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certificatin Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''certificatin Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions.'' Without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and relief, that:

(1) No Federal 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.

(2) If any funds other than Federal 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.

(3) The undersigned shall require that the language of this certification 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 not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement 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 statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

Federal Use Only: [illegible]

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Standard Form - LLL

BILLING CODE 4184–01–P

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

OMB STATE SINGLE POINT OF CONTACT LISTING*

ARIZONA
Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–1305

ARKANSAS
Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

ALABAMA
Jon C. Strickland, Alabama Department of Economic and Community Affairs, Planning and Economic Development Division, 401 Adams Avenue, Montgomery, AL 36103–5690, Telephone: (205) 242–5483, FAX: (205) 242–5515

CALIFORNIA
Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

DELAWARE
Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

DISTRICT OF COLUMBIA
Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. and Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

FLORIDA
Suzanne Traub-Metlay, Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, The Capitol (Room 1603), Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114, FAX: (904) 488–9005

GEORGIA
Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

ILLINOIS
Tim Golemo, State Single Point of Contact, Department of Commerce and Community Affairs, 620 East Adams, Springfield, Illinois 62701, Telephone: (217) 782–1671, FAX: (217) 782–6620

INDIANA
Frances E. Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–2972, FAX: (317) 233–3323

IOWA
Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

KENTUCKY
Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

MAINE
Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

MARYLAND
William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

MISSISSIPPI
Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

MISSOURI
Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102 Telephone: (314) 751–4834, FAX: (314) 751–7819

NEVADA
Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (701) 687–4065, FAX: (702) 687–3983

NEW HAMPSHIRE
Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process
Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

NEW JERSEY
Gregory W. Adkins, Assistant Commissioner, New Jersey Department of Community Affairs

Please direct all correspondence and questions about intergovernmental review to:

Andrew J. Jaskolka, State Review Process, Intergovernmental Review Unit, CN 800, Room 813A, Trenton, New Jersey 08625–0800, Telephone: (609) 292–9025, FAX: (609) 633–2132

NEW MEXICO
Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

NEW YORK
New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

NORTH CAROLINA
Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

NORTH DAKOTA
North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

OHIO
Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus,

Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to:

Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

RHODE ISLAND

Daniel W. Varin, Associate Director, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA,

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385

TEXAS

Tom Adams, Governors, Officer, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

UTAH

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114 Telephone: (801) 538–1535, FAX: (801) 538–1547

VERMONT

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609 Telephone: (802) 828–3326, FAX: (802) 828–3339

WEST VIRGINIA

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

WISCONSIN

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931

WYOMING

Sheryl Jeffries, State Single Point of Contract, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone: (307) 777–7574, FAX: (307) 638–8967

TERRITORIES

GUAM

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

PUERTO RICO

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

NORTHERN MARIANA ISLANDS

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96590

VIRGIN ISLANDS

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to:

Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

[FR Doc. 95–31009 Filed 12–20–95; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR—3917–N–36]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or QMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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 agency's estimate of the burden of the proposed collection of information; (3) Enhance 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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also list the following information:

Title of Proposal: Request for Credit Approval of Substitute Mortgagor.

OMB Control Number: 2502–0036.

Description of the need for the information and the proposed use: Section 204(b) of the National Housing Act (P.L. 479, 48 Stat. 1246, 12 U.S.C. 1701 et. seq.) provides that the Secretary of Housing and Urban Development (HUD) may at any time, under such terms and conditions as he may prescribe, consent to the release of the mortgagor from his liability under the mortgage or the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage.

Agency form numbers: HUD–92210.

Members of affected public: Individuals or households.

An estimation of the total numbers of hours needed to prepare the information collection is 10,000, number of respondents is 10,000, frequency response is monthly and the response is one hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 7, 1995.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–31077 Filed 12–20–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination for Federal Acknowledgment of the Huron Potawatomi, Inc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8.

Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary acknowledges that the Huron Potawatomi, Inc., 221 1½ Mile Road, Fulton, Michigan 49052, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group satisfies the criteria set forth in 25 CFR 83.7 as modified by 25 CFR 83.8.

DATES: This determination is final and will become effective 90 days from publication of the Final Determination, pursuant to 25 CFR 83.10 (l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

A notice of the Proposed Finding to acknowledge the Huron Potawatomi, Inc. (HPI) was published in the Federal Register on May 31, 1995, 60 F.R. 104, 28426–28427. The 180-day period provided for in the regulations for comment on the Proposed Finding closed November 27, 1995. No substantive third-party comments were received by the BIA. The only public comments received were two resolutions in support of the proposed finding. The petitioner waived the 60-day period provided for in the regulations (25 CFR Part 83.10(k)) for the petitioner to respond to third-party comments. This determination is made following a review of Huron Potawatomi, Inc.'s response to the Proposed Finding to acknowledge, which consisted of the submission of an updated membership list.

The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Appeals (§ 83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the Federal Register (§ 83.11(a)(2)).

The final determination incorporates the proposed finding and the technical reports to the proposed finding. Under 25 CFR 83.8, Huron Potawatomi, Inc., also known as the Nottawaseppi Huron Potawatomi Band, was deemed to have had prior unambiguous Federal acknowledgment in 1833, the date of the last treaty signed by the Potawatomi of Huron Band's chiefs. Between 1833 and 1840, the tribe's ancestors continued to reside on the Nottawaseppi Reserve. In 1840, the tribe's ancestors either avoided attempts of the Federal Government to remove the Potawatomi to Kansas or returned to Michigan within a few years after removal. The community was reestablished by 1842, and from that date until the present has consistently been identified as a settlement of Michigan Potawatomi in Federal, state, and local documents. Huron Potawatomi, Inc. meets criterion 83.7(a) as modified by criterion 83.8(d).

A geographical residential focus on the Pine Creek Indian Reservation in Calhoun County, Michigan, use of the Potatomi language as late as 1960, and a level of in-group or culturally appropriate patterned out-group marriages to other Michigan Indians from 1842 through 1960 of more than 50 percent were evidence that the tribe met the requirements of criterion 83.7(b) for community up to 1960 under the provisions of 83.7(b)(2). Since 1960, the migration of the tribe's members off the Pine Creek Reservation to specific locations in Michigan was patterned. The outlying settlements not only maintained close social and kinship ties with the central Pine Creek settlement area, but also among the five external settlement areas. Huron Potawatomi, Inc. meets criterion 83.7(b) as modified by section 83.8(d).

Because Huron Potawatomi, Inc. met the requirements of criterion 83.7(b) between 1833 and 1934 by showing a sufficient level of evidence under 83.7(b)(2), pursuant to 83.7(c)(3) they also met criterion 83.7(c) for that time period. From 1934 through 1970, the leadership was by a committee closely associated with the Methodist Indian mission on the Pine Creek reservation. In 1970, the tribe incorporated and has since been administered by an elected chairman and council. Huron Potawatomi, Inc. meets criterion 83.7(c) as modified by criterion 83.8(d).

The tribe has provided a copy of its governing document, which describes its membership criteria. Huron Potawatomi, Inc. meets criterion 83.7(d).

The 1994 membership list of the Huron Potawatomi, Inc. contained 850 entries. The membership has been documented to descend from persons listed on the 1904 Taggart Roll, compiled by the Bureau of Indian Affairs in connection with the issuance of Potawatomi annuity payments under Federal treaties. The Proposed Finding concluded that the 1994 HPI membership list, after eliminating deceased members and duplicate names, contained 819 actual living persons. The Proposed Finding noted the following items pertaining to the HPI membership: (1) That 171 of the HPI members were also, by ancestry, eligible for membership in the Pokagon Potawatomi Band; (2) that a small number of the HPI members were eligible for enrollment in other federally acknowledged tribes and that two large families appeared to be dually enrolled with the Saginaw Chippewa Indian Tribe; and (3) that 126 individuals on the February 18, 1994, HPI membership list had notified the BIA that they wished to be part of the petition for Federal acknowledgment submitted by the Match-e-be-nash-she-wish Pottawatomi Band, while about 150 others were eligible to be included in the membership of the Match-e-be-nash-she-wish Pottawatomi Band if they so desired. Because of extensive intermarriage among American Indian tribes in Michigan, the above determinations contained overlaps: the same individual might be eligible for more than one of the enrollment options. The Proposed Finding concluded that if the persons who fell into the categories listed above chose to disenroll from HPI, their removal from the HPI membership would not adversely affect the ability of the Huron Potawatomi, Inc. to meet the mandatory criteria of the Federal acknowledgment regulations.

The December 1, 1995, membership list submitted by Huron Potawatomi, Inc. used both the prior membership list dated June 27, 1991 (numbers 1 through 849) and that dated February 15, 1994, as the basis for the changes submitted: it utilized the 1991 membership numbers, whereas the 1994 list did not include membership numbers, and added #850 for one individual (whose name was on the February 19, 1994, list). The December 1, 1995, HPI list represents the following changes from the February 18, 1994, HPI list: 11 former members were noted as deceased; 2 former members enrolled in the Grand Traverse Band; 42 former members enrolled in the Pokagon

Potawatomi Band; and 132 (the 126 noted by the Proposed Finding plus 6 more) former members enrolled in the Match-e-be-nash-she-wish Pottawatomi Band. These withdrawals fell well within the parameters predicted by the Proposed Finding. Since the Proposed Finding, fifty-eight persons carried on the 1991 and 1994 HPI lists relinquished their membership in Huron Potawatomi, Inc. in order to remain enrolled in the Saginaw Chippewa Indian Tribe. These relinquishments resolved any problem caused by dual enrollment in another federally-recognized tribe. Huron Potawatomi, Inc. did not add any members between the February 18, 1994, and December 1, 1995, membership lists: none of the births to tribal members that occurred in the interim met the constitutional requirements for voting membership at age 18. These deductions should have given, based on the 1994 roll, a net membership for Huron Potawatomi, Inc., of 606 individuals. The list dated December 1, 1995, contained 602 names. The discrepancy of four persons was clarified by an addendum to the membership roll sent by the HPI on December 12, 1995. The addendum identified three names that were on the tribe's deceased list, but had been overlooked. The fourth person was identified as member on the roll who has the same name as a person on the deceased member list. Huron Potawatomi, Inc. meets criterion 83.7(e).

Huron Potawatomi, Inc. is not principally composed of persons who are members of another acknowledged North American Indian tribe. Huron Potawatomi, Inc. meets criterion 83.7(f).

No evidence was found that Huron Potawatomi, Inc. or its members are the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship. Huron Potawatomi, Inc. meets criterion 83.7(g).

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–31075 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–02–P

Operation and Maintenance Rate Adjustment: Wapato Irrigation Project, Washington; Notice of Proposed Operation and Maintenance Rate Increase

SUMMARY: The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Wapato Irrigation Project for 1996 and subsequent years. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management control,

(b) Materials and supplies,

(c) Major and minor vehicle and equipment repairs,

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement,

(e) Capitalization expenses,

(f) Acquisition expenses, and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702.

DATES: Comments must be submitted on or before [January 22, 1996.]

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Assistant Secretary of Indian Affairs by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8. 1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with Section 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Wapato Irrigation Project for Calendar Year 1996 and subsequent years.

The purpose of this notice is to announce a proprosed increase in the Wapato Project assessment rates proportionate with actual operation and maintenance costs. The assessment rates for 1996 will amount to an increase of 11% for the Wapato Satus Unit A Lands and 21% for B lands due to increased storage charges and an 11% increase for the Toppenish-Simcoe & Ahtanum Units.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1996 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report $15.00
(2) Requests for Verification of Account Delinquency Status, Per Report.....$10.00
(3) Requests for Splitting of Operation and Maintenance Bills (In addition to minimum billing fee) Per Bill $10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee) Per Bill $10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report $10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee.....$10.00
(7) Review of subdivision plats.....$10.00

Ahtanum Unit

Charges

(A) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1996 and subsequent years until further notice, is fixed at $10.00 per acre per annum for land to which water can be delivered from the project works.

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(A) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1996 and subsequent years until further notice, is fixed at $10.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bills issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(A) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1996 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts ..	$40.00
(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands ..	$40.00
(3) Rate per assessable acre for all lands with a storage water rights, known as ''b'' lands, in addition to other charges per acre	$8.00
(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands	$44.00
(5) Basic rate for each assessable acre of Water Rental Agreement Lands	$49.00

(B) In addition to the foregoing charges there shall be collected a billing charge of $5.00 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5.00. A one acre charge shall be levied against all tracts of less than one acre.

Payments

The water charge become due on April 1 of each year and are payable on or before that date. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Dated: December 13, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–31043 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[AZ–054–06–7122–14–X218: AZ–054–96–03]

Arizona, Temporary Closure of Selected Public Lands in La Paz County, Arizona.

AGENCY: Bureau of Land Management.

ACTION: Temporary Closure of Selected Public Lands in La Paz County, Arizona, during the Operation of the 1996 SCORE Parker 400 Desert Race.

SUMMARY: The Area Manager of the Havasu Resource Area announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 1996 SCORE Parker 400 Desert Race.

DATES: January 18, 1996, through January 21, 1996.

SUPPLEMENTARY REGULATIONS: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the course comprised of BLM lands, roads and ways south of the Bill Williams River. East and north of AZ Highway 72 and west of Wenden Road is closed to public vehicle use from 6:00 p.m. Thursday, January 18, 1996, to 12:00 noon Sunday, January 21, 1996 (Mountain Standard Time).

2. Vehicles are prohibited from the following four Wilderness Areas and one Wilderness Study Area (WSA):

a. AZ–054–12 (Gibraltar Mountain)
b. AZ–054–15A (Swansea)
c. AZ–054–71 (Buckskin Mountains)
d. AZ–054–17 (East Cactus Plain)
e. AZ–054–14A/B (Cactus Plain WSA)

3. The entire area encompassed by the designated course and all areas within 1 mile outside the designated course are closed to all vehicles except authorized and emergency vehicles. Access routes leading to the course are closed to vehicles.

4. Vehicle parking or stopping along Bouse Road, Shea Road, and Swansea Road is prohibited except for the designated spectator areas.

5. Spectator viewing is limited to two designated spectator areas located at:

a. South and north of Shea Road, approximately 7 miles east of Parker, Arizona.

b. Bouse Road, also known as Swansea Road, approximately 2 miles north of Bouse, Arizona).

6. The following regulations will be in effect for the duration of the closure: Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate or otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Be in possession of any alcoholic beverage unless that person has reached the age of 21 years.

f. Possess, discharge, or use firearms, other weapons, or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle, including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

j. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.

k. Fail to keep their site free of trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Arizona time.

m. Allow any pet or other animal in their care to be unrestrained at any time. Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona or to La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all La Paz County and BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Mark Harris, BLM Ranger, or Myron McCoy, Outdoor Recreation Planner, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (520) 855–8017.

Dated: December 15, 1995.

William J. Liebhauser,

Area Manager.

[FR Doc. 95–31067 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–32–P

[AZ–054–06–1430–00; AZA 29390]

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 La Paz County, Arizona, have been examined and found suitable for classification for lease under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The classification is for the following lands for recreational or historical purposes.

Gila and Salt River Meridian, Arizona

T. 10 N., R. 15 W.,
Sec. 28, W½SW¼;
Sec. 29, lots 1 to 6, inclusive, NW¼SW¼;
Sec. 32, lots 1 and 2;
Sec. 33, lots 1 and 2;
MS 2797.

The area described contains 1,010 acres.

The lands are not needed for Federal purposes. Lease is consistent with the current BLM land use planning and would be in the public interest. The lease, 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. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. All valid existing rights documented on the official public land records at the time of lease issuance.

5. 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 lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed lease or classification of the lands to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for recreational or historical purposes. 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, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreational purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective February 20, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, Bureau of Land Management, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona, (520) 855–8017.

Dated: December 13, 1995.

Robert M. Henderson,

Acting Area Manager.

[FR Doc. 95–31063 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–32–P

[NM–932–1430–01; NMNM 69994–25, et al.]

Issuance of Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to The Nature Conservancy (TNC) on September 23, 1994, for the following described land in Otero County, New Mexico, pursuant to the Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

NMNM 69994–28

New Mexico Principal Meridian

T. 16 S., R. 10 E.,
Sec. 5, lots 21 and 28.
Containing 39.26 acres.

In exchange the United States acquired the surface estate in the following described land located in Rio Arriba County, New Mexico:

NMNM 69994–25

T. 27 N., R. 2 E.,
Sec. 28, S½NW¼ and SW¼.
Containing 240.00 acres.

NMNM 69994–26

T. 27 N., R. 2 E.,
Sec. 33, W½
Containing 320.00 acres.

The purpose of the exchange was to acquire land for the Rio Chama National Wild and Scenic River as part of an ongoing TNC Exchange Pool.

Dated: December 14, 1995.

Richard A. Whitley,

Acting State Director.

[FR Doc. 95–31111 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–FB–M

[NV–030–5700–77; N–59714]

Notice of Realty Action; Modification of Recreation and Public Purposes Classification and Designation of Public Land for Sale; Lyon County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Classification of the following land pursuant to the Recreation and Public Purposes Act of 1926, as amended, (43 U.S.C. 869, et seq.), is hereby modified to allow for disposal of the land through sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than fair market value:

Mt. Diablo Meridian, Nevada

T. 20 N., R.25 E.,
Sec. 8, NE¼NW¼.
Containing 40 acres.

Fair market value has been determined to be $68,000.00.

DATES: Comments on the proposed land sale will be accepted until February 5, 1996. The land will not be offered for sale until 60 days after publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Bureau of Land Management, Carson City District

Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, (702) 885–6000.

SUPPLEMENTARY INFORMATION: On May 11, 1983, this public land was classified for public purposes pursuant to the Recreation and Public Purposes Act. The land was subsequently leased to Lyon County, Nevada for a public school site. The land was never developed as a school site and surrounding lands have been zoned for industrial use. The Lyon County School District is no longer interested in utilizing this land as a school site and the lease has been relinquished. The 40-acre parcel will be offered for sale directly to Wade/Fernley, L.P., the property owner of all adjoining lands. This sale is consistent with BLM policies and the Lahontan Resource Management Plan and is supported by Lyon County and the Town of Fernley, Nevada. The public interest will be served by offering this land for sale. The purpose of the sale is to dispose of a parcel of land which is difficult and uneconomical to manage as part of the public lands and which has potential for industrial development. No significant resource values will be affected by this transfer. The appraisal report, planning document, and environmental report covering the proposed sale are available for review at the BLM, Carson City District Office.

PATENT TERMS AND CONDITIONS: Patent for the land when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals other than those having no known mineral values. (A more detailed mineral reservation will appear in the patent.) and be subject to:

Those rights for highway purposes granted to the Nevada Department of Transportation, its successors or assigns, by rights-of-way Nev–054710 and CC–018420, pursuant to the Act of November 9, 1921 (42 Stat 216).

The sale will not result in a reduction of Animal Unit Months (AUMs) on BLM grazing permits.

For a period of 45 days after publication of this notice in the Federal Register, interested parties may submit comments to James M. Phillips, Lahontan Resource Area Manager, Bureau of Land Management, Carson City District Office. Objections will be reviewed by the Carson City District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated this 12th day of December, 1995.

James M. Phillips,

Area Manager Lahontan Resource Area.

[FR Doc. 95–31113 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–HC–P

[AZ–055–06–1330–00; CAAZCA 36103]

California; Notice of Realty Action: Extension of Deadline for Submission of Applications for a Long-Term Recreation Concession Lease in Imperial County, California.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) is announcing the extension of the deadline for submission of applications for a long-term recreation concession lease in support of BLM's recreation program, pursuant to the regulations at 43 CFR 2920. The original Notice of Realty Action ''Availability of Long-Term Recreation Concession Lease in Imperial County, California'' was published in the Federal Register, Volume 60, No. 187, pages 49850 through 49851, September 27, 1995. The site for the proposed concession is located on public lands on the west bank of the Colorado River about 12 miles south of Blythe, California, in Imperial County.

DATES: Applications for developing the site will be accepted only at the BLM Yuma Resource Area Office, Yuma District, 3150 Winsor Avenue, Yuma, AZ 85365, from October 25, 1995, to February 20, 1996. If a satisfactory application/proposal is received, selection of the successful applicant will be made by March 31, 1996, without further publication. Lease issuance will not be simultaneous with final selection, but will occur by May 1, 1996, after the term of the lease, stipulations, and other items have been agreed upon by BLM and the successful applicant.

FOR FURTHER INFORMATION CONTACT: Area Manager Joy Gilbert or Supervisory Lands and Minerals Specialist Pat Boykin, BLM, Yuma Resource Area, 3150 Winsor Avenue, Yuma, AZ 85365, (520) 726–6300.

Dated: December 12, 1995.

Joy Gilbert,

Area Manager, Yuma Resource Area.

[FR Doc. 95–31058 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–32–P

[NM–952–06–1420–00]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on January 2, 1995.

New Mexico Principal Meridian, New Mexico

T. 17 N., R. 18 W., Accepted September 6, 1995, for Group 843 NM.
T. 20 N., R. 17 W., Accepted August 31, 1995, for Group 844 NM.
T. 18 N., R. 18 W., Accepted September 14, 1995, for Group 844 NM.
T. 19 N., R. 18 W., Accepted September 14, 1995, for Group 844 NM.
T. 27 N., R. 15 W., Accepted July 25, 1995, for Group 870 NM.
T. 29 N., R. 20 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 16 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 18 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 15 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 19 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 14 W., Accepted August 31, 1995, for Group 870 NM.
T. 29 N., R. 17 W., Accepted August 31, 1995, for Group 870 NM.
T. 10 N., R. 16 W., Accepted September 20, 1995, Amended Survey.

Indian Meridian, Oklahoma

T. 13 N., R. 9 W., Accepted September 21, for Group 64 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the open files of the New Mexico State Office, Bureau

Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: December 7, 1995.

John P. Bennett,

Chief Cadastral Surveyor For New Mexico.

[FR Doc. 95–31069 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–FB–M

[NM–952–06–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on December 4, 1995.

New Mexico Principal Meridian, New Mexico

T. 20 N., R.10 E., Accepted December 1, 1995, for Group 914 NM.

A person or party who wishes to protest against this survey must file a written protest with the State Director, Bureau of Land Management, that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

This plat will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: December 4, 1995.

John P. Bennett,

Chief Cadastral Surveyor For New Mexico.

[FR Doc. 95–31068 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–809443

Applicant: Alan Sackman, New York, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by F. Bowker, ''Thornkloof'', Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809393

Applicant: John Thrower, Saxonburg, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by the Ciskei Government, ''Tsolwana Game Reserve'', Tarkastad, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809587

Applicant: University of Washington, Regional Primate Research Center, Seattle, WA.

The applicant requests a permit to import blood samples from captive-held and captive-born orangutans (*Pongo pygmaeus*) from Safari Park, Bogor, Indonesia, for the purpose of enhancement of the survival of the species.

PRT–800037

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export two captive-born male Parma wallaby (*Macropus parma*) to the Seoul Grand Park Zoo, Seoul, Korea, to enhance the propagation and survival of the species through captive breeding and conservation education.

PRT–808443

Applicant: Richard A. Fruchey, Riverton, WY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Contour, Tsolwana Game Reserve, Tarkastad, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809334

Applicant: Manimal Magic Act, Las Vegas, NV.

The applicant requests a permit to export and import leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–765658

Applicant: Manimal Magic Act, Las Vegas, NV.

The applicant requests a permit to reexport and reimport captive-born leopards (*Panthera pardus*), tigers (*Panthera tigris*), Siberian tiger (*Panthera tigris altaica*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–673539

Applicant: Gatti Production, Inc., Tustin, CA.

The applicant requests a permit to reexport and reimport four wild Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–701458

Applicant: Carl R. Beck, Las Vegas, NV.

The applicant requests a permit to reexport and reimport leopards (*Panthera pardus*), tigers (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–809349

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport one wild Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–809348

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport one wild Asian elephant (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–809347

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to reexport and reimport one wild Asian elephant (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–809260

Applicant: Thomas Boyle, Farmington Hills, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. D.B. Pohl at Teafoutain, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809599

Applicant: Wenjun Li, University of Massachusetts, Amherst, MA.

The applicant requests a permit to import study skins, skulls, hair, scale, tissue and blood samples from Temminck's ground pangolin (*Manis temmincki*) from museums in Canada, Australia, France, Germany, Austria, Sweden, United Kingdom, and South Africa, for the purpose of scientific research on the status of genetic relationships within the genus *Manis.*

PRT–809549

Applicant: Frederick E. McDonald, III, Dallas, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Frank Bowker, Thornkoof, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–809545

Applicant: Exotic Feline Breeding Compound, Rosamond, CA.

The applicant requests a permit to import one captive-born Persian leopard (*Panthera pardus saxicolor*) from Zoo Kaunas, Lithuania for the purpose of enhancement of the survival of the species through propagation.

The following applicants have applied for a permit to conduct certain activities with endangered species. The original notice was published on November 16, 1995, in FR Vol. 60, No. 221, 57592–57593, pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). The comment period has been extended for an additional 5 days because of the government shutdown.

PRT–808566

Applicant: Darrell Judkins, Lakeville, MN.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–802429

Applicant: Christian Jackson, Metairie, LA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia to enhance the survival of the species.

PRT–802428

Applicant: Tamara Scott, Newark, CA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia to enhance the survival of the species.

PRT–792071

Applicant: Frank O'Brien, Wilkes-Barre, PA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–800757

Applicant: Richard Edwards, Edmond, OK.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–797904

Applicant: Charles Cook, Centerville, OH.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–802244

Applicant: David Greenberg, Tucson, AZ.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) and slender-snout crocodile (*Crocodylus cataphractus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–794568

Applicant: Eugene Bergholz, Dousman, WI.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–788168

Applicant: Wilson Stout, Dallas, TX.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

PRT–788047

Applicant: Hossein Golabchi, Augusta, GA.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

PRT–788044

Applicant: Larry Battarbee, Dallas, TX.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: The Cincinnati Zoo, Cincinnati, OH, PRT–809222.

Type of Permit: Take for public Display.

Name and Number of Animals: Pacific walrus (*Odobenus rosmarus*), 4

Summary of Activity to be Authorized: The applicant has requested a permit to take (permanently remove) from the wild up to 4 walrus calves which are orphaned as a result of the Alaska Native subsistence hunt or are

found stranded for the purposes of public display.

Source of Marine Mammals for Research/Public Display: Located in Alaskan waters near Savoonga, St. Lawrence Island.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: December 15, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–31025 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–55–P

Emergency Exemption: Issuance

On 13 December 1995, a permit, US 809571, was issued to the Southwest Foundation for Biomedical Research, San Antonio, Texas to import two serum samples from one captive-born lion-tailed macaque (*Macaca silenus*) from the Metro Toronto Zoo, Ontario, Canada for diagnostic virology. The 30-day public comment period required by the Endangered Species Act was waived in accordance with section 10(c) of the Endangered Species Act. The Fish & Wildlife Service determined that an emergency affecting the health and life of one of the animal's care-takers existed and no reasonable alternative was available to the applicant. The care-taker was bitten on 11 December 1995, by the animal which is a potential carrier of the monkey B-virus (*Herpes simiae*). The B-virus is lethal to humans if not diagnosed within the first few days. Regardless of the test results the lion-tailed macaque will not be destroyed.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: December 15, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–31026 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Electronic Data Interchange (EDI) in the Royalty Management Program

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of an EDI presentation.

SUMMARY: The Minerals Management Service (MMS) is giving an Electronic Data Interchange (EDI) presentation in Fort Worth, Texas, on January 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Y. Matthews, Systems Management Division, Minerals Management Service, Royalty Management Program, P. O. Box 25165 MS 3140, Denver, Colorado, 80225–0165, telephone numbers (800) 619–4593 or (303) 275–7036, FAX number (303) 275–7099.

DATE: The EDI presentation is Thursday, January 25, 1996.

LOCATION: Burnett Building, Union Pacific Resource's Conference Room 2983, 801 Cherry Street, Fort Worth, Texas. Cherry Street is located off of Interstate 30 (take the exit marked Cherry Street).

SUPPLEMENTARY INFORMATION: MMS is offering an EDI presentation at no cost to companies and interested parties that intend to implement or pilot EDI with MMS. The EDI presentation will be held the day following the American Petroleum Institute (API), Petroleum Industry Data Exchange (PIDX) REGS Work Group meeting in Fort Worth, Texas. The API PIDX REGS Work Group meeting is scheduled for January 22–24, 1996. The EDI Presentation instructors are MMS employees of the Royalty Management Program, Systems Management Division.

Agenda: Morning Session 9:00 a.m.–11:30 a.m.

Instructor: Mr. Ron Hatton

Subject: MMS EDI activities, capabilities, current status and implementation planning and schedules.

Afternoon Session 1:00 p.m.–4:00 p.m.

Instructor: Mr. Tim Allard

Subject: EDI technical issues related to mapping and electronic exchange of regulatory data, and funds transmittal with MMS via EDI.

All EDI Presentation attendees will be provided copies of the current MMS EDI Implementation Guides.

If you are planning to attend this EDI Presentation, please leave a message for Barbara Matthews at the telephone and FAX numbers in the information contact section of this notice no later than January 17, 1996.

Dated: December 15, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–31074 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

General Management Plan Organ Pipe Cactus National Monument, Arizona; Notice of Intent to Prepare Supplemental Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, Public Law 91–190, and the Council on Environmental Quality regulations at 40 CFR 1502.9(c), the National Park Service will prepare a supplemental environmental impact statement (SEIS) to the 1995 draft General Management Plan/Environmental Impact Statement (GMP/DEIS) for Organ Pipe Cactus National Monument, Arizona. This notice serves to inform the public of the continuation of the GMP/EIS planning process.

BACKGROUND: In May 1995, the National Park Service issued a draft GMP/EIS for Organ Pipe Cactus National Monument, Arizona. The draft GMP described and analyzed a proposed action and an alternative strategy for the general management of the monument including resource protection, visitor use, and facility development. An

accompanying DEIS assessed the environmental and socioeconomic impacts associated with each alternative.

Substantive public and agency comments were received on the draft document during the 60-day comment period that ended on July 10, 1995. Most comments focused on the following issues: changes proposed for State Route 85; the range of alternatives and suggestions for new alternatives; costs associated with implementing various elements of alternatives; and mitigation strategies for the protection of natural resources, especially threatened and endangered species. Based on an analysis of these comments, the National Park Service has determined that a supplemental draft GMP/EIS will be prepared.

The supplemental draft GMP/EIS will address the comments and suggestions received during the initial public comment period. The supplement will include clarifications of the original alternatives and a discussion of new alternatives to be added since release of the initial draft GMP/EIS. It will also present an analysis of the environmental consequences associated with each alternative.

The official who is responsible for the current GMP/EIA planning process is Stanley T. Albright, Field Director, Pacific West Area, National Park Service. The supplemental draft GMP/EIS is expected to be available for public review in early 1996, and it will be provided to all persons and organizations who received the initial DEIS. Upon approval, officials responsible for implementing the plan will be the Superintendent, Organ Pipe Cactus National Monument, and the Field Director, Intermountain Field Area, National Park Service.

Dated: December 12, 1995.

Patricia L. Neubacher,

Field Director, Pacific West Area.

[FR Doc. 95–31065 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and the Chairperson of the subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order.
(2) Introduction of Commission members and guests.
(3) Approval of summary of minutes from April 6–8, 1994 meeting.
(4) Review agenda.
(5) Superintendent's welcome and review of the Commission's function and purpose.
(6) Commission membership status.
(7) Election of Chair and Vice-Chair.
(8) Federal Subsistence Management Program:
  a. Update on the revised C&T determination process.
  b. Update on Federal Subsistence Board actions affecting the park.
(9) Public and other agency comments.
(10) Old business:
  a. Status of letter to Eastern Interior, Southcentral and southeast Subsistence Regional Councils encouraging cooperation between the SRC and the regional councils.
  b. Status of letter to Secretary of the Interior requesting funding to conduct an access study.
  c. Status of letter to Secretary of the Interior requesting assistance in resolving fall hunting of waterfowl with provisions of the Migratory Bird Treaty Act.
  d. Status of SRC's Resident Zone Boundary Proposal.
  e. Status of Hunting Plan Recommendation studies to add Northway and Tetlin as resident zone communities.
(11) New business:
  a. Proposed 1996–97 subsistence hunting proposals/regulations.
  b. Mentasta Caribou Hunt Proposal by NPS.
  c. 804 process work session.
  d. Review of NPS Subsistence Program.
(12) Set time and place of next SRC meeting.
(13) Adjournment

DATES: The meeting will be held Wednesday and Thursday, January 17 and 18, 1996. The meeting will begin at 8:30 a.m. and end at 5 p.m. each day.

LOCATION: The meeting will be held at the Caribou Cafe in Glennallen, Alaska.

FOR FURTHER INFORMATION CONTACT:

Jonathan B. Jarvis, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Cooper Center, Alaska 99573.

SUPPLEMENTARY INFORMATION: The subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Field Director.

[FR Doc. 95–31090 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 1996 is 7.625 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1995, through and including September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: (303) 236–1061, extension 287.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 7.625 percent for fiscal year 1996.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 7.58 percent. Rounding this average yield to the nearest one-eighth percent is 7.625 percent, which is within the permissible one-quarter of 1 percent change.

The rate of 7.625 percent shall be used by all Federal agencies in the formulation and evaluation of water and

related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: December 14, 1995.

Wayne O. Deason,

Assistant Director, Program Analysis Office.

[FR Doc. 95–31060 Filed 12–20–95; 8:45 am]

BILLING CODE 4310–94–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32804]

CSX Corporation and American Commercial Lines, Inc.—Control and Related Merger Exemption—Conticarriers and Terminals, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Petition for exemption.

SUMMARY: Acting under 49 U.S.C. 10505(a), the Commission exempts CSX Corporation (CSX), CSX subsidiary, American Commercial Lines, Inc. (ACL), and Conticarriers and Terminals, Inc. (Conticarriers) from 49 U.S.C. 11343 and 11321 so as to enable ACL to acquire control of the barge operating assets of Conticarriers and lease them to ACL's barge operating subsidiary American Commercial Barge Line Company.

DATES: This exemption will be effective on December 21, 1995. Petitions to reopen must be filed by January 10, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32804 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[1] 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) petitioners' representative: Donald H. Smith, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: December 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31082 Filed 12–20–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should use the current name and address.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Industrial Macromolecular Crystallography Association

Notice is hereby given that, on January 19, 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''), Industrial Macromolecular Crystallography Association (''IMCA'') 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, G.D. Searle and Company, Skokie, IL; and Sanofi Winthrop, Inc., New York, NY have become members of IMCA. Monsanto Company and Sterling Drug, Inc. have withdrawn as members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMCA intends to file additional written notifications disclosing all changes in membership.

On October 23, 1990, IMCA 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 3, 1990 (55 FR 49953).

The last notification was filed with the Department on March 3, 1993. A notice was published in the Federal Register pursuant to section 6(b) of the Act on March 30, 1993 (58 FR 16707).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–31055 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 1, 1995 a proposed Consent Decree in *United States and State of California* v. *Shell Oil Company, Inc., et al.*, Case No. CV 91–0589 RJK (Ex) was lodged with the United States District Court for the Central District of California. This Consent Decree represents a settlement of claims against McAuley LCX Corporation (''McAuley'') for costs incurred in connection with the McColl Superfund Site in Fullerton, California under section 107 of CERCLA, 42 U.S.C. § 9607.

Under this settlement between the United States and the State of California (''Plaintiffs'') and McAuley, McAuley will pay the United States Environmental Protection Agency (''EPA'') $184,000 for past United States response costs. The Consent Decree also requires McAuley to pay the State of California $66,000 for past State response costs.

This is the second consent decree entered in this case. The first consent decree between the Plaintiffs and the Oil Company Defendants (Shell Oil Company, Union Oil Company of California, Atlantic Richfield Corporation and Texaco, Inc.) resulted in payment of $18,000,000 from the Oil Company Defendants to the Plaintiffs.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and State of California* v. *Shell Oil Company, Inc., et al.*, D.J. Ref. 90–11–2–3A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Central District of California, Room 7516 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012 and at Region IX, Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree and exhibits thereto may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $9.50 (25 cents

per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–31057 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Caribe General Electric Products, Inc.*, Civil Action No. 90–2287CCC, was lodged on December 8, 1995, with the United States District Court for the District of Puerto Rico.

The Second Amended Complaint in the *Caribe General Electric Products* action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by the United States in taking response actions in connection with the Vega Alta Public Supply Wells Superfund Site (''Site'') located in the municipality of Vega Alta, Puerto Rico. The proposed Consent Decree embodies an agreement by defendants Caribe General Electric Products, Inc., Motorola Telcarro de Puerto Rico, Inc., Harman Puerto Rico Automotive, Inc., the West Company of Puerto Rico, Inc., and Unisys Corporation to be jointly and severally liable for the payment of $2,650,000 to the United States in order to reimburse the United States for past costs incurred at the Site through about November 1993. In addition, all of these defendants, as well as the Puerto Rico Industrial Development Company, the remaining defendant, have agreed to provide the United States with access to any property that they own or control to which access is required for implementation of response actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Uunited States* v. *Caribe General Electric Products, Inc.*, DOJ Ref. #90–11–3–269. The proposed Consent Decree may be examined at the Region 2 Office of the Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866 (contact Marla Wieder at 212–637–3184), at the United States Attorney's Office located at the Federal Building, Room 101, Carlos Chandon Avenue, Hato Rey, Puerto Rico 00918 (contact Rosa Rodriguez at 809–766–5656), and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 for a copy of the Consent Decree (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–31056 Filed 12–20–95; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR 100, Appendix A, ''Seismic and Geologic Siting Criteria for Nuclear Power Plants.''

2. Current OMB approval number: 3150–0093.

3. How often the collection is required: As necessary in order for NRC to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power plants constructed and licensed in accordance with 10 CFR Part 50 and the Atomic Energy Act of 1954, as amended.

4. Who is required or asked to report: Applicants and licensees for nuclear power plants.

5. The number of annual respondents: 2.

6. The number of hours needed annually to complete the requirement or request: 10,000.

7. Abstract: Utilities that propose to build and operate nuclear power plants are required to design, construct, and maintain those plants to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment. NRC uses the information required by 10 CFR Part 100, Appendix A, to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power plants.

Submit, by February 20, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 14th day of December, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–31079 Filed 12–20–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company (D.C. Cook Nuclear Plant, Units 1 and 2)

Exemption

I

Indiana Michigan Power Company (IMPCo, the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2. The Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

In 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), in part, states that ''the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

In 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), it specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' Also, 10 CFR 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, ''receives a picture badge upon entrance into a protected area which must be returned upon exit from the protected area***.''

The licensee proposes to implement an alternative unescorted access system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing the Donald C. Cook site.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. According to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same ''high assurance'' objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area of Donald D. Cook, Units 1 and 2, for both employee and contractor personnel is controlled through the use of picture badges. Positive identification of personnel which are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site.

The proposed system will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Donald C. Cook site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, ''A Performance Evaluation of Biometric Identification Devices,'' SAND91—0276 UC—906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system. The site security plans will also be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Donald C. Cook site.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep

their picture badges in their possession upon leaving the Donald C. Cook site.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (60 FR 64183).

Dated at Rockville, Maryland, this 15th day of December 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV. Office of Nuclear Reactor Regulation.

[FR Doc. 95–31080 Filed 12–20–95; 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; Notice of Meeting

The ACRS Subcommittees on Individual Plant Examinations (IPEs) and on Probabilistic Risk Assessment (PRA) will hold a joint meeting on January 10, 11 and 12, 1996, in room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 10, 1996—8:30 a.m. until the conclusion of business

Thursday, January 11, 1996—8:30 a.m. until the conclusion of business

Friday, January 12, 1996—8:30 a.m. until the conclusion of business

The Subcommittees will continue to discuss topics related to Risk-Based Regulatory Applications (RBRA), including identification of the models, analysis and regulatory issues that are currently amenable to risk-based regulatory approach, adequacy of IPEs, and other related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. 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 Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, industry groups, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineers, Dr. Medhat El-Zeftawy (telephone 301/415–6889) or Mr. Michael Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individuals one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: December 13, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–31007 Filed 12–20–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1995.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of December 1, 1995, of three deferrals contained in one special message for FY 1996. This message was transmitted to Congress on October 19, 1995.

Rescissions

As of December 1, 1995, no rescission proposals were pending before the Congress.

Deferrals (Attachments A and B)

As of December 1, 1995, $113.2 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1995.

Information From Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the Federal Register cited below:

60 FR 55154, Friday, October 27, 1995.

Alice M. Rivlin,

Director.

Attachments

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1996 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	122.8
Routine Executive releases through December 1, 1995... (OMB/Agency releases of $9.6 million, partially offset by cumulative positive adjustment of $4 thousand.)	-9.6
Overturned by the Congress.....	---
Currently before the Congress.....	113.2

[FR Doc. 95-31005 Filed 12-20-95; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT B
Status of FY 1996 Deferrals - As of December 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12-1-95
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D96-1	75,000		10-19-95	9,616			4	65,388
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D96-3	40,486		10-19-95					40,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D96-2	7,321		10-19-95					7,321
TOTAL, DEFERRALS		**122,807**	**0**		**9,616**			**4**	**113,194**

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36594; File No. SR–Amex–95–29]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Bond Listing Standards

December 14, 1995.

I. Introduction

On July 19, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder, [2] a proposed rule change to revise its standards for the listing and delisting of debt securities. On December 12, 1995, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 36225 (September 13, 1995), 60 FR 48734 (September 20, 1995). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

Section 104 of the Amex's *Company Guide* sets forth the current standards for listing bonds and debentures. Presently, the Amex will consider listing a debt security if: (1) The company appears to be in a financial position sufficient to satisfactorily service the debt issue; (2) the issuer meets the size and earnings guidelines applicable to issuers listing common stock; [4] and (3) the issue has an aggregate market value and principal amount of at least $5 million for issuers that have common stock listed on the Amex or the New York Stock Exchange (''NYSE''), or at least $20 million and 100 holders for issuers that do not have securities listed on the Amex or NYSE. The Amex presently gives consideration to delisting a bond issue if the aggregate market value or principal amount falls below $400,000. For convertible debt, continued listing is dependent upon the underlying security remaining in compliance with the Amex's numerical criteria for that security.

The Amex proposes to amend its standards for the listing of debt securities with a view towards making the Exchange more accessible to debt issuers and facilitating the listing of such securities.[5] Specifically, the proposal eliminates the requirements that the issuer demonstrate that it will be able to satisfactorily service the debt issue, and that the issuer meet the size and earnings guidelines applicable to companies listing common stock. The proposal also removes the requirement that issuers that do not have securities listed on the Amex or NYSE have at least 100 holders and an aggregate market value and principal amount of $20 million. Finally, the proposal modifies the current aggregate market value and principal amount requirement by stating that the issuer must have at least $5 million in aggregate market value *or* principal amount.

In place of the current guidelines, the proposal provides that the Amex may list an issuer's debt securities if an issuer of an equity security listed on the Amex or NYSE is in ''good standing'' with the respective exchange,[6] and has an aggregate market value *or* principal amount of at least $5 million. This standard also will apply to an issuer that is owned by, or under common control with, an issuer of equity securities listed on the Exchange or the NYSE (''listed issuer''); and to an issuer whose debt securities are guaranteed by a listed issuer.

In contrast, debt securities of an ''unaffiliated'' issuer [7] will not be eligible for initial listing on the Amex unless a nationally recognized securities rating organization (''NRSRO'') has assigned a certain minimum rating to the bonds (or to other bonds issued by the same company). Specifically, debt securities of an unaffiliated issuer will not be eligible for initial listing on the Amex unless:

- An NRSRO has assigned a current rating to the debt security that is no lower than a Standard and Poor's (''S&P'') Corporation ''B'' rating or an equivalent rating by another NRSRO; or
- If no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned an investment grade rating to an immediately senior issue,[8] or a rating that is no lower than an S&P Corporation ''B'' rating (or an equivalent rating by another NRSRO) to a *pari passu*[9] or junior issue.

As under its current rules, the Amex will give consideration to delisting a bond issue if the issuer is unable to meet its obligations on the listed debt, or if the debt's aggregate market value or principal amount falls below $400,000. The Amex proposal amends the delisting standards to clarify that any debt issuer that is unable to meet its obligation on the listed debt securities may be delisted. In applying this standard, the Exchange states that it normally will not delist the debt if there is value in the security and continued Exchange trading is in the best interests of investors.[10] However, if an issuer is unable to meet its financial obligations and there is minimal or no value in the security, the Exchange will give serious consideration to delisting the debt issue.[11] The Exchange states that it also will consider delisting debt that was listed based on the issuer being either majority-owned or guaranteed by an Amex or NYSE issuer when the equity securities of such owner or guarantor are delisted.[12]

Convertible bonds will be reviewed for continued listing when the underlying equity security is delisted, and will be delisted when the related security is no longer subject to real-time last sale reporting in the United States.[13] Further, if the underlying equity

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from Claudia Crowley, Amex, to Glen Barrentine, Senior Counsel, Division of Market regulation, SEC, dated December 12, 1995. Amendment No. 1 supplemented the proposal by specifying that (1) the underlying equities of listed convertible debt must be subject to real-time last sale reporting *in the United States,* (2) specialists assigned to municipal debt must comply with MSRB Rule G–3, (3) municipal securities will not be subject to off-board trading restrictions, and (4) unrated debt securities of unaffiliated issuers may be listed if an NRSRO has currently assigned an investment grade rating to an *immediately* senior issue by the *same* company.

[4] The Amex guidelines provide for the issuer to have stockholders' equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[5] The Commission notes that the new guidelines for listing debt securities are substantially similar to the NYSE's debt listing standards, which the Commission approved in Securities Exchange Act Release No. 34019 (May 5, 1994), 59 FR 24765 (May 12, 1994).

[6] A company is in ''good standing'' if it is above the relevant continued listing guidelines.

[7] An unaffiliated issuer is one that has no equity securities listed on the Amex or NYSE; is not, directly or indirectly, majority-owned by, nor under common control with, an issuer of Amex or NYSE-listed equity securities; and is not issuing a debt security guaranteed by an issuer of equity securities listed on the Amex or NYSE.

[8] To be investment grade, an issue must be assigned a rating no lower than an S&P Corporation rating of ''BBB-'' (or another NRSRO's equivalent thereof). The Amex amended the proposal to specify that it will apply this standard only to unrated bonds that are *immediately* junior to another rated class of securities issued by the *same* company. *See* Amendment No. 1, *supra* note 3.

[9] A *pari passu* issue has equal standing with the debt issue proposed to be listed.

[10] *See* Securities Exchange Act Release No. 36225 (September 13, 1995), 60 FR 46734 (September 20, 1995) (notice of this proposed rule change).

[11] *Id.*

[12] *Id.*

[13] *See* Amendment No. 1 *supra* note 3 (specifying that last trade reporting must be available *in the United States*).

security is delisted due to a violation of the Amex ''corporate responsibility'' criteria (including, but not limited to, the outside director, audit committee and shareholder voting requirements),[14] the Exchange will delist all debt securities convertible into that equity security.

The Amex also proposes to simplify the listing process for debt issuers by reducing the number of documents that an applicant must file in support of its debt listing application. Specifically, the Exchange will eliminate the schedule of distribution and the listing resolution. In addition, the Exchange will no longer require that trustees certify certain issuer-specific information.

Finally, the Amex is adopting a new rule to permit the listing of municipal and sovereign debts (*i.e.*, debt issued by foreign governments, and by American states, localities, or government agencies).[15] The Exchange will evaluate whether to list there issuers on a case-by-case basis and will treat the issuer as an ''unaffiliated'' corporate issuer for purposes of the initial listing guidelines described above. Municipal debt will be subject to the same delisting standards as corporate debt. The Amex will assign municipal securities accepted for listing on the Exchange to specialists that will trade the securities in accordance with all Amex regulations otherwise applicable to the trading of securities on the trading floor.[16] All Exchange contracts in municipal securities will be compared, settled and cleared in accordance with the applicable regulations of the Municipal Securities Rulemaking Board (''MSRB'').

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[17] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the Amex with greater flexibility in determining which debt securities warrant inclusion in its bond trading and disclosure systems, while continuing the protections that the Exchange's listing standards provide investors.

After careful review, the Commission has concluded that the proposed initial listing standards should help the Amex to ensure that only substantial companies capable of meeting their financial obligations are eligible to have their debt listed on the Exchange. As before, the proposed rule change will require that the Amex evaluate an issuer's ability to cover the interest charges on its debt securities. Although the Exchange currently makes this interest coverage determination itself,[18] the amended standards will rely instead on either the issuer's relationship with the Amex of NYSE, or the debt's NRSRO rating.

The Commission agrees that, to the extent that the Amex and the NYSE have adequate listing standards for common stock, the Amex reasonably may assume that listed companies (and certain affiliates thereof) should not pose a significant risk of defaulting on their obligations so long as the companies remain in ''good standing'' on the exchanges. Moreover, debt securities enjoy seniority over equity securities. Because the Amex (or NYSE) presumably would not have listed the junior equity issue unless it was satisfied with the quality of the company, the Commission believes it is reasonable for the Amex to assume that the senior debt issue also warrants listed status.

For ''unaffiliated'' issuers, the Commission finds that it is not unreasonable for the Exchange to defer to the expertise of an NRSRO, rather than conducting its own analysis of the company's financial condition, as is presently the case. Although the Commission would be concerned by any potential misuse of NRSRO ratings, the Commission notes that the NRSROs routinely evaluate interest coverage, among other things, when they rate bonds. In addition, their methodology incorporates extrinsic factors, such as characteristics of the issuer's industry group. The Commission therefore agrees with the Exchange that, under these circumstances, NRSRO ratings can be relied upon for determinations about the creditworthiness of issuers.

Moreover, the Commission is satisfied that the distinctions in NRSRO ratings drawn by the Amex are valid.[19] According to the S&P Corporation's debt rating definitions,[20] bonds rated ''B'' (or higher) currently have the capacity to meet interest payments and principal repayments, whereas bonds rated ''CCC'' (or lower) are dependent upon favorable business, financial or economic conditions to meet timely payments of interest and repayment of principal. The Commission also believes that it is logical for the Amex to assume that an unrated debt issue which is *pari passu* with (or senior to) an issue with at least a ''B'' rating would, if rated, receive an equal (or higher) rating. Finally, to permit the Amex to list unrated bonds that are immediately junior to an investment grade issue is appropriate because those bonds generally would be rated no more than one rating category lower (*i.e.*, a S&P Corporation ''BB'' rating).[21]

As for the other provisions in the proposal, the Commission finds that they strike an appropriate balance between protecting investors and enhancing the flexibility of the debt listing process. For instance, the proposed rule change provides that, to be eligible for listing, a bond issue must have an aggregate market value or

[14] *See* Sections 121–123 of the Amex's *Company Guide*.

[15] This does not include debt issued or guaranteed by the United States Government or agencies thereof that presently may be admitted to dealings on the Exchange pursuant to Amex Rule 140.

[16] The Amex intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with MSRB Rule G–3 regulations regarding municipal securities principals and representatives. *See* Amendment No. 1 *supra* note 3. The National Association of Securities Dealers, Inc. (''NASD'') has authority to enforce MSRB rules for listed municipal securities. The Amex enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

[17] 15 U.S.C. 78f(b) (1988).

[18] As noted above, the current listing standards require that a company appear to be in a financial position sufficient to satisfactorily service in the debt issue to be listed.

[19] The Commission notes that the NRSRO ratings being adopted by the Amex are the same standards as the Commission approved for the NYSE in Securities Exchange Act Release No. 34019, *supra* note 5.

[20] *See* Standard & Poor's High Yield Directions, January 1994.

[21] *Id.*

principal amount of at least $5 million. This should enable the Amex to deny listed status to companies whose securities do not have sufficient liquidity for a fair and orderly market, without infringing upon *bona fide* issuers' access to the Exchange's bond trading and disclosure systems.

Conversely, the Commission does not believe that eliminating the distribution requirement for unaffiliated issuers will have a significant adverse effect on investors in the bond market. In the past, the Commission has recognized that such information may be difficult to estimate accurately and may be relatively less pertinent than other factors.[22] Additionally, the Commission believes that the proposed elimination of certain documents that the Exchange currently requires from applicants is reasonable. Specifically, the Exchange is eliminating the schedule of distribution because distribution is no longer a listing guideline, and the listing resolution because it is essentially ceremonial in nature and does not serve any significant purpose.[23] The Amex also will cease to require that trustees certify issuer-specific information. Accordingly, the Exchange only will require that the certificate show the trustee's acceptance of the trust.[24]

In terms of the delisting criteria, the Commission has concluded that the revised standards should enable the Amex to identify listed companies that may have insufficient resources to meet their financial obligations or whose debt securities may lack adequate trading depth and liquidity. This, in turn, will allow the Exchange to take appropriate action to protect bondholders. The Amex delisting standards, however, do not include a minimum market value for debt securities. The Exchange states that if an issuer is unable to meet its financial obligations and there is minimal or no value in the security, the Exchange will give serious consideration to delisting the debt issue.[25] As the Commission discussed in its approval of similar debt standards for the NYSE,[26] the Commission expects the Amex to consider carefully the propriety of continued exchange trading of the securities of bankrupt or distressed companies,[27] and expects debt securities with minimal value to be delisted.

In addition, the Amex will delist convertible bonds whenever the underlying equity security is no longer subject to real-time last sale reporting in the United States.[28] If the related equity merely moves from the Amex to another market, it is not inconsistent with the Act for the Exchange to have discretion to continue listing the convertible debt. This would not be the case, however, if the underlying security is delisted because the issuer violated one of the Amex's corporate responsibility criteria. As a general matter, the Commission would have serious concerns about any proposal that does not provide for the delisting of convertible bonds where a company acts to disadvantage its shareholders. The Amex proposal addresses this concern by including in its guidelines that the Exchange will delist convertible bonds when the issuer's equity security is delisted due to a violation of the Exchange's corporate governance listing standards.[29]

Finally, the Commission believes that the Amex's initial listing and delisting criteria are appropriate for determining whether municipal debt should be trading on the Exchange. Because municipal securities will trade under the Amex's existing regulatory regime for trading securities (which includes specialist obligations, margin requirements, and surveillance programs), the Commission believes that adequate safeguards are in place to ensure the protection of investors in municipal securities.[30]

The Commission notes that the MSRB's regulatory scheme for the comparison, settlement, and clearing of municipal securities will continue to apply to municipal securities listed on the Amex. Additionally, the Amex will require specialist units applying for appointment and registration in municipal securities to be in compliance with MSRB Rule G–3 regarding municipal securities principals and representatives.[31] The Commission believes that it is important that any specialist selected by the Amex for a listed municipal security be familiar with the characteristics of such security.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 clarifies and codifies the intent of certain language used in the original filing. Finally, the Commission did not receive any comments on the original proposal,[32] which was noted for the full statutory period, nor did it receive comments on a similar NYSE proposal that was also noticed for the full statutory period.[33]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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 rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, 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 at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–29 and should be submitted by January 11, 1996.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–Amex–95–29), including Amendment No. 1 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

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[22] *See* Securities Exchange Act Release No. 32909 (September 15, 1993), 58 FR 49537 (September 23, 1993) (File No. SR–NYSE–93–21) (approving amendments to Paragraph 703.06 of the NYSE's *Listed Company Manual* to eliminate requirement that distribution information be submitted as supporting document to debt listing application).

[23] The Exchange will continue to require an opinion of counsel that the issuance of the debt has been approved by the company's board of directors. *See* Section 213.6(c) of the Amex's *Company Guide.* Not requiring a listing resolution is consistent with NYSE procedures. *See* Paragraph 703.06 of the NYSE's *Listed Company Manual.*

[24] This is consistent with NYSE requirements. *See* Paragraph 703.06 of the NYSE's *Listed Company Manual.*

[25] *See* Securities Exchange Act release No. 36225, *supra* note 10.

[26] *See* Securities Exchange Act Release No. 34019, *supra* note 5.

[27] For example, the Commission believes that the Amex should delist the debt of companies in bankruptcy that file a plan of reorganization providing no recovery for debt holders.

[28] *See* Amendment No. 1, *supra* note 3 (specifying that last trade reporting must be available *in the United States).*

[29] *See supra* note 14 and accompanying text.

[30] The Amex confirmed in Amendment No. 1, *supra* note 3, that municipal securities will not be subject to off-board trading restrictions.

[31] *See* Amendment No. 1, *supra* note 3.

[32] *See* Securities Exchange Act Release No. 36225, *supra* note 10.

[33] *See* Securities Exchange Act Release No. 34019, *supra* note 5.

[34] 15 U.S.C. 78s(b)(2) (1988).

[35] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–31087 Filed 12–20–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–36592; File No. SR–PSE–95–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Composition and Duties of the Options Allocation Committee of the Exchange

December 14, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 15, 1995, the Pacific Stock Exchange Incorporated (''PSE'' 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. 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 the rules relating to the composition and duties of its Options Allocation Committee (''OAC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to make five changes to PSE Rule 11.10(c). First, the Rule currently provides in part that the OAC shall consist of Floor Brokers and Market Makers. The Exchange proposes to amend this provision to provide that the OAC shall consist of Market Makers, Lead Market Makers, Floor Brokers, and/or persons associated with floor members, office members or office allied members.[2]

Second, Commentary .01 to Rule 11.10(c) currently provides that the OAC shall be comprised of (i) two Floor Brokers from either the Options Floor Trading Committee or the Options Listing Committee; (ii) two Market Makers or Lead Market Makers from either the Options Floor Trading Committee or the Options Listing Committee; (iii) three at-large Floor Brokers; and (iv) three at-large Market Makers or Lead Market Makers. The Exchange proposes to amend this provisions to provide that attempts shall be made in order for the OAC to have a composition that includes: Floor Brokers from either the Options Floor Trading Committee or the Options Listing Committee; Market Makers or Lead Market Makers from either the Options Floor Trading Committee or the Options Listing Committee; at-large Floor Brokers; and at-large Market Makers or Lead Market Makers.

Third, the Exchange proposes to eliminate the provision in Commentary .01 that the OAC shall be limited to no more than three members of the Options Floor Trading Committee and no more than three members of the Options Listing Committee.

Fourth, Rule 11.10(c) currently provides that it shall be the duty of the OAC to allocate, reallocate and evaluate options issues. The Exchange proposes to change this provision to provide that the OAC shall allocate and reallocate option issues.

Finally, Rule 11.10(c) currently provides that the OAC shall be responsible for monitoring the performances of trading crowds and Lead Market Makers. The Exchange proposes to change this provision to provide that the OAC shall be responsible for evaluating and monitoring the performances of Market Makers, trading crowds and Lead Market Makers.[3]

The Exchange believes that the current rules on the composition of the OAC are unnecessarily restrictive and that the proposed changes to these rules are appropriate in order to allow for greater flexibility in the committee selection process and the process for replacing committee members who resign or change their status in regard to floor membership or service on other committees of the Exchange. With regard to the proposed changes to the rules on the duties of the OAC, the Exchange believes that they clarify the existing rules and do not otherwise change the way business is conducted on the Exchange.

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it promotes just and equitable principles of trade, and Section 6(b)(4), in particular, in that it assures a fair representation of members in the administration of the affairs of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 organizations 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

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] *Cf.* PSE Const., Art. IV, § 5(a) (similar provision for Equity Allocation Committee).

[3] The OAC currently evaluates Market Makers and Lead Market Makers pursuant to Options Floor Procedure Advice B–13.

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–PSE–95–29 and should be submitted by January 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31088 Filed 12–20–95; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Notice to Registrants Who Have Attained Age 26 Years

Registrants who have attained age 26 years do not have the duty to notify the Selective Service System of a change in their address.

If a registrant notifies the System of a change in his address the System may record it.

This notice is issued pursuant to my authority in 32 CFR 1621.1.

Dated: December 14, 1995.

Gil Coronado,

Director of Selective Service.

[FR Doc. 95–31000 Filed 12–20–95; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2313]

Policy on Munitions Export Licenses to Nigeria

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer commercial defense articles or defense services to Nigeria are suspended until further notice. This action is being taken pursuant to Section 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: November 10, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Sherman, Office of Arms Transfer and Export Control Policy, Bureau of Political-Military Affairs, Department of State (202 647–4231).

SUPPLEMENTARY INFORMATION: On November 10, President Clinton announced a ban on the sale and repair of military goods and services to Nigeria. It is thus the policy of the U.S. Government to deny all new, and suspend all previously issued, licenses and other approvals to export or otherwise transfer commercial defense articles and defense services to Nigeria. This action is being taken to underscore the importance the United States attaches to an orderly and timely transition to unhindered elected civilian government, as well as to respect for human rights.

The licenses and approvals subject to this policy include those which permit commercial defense article and service, including repair service, exports of any kind (e.g. licenses and other approvals for manufacturing license agreements, technical assistance agreements, and technical data exports), involving Nigeria, subject to the Arms Export Control Act. This policy also prohibits the use in connection with Nigeria of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), with the exception of the exemption specified at 22 CFR 125.4(b)(13).

This action has been taken pursuant to Sections 38 and 42 of the Arms Export Control Act (22 U.S.C. Sections 2778 and 2791) and Section 126.7 of the ITAR in furtherance of the foreign policy of the United States. In accordance with Sections 126.3 and 126.7 of the ITAR, affected persons desiring review of this policy with regard to a particular export may petition the Director, Office of Defense Trade Controls.

Dated: December 11, 1995.

Thomas E. McNamara,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 95–31108 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice No. 2308]

United States International Telecommunications Advisory Committee, Radiocommunication Sector, Working Parties of Study Group 9; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector, Study Group 9, (Radio relay systems), Working Parties will meet on January 9 and 10, 1996 at the Federal Communication Commission, 2000 M Street, NW, Washington, DC 20554.

The meetings will be convened as follows:

Working Party 9C (HF Systems)—January 9, 1:30 pm, Room 501.

This meeting will address organizational and working plans for the coming cycle including consideration of Recommendation GT PLEN B (Annex 1) for WRC–97.

Working Parties 9A (Performance and interface of radio relay systems), *9B* (Channel plans), and *9D* (Sharing with other services except the fixed satellite service)—January 10, 9:30 am, Room 847.

This joint meeting will address the development of a work plan for the coming cycle with emphasis on preparations of sharing studies required for WRC–97.

Joint Working Party 4–9/S (Sharing between the fixed service and fixed-satellite service)—January 10, 1:30 pm, Room 847.

This meeting will continue development of the work plan for the coming cycle.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the Chairman. Those planning to attend the meeting should contact Mr. Alex Latker by phone at (202) 418–0767 or by fax at (202) 418–0765.

Dated: December 11, 1995.

Warren G. Richards,

Chairman, U.S. ITAC for ITU–Radiocommunication Sector.

[FR Doc. 95–31001 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2309]

United States International Telecommunications Advisory Committee (ITAC), Standardization Sector (ITAC–T), National Study Group and ITAC–T Study Group A; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) National Study Group and Study Group A will meet on the following dates, times and venue in Washington, DC:

ITAC–T Study Group A, January 30, 1996, 9:30 a.m.—4:00 p.m., at the

[4] 17 CFR 200.20–3(a)(12) (1994).

Department of State, Room 1207, 2201 C Street, NW, Washington, DC.

ITAC–T National Study Group, January 31 and February 1, 1996, 9:30 a.m.—4:00 p.m., at the Department of State, Room 1207, 2201 C Street, NW, Washington, DC.

Detailed agendas will be provided prior to the meetings to the most recent attendees of ITAC–T Study Groups. The Study Group A agenda will deal primarily with preparations for the upcoming Geneva meeting of the ITU–T Study Group 1 scheduled for February 27 to March 8, 1996 and preparations for, and development of U.S. contributions for the upcoming meeting of ITU–T Study Group 3 March 11–20, 1996. The ITAC–T National Group's agenda will cover preparations for the February 19–23 TSAG General meeting and continue preparations for the upcoming World Telecommunications Standardization Conference scheduled for October 1996.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Questions regarding the meeting may be addressed to Mr. Earl Barbely at 202–647–0197. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: December 7, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–31002 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2310]

United States International Telecommunications Advisory Committee (ITAC); Notice of Meeting

The Department of State announces that a meeting of the United States International Telecommunications Advisory Committee (ITAC) will be held January 12, 1996, 1:30–4 p.m., in room 1912 of the Department of State, 2201 ''C'' Street, NW., Washington, DC. The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues.

The agenda of this meeting is to consider preparations for the ITU's first World Telecommunications Policy Forum, to be held October 21–23, 1996, in Geneva, with the theme ''Global mobile personal communications by satellite.'' both Members (governments) and members (entities and organizations authorized to participate in the Union's activities) are invited to attend and may submit contributions in their own right. In particular the Department is seeking ITAC recommendations on U.S. participation in the Forum. For example, it is foreseen that U.S. contributions, which have been requested by February 26, might consist of a relatively short submission by the U.S. government on appropriate topics, accompanied by one or more submissions from the private sector interested in such systems. Questions regarding the agenda may be directed to Richard Shrum, Department of State (202–647–0050).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to 202–647–7407 not later than 2 days before the scheduled meeting. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: December 13, 1995.

Richard E. Shrum,

ITAC Executive Director.

[FR Doc. 95–31072 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2307]

Privacy Act of 1974; Creation of a New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE–41, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on December 4, 1995.

This system of records is being implemented by the Department of State to reflect more accurately its enhanced record keeping system for Foreign Service officers and specialists, and WAE re-employed annuitants who are assigned as rovers at posts abroad or domestically. The information included is directly related to the employee's assignment as a rover and generally does not include information kept in his/her official personnel file.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Margaret P. Grafeld; Acting, Director; Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1239. This system of records will be effective 40 days from the date of publication, unless we receive comments which will result in a contrary determination. The new system description, ''Rover Records, STATE–41'' will read as set forth below.

Dated: December 4, 1995.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

State—41

SYSTEM NAME:

Rover Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW, Washington, DC 20520; and the Miami Regional Center, 4000 N. Andrews Street, Ft. Lauderdale, FL 33309.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Foreign Service professional full-time officers and specialists, (communicators, secretaries, personnelists, administrative officers, and budget and fiscal officers) who are assigned as rovers for a tour of duty or in temporary duty status; WAE re-employed annuitants assigned as rovers in designated positions; and individuals previously in the above two categories whose reassignments are pending or who have resigned from the rover program or been reassigned outside of the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3921 (Management of service); 22 U.S.C. 2656 and 2658 (Management of foreign affairs; Delegation of authority); 5 U.S.C. 301 (Management of the Department of State).

CATEGORIES OF RECORDS IN THE SYSTEM:

Communications between the Bureau of Personnel (PER) and the employee regarding assignments, extensions and curtailments; communications between PER and the bureau of assignment; communications between the employee and the office responsible for the employee's rating regarding issues and problems encountered and self-evaluation of performance and accomplishments; memoranda and telegrams regarding performance prepared at posts where employee served; employee trip reports; employee's assignment history; passports and copies of passport applications; photographs of employee for passport and visa purposes; profile sheets for visa applications; blanket travel authorizations and amendments; training records; medical clearance notifications; signed work requirements; copies of SF–50 personnel actions, arrival/departure communications; information regarding allowances, housing, and household effects; and time and attendance information. For WAE re-employed annuitants: Copies of W–4 tax withholding forms, SF–1190 foreign allowance forms, earnings and leave statements, salary checks and transfer of labor charges are also kept when routed through the appropriate Executive Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used to provide performance evaluation information for the employee's rating and reviewing officers who are not the on-site supervisors, to provide necessary information for visa requests for foreign travel, for applications for U.S. passports, for recommendation and authorization of training, for assisting the employee and posts in travel arrangements and assignment and administrative processing, for assignment processing in considering reappointments for re-employed annuitants, and by foreign missions when visas are requested. Also see the ''Routine Uses'' paragraph of the Prefatory Statement published in the Federal Register.

POLICIES AND PRACTICES FOR STORMING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to the Miami Regional Center is controlled by camera and motion detection devices. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be destroyed or retired according to published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Freedom of Information, Privacy and Classification Review, Room 1239; Department of State, 2201 C Street, NW, Washington, DC 20520–1239.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director for African Affairs, Room 3517; Executive Director for East Asian and Pacific Affairs, Room 4313A; Executive Director for European and Canadian Affairs, Room 5428; Executive Director for Near Eastern and South Asian Affairs, Room 4245; or the Managing Director for Systems Operations for Information Management, Room 4422; Department of State, 2201 C Street, NW, Washington, DC 20520; or the Director of Miami Regional Center; 4000 N. Andrews Street, Ft. Lauderdale, FL 33309.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe the Department of State might have records pertaining to themselves when they were rovers should write to the Director, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 1201 C Street NW, Washington, DC 20520–1239. The individual must specify that he/she wishes the Rover Records applicable to his/her assignment to that program to be checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; bureau to which he/she was assigned and dates of assignment.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records, from supervisors and officers who benefited from the individual's performance at posts where the individual served, from the office of the Regional Executive Director, from the Office of Medical Services, and from the Bureau of Personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). See Department of State Rules published in the Federal Register.

[FR Doc. 95–31109 Filed 12–20–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 95–10–9 established the currently effective two-month SFFL applicable through November 30, 1995.

In establishing the SFFL for the two-month period beginning December 1, 1995, we have projected non-fuel costs based on the year ended September 30, 1995 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–12–23 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.4085.
Latin America	1.4448.
Pacific	1.4717.

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: December 14, 1995

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–31052 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Notice That the Department Will No Longer Issue Formal SFRL Update Orders, in Light of the Recently Issued Final Rule Exempting Carriers From Their Statutory Duty To File International Air Cargo Tariffs. We Are Publishing This Notice in Its Entirety as an Appendix to This Document

DATED: Issued in Washington, DC December 13, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

Attachment

United States of America, Department of Transportation, Office of the Secretary, Washington, DC

NOTICE: Issuing of Formal SFRL Update Orders Discontinued.

The Department issued a final rule, November 30, 1995, exempting all U.S. and foreign air carriers from their statutory duty to file international air cargo tariffs, subject to the reimposition of the duty in specific cases when consistent with the public interest (60 FR 61472).

In light of this development, the Department will no longer be issuing periodic formal orders updating the Standard Foreign Rate Level (SFRL) for each geographic area (Atlantic, Latin America and Pacific). However, as stated in our October 24, 1994, Notice of Proposed Rulemaking, the Department will continue to recalculate the SFRL cost indices. This will continue to establish benchmark levels that would be considered reasonable, and that could be used to resolve any complaints against rates in any rate categories covered by the SFRL.

These SFRL cost indices will be available from the Department upon request. Persons who desire this information may telephone the Department at 202–366–2435 or write to the Department at the following address:

U.S. Department of Transportation; Office of the Secretary; Office of International Aviation, X–43; 400 7th Street S.W.; Washington DC 20590.

This notice shall be published in the Federal Register and shall be served on all certificated air carriers and all foreign air carriers.

Dated: December 13, 1995.

Patrick V. Murphy for Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–30915 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS–95–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The waiver petitions are as follows:

Mississippi Central Railroad Company (MSCI)

FRA Waiver Petition Docket No. HS–95–3

The MSCI seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The MSCI states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered.

The MSCI railroad operates 55.5 miles of excepted track from Grand Junction, Tennessee to Oxford, Mississippi. Train movements are authorized by Yard Limit rule and Timetable instructions. The maximum authorized operating speed is 10 mph.

The MSCI connects with the Burlington Northern at Holly Springs, Mississippi and the Norfolk Southern at Grand Junction, Tennessee. There are no operating rights arrangements on any carrier. Norfolk Southern has 1.8 miles of track rights at Grand Junction, Tennessee. The MSCI does not operate trains on the segment of track. The Norfolk Southern maintains the 1.8 miles of track.

The petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

The Puget Sound Railway Historical Association (PSHX)

FRA Waiver Petition Docket No. HS–95–5

The Puget Sound Railway Historical Association (PSHX) requests a waiver from the requirements of Title 49 Code of Federal Regulations Part 228.11(a)(4), which requires the number of consecutive hours off duty prior to going on-duty for hours of service purposes. The PSHX operates 3 miles of former Northern Pacific branch line between North Bend, and Snoqualmie, Washington, as the Puget Sound Snoqualmie Valley Railroad.

Port Utilities Commission of South Carolina (PUCC)

FRA Waiver Petition Docket No. HS–95–6

The PUCC seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PUCC states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The PUCC is a Terminal Switching Railroad operating within the County of Charleston, South Carolina over a 1.5 miles of trackage at North Charleston, South Carolina. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

East Cooper and Berkeley Railroad (ECBR)

FRA Waiver Petition Docket No. HS–95–8

The ECBR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The ECBR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The ECBR provides service over 15.5 miles of track in Berkeley County, between State Junction and Charity Church, South Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Port Terminal Railroad of South Carolina (PTR)

FRA Waiver Petition Docket No. HS–95–9

The PTR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PTR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The PTR is a Terminal Switching Railroad operating within the County of Charleston, South Carolina over a two-thirds of a mile of trackage between North Charleston and Charleston, South Carolina. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Algers, Winslow and Western Railroad Company (AWW)

FRA Waiver Petition Docket No. HS–95–10

The AWW seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AWW states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered.

The AWW provides freight service over 16 miles of trackage within Pike County, Indiana. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Louisiana and Delta Railroad (LDRR)

FRA Waiver Petition Docket No. HS–95–11

The LDRR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The LDRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The LDRR railroad operates 91 miles of Class 2 track between New Liberia and Schriever, Louisiana and joint operation with the Southern Pacific Transportation Company (SP), between Cade (MP 131) and Raceland (MP 41.2), Louisiana. Train movements are authorized by the yard limit rule and posted track speeds while on LDRR trackage and Direct Traffic Control on SP trackage. The maximum authorized operating speed is 20 mph on LDRR and 45 mph on the SP by special agreement.

Pioneer Valley Railroad (PVRR)

FRA Waiver Petition Docket No. HS–95–12

The PVRR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PVRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered.

The PVRR provides service over 26 miles of trackage between Westfield and Holyoke, and Westfield and Easthampton, all within the State of Massachusetts. The petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Tennessee Valley Railroad (TVRM)

FRA Waiver Petition Docket NO. RSAD–95–2

The TVRM seeks a waiver petition from the requirements of subparts D, E, F, and G of the random alcohol and drug testing provisions. The TVRM provides excursion service over approximately 3 miles of TVRM trackage and also operates over 4 miles of Norfolk Southern trackage. TVRM states that maintaining the required programs will create a financial burden to the railroad.

Issued in Washington, D.C. on December 18, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–31115 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–06–P

Petition for a Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. RSEQ–95–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular

business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The waiver petition is as follows:

Little Kanawha River Rail (LKRR)

FRA Waiver Petition Docket No. RSEQ–95–4

The LKRR seeks a waiver of compliance with Title 49, Code of Federal Regulations (49 CFR), Part 240, ''Qualifications for Locomotive Engineers.'' LKRR is a rural railroad operating over approximately 2.8 miles of track near the Little Kanawha River in Wood County, West Virginia. LKRR operates using a 1200 HP locomotive, No.1205. LKRR employs 3 part time employees, has a maximum speed of 10 MPH and a 5 MPH restriction over crossings and bridges. The LKRR operates approximately 16 hours per week handling coke into Marietta Industrial Enterprises and scrap metal from Ames Corporation.

LKRR handles about 55 cars per month. LKRR has 4 crossings at grade on its property and interchanges with the CSXT near the end of its line. LKRR states that granting this wavier will not have a negative impact on safety.

Issued in Washington, D. C. on December 18, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation

[FR Doc. 95–31116 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application BS–AP–No. 3370

Applicant: Portland and Western Railroad, Incorporated, Mr. A.W. Mogytych, President and General Manager, P.O. Box 942, Albany, Oregon 97321

The Portland and Western Railroad, Incorporated (PNWR) seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track and controlled siding, between Greton, milepost 757.0 and St. Marys, milepost 751.8, Oregon, a distance of approximately 5 miles, and operate trains by track warrant control.

The reason given for the proposed changes is that of the 106 miles of main line track that PNWR operates, only 5 miles of trackage is controlled by CTC. The maintenance of the CTC imposes a unnecessary cost burden upon PNWR, and frequent and costly train delays are experienced because of difficulties in establishing communications with the SP dispatching personnel in Denver. PNWR is the only operating carrier within the CTC limits and the carrier's track warrant system utilized on 83.2 miles of other trackage, is adequate to safely handle PNWR traffic in lieu of CTC. Acquisition and installation of CTC controls to operate from PNWR's Albany, Oregon, dispatching office would be prohibitively expensive.

BS–AP–No. 3371

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001

The Union Pacific Railroad Company seeks approval of the proposed modification of the automatic block signal system, on the single main track, at North End of Travis, milepost 253.9, near San Antonio, Texas, Austin Subdivision; consisting of the discontinuance and removal of automatic block signal 2539–2 and absolute signal 2540–2, conversion of absolute signal 2545–2 to automatic operation, and relocation of automatic signal 2546–2.

The reason given for the proposed changes is that Travis siding is no longer used for the meeting and passing of trains.

BS–AP–No. 3372

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the two main track Baring Cross Bridge, milepost 345.4, near North Little Rock, Arkansas, Little Rock Subdivision.

The reason given for the proposed changes is to modernize the operation of the Baring Cross Bridge.

BS–AP–No. 3373

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Montana Junction, Idaho, milepost 136.7 and Idaho Falls, Idaho, milepost 189.4, Montana Subdivision, approximately 53 miles; consisting of the discontinuance and removal of 81 automatic block signals and conversion of signals 1382 and ''BW Hold'' to operative distant signals.

The reason given for the proposed changes is that traffic density does not warrant an automatic block signal system.

BS–AP–No. 3374

Applicant: Southern Pacific Lines, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105

The Southern Pacific Lines seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the No. 2 main track, between Valley Blvd X-Overs, milepost B–485.5 and Taylor Junction B–482.8, California, Los Angeles Division, Basin Subdivision, West Line; consisting of the discontinuance and removal of automatic block signal 4846 and designation of the No. 2 main track to a yard track.

The reason given for the proposed changes is that due to minimum track usage, the automatic block signal system is no longer required.

BS–AP–No. 3375

Applicant: Southern Pacific Lines, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105

The Southern Pacific Lines seeks approval of the proposed conversion of the manual interlocking system to a traffic control system, between Polk, milepost 131.8 and Elvas, milepost 92.1, California, Roseville Division, San Joaquin Subdivision.

The reason given for the proposed changes is to enhance safety by having the operator use the same operating rules as the dispatchers on joining territories.

BS–AP–No. 3376

Applicant: Southern Pacific Lines, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105

The Southern Pacific Lines (SP) seeks approval of the proposed discontinuance and removal of the barricade detectors and installation of

Krail, in the SP Western Region, at the following dead end street locations:

Roseville Division

Brooklyn Subdivision, Valley Line, County Road Milepost C–737.8
Valley Subdivision, East Valley Line, Road Milepost C–183.0
Roseville Subdivision, No.1 Track, Forest Street Milepost A–124.7
Martinez Subdivision, Sacramento Line, Road Milepost A–9.4
Coast Subdivision, Coast Line, Road Milepost E–79.7
San Joaquin Subdivision, Fresno Line, Road Milepost B–109.5
San Joaquin Subdivision, Fresno Line, Road Milepost B–204.6
San Joaquin Subdivision, Sacramento Line, Road Milepost A–99.9

Los Angeles Division

Salinas Subdivision, Coast Line, Harris Road Milepost E–121.8
Santa Barbara Subdivision, Coast Line, Road Milepost E–403.2
Santa Barbara Subdivision, Coast Line, Road Milepost E–422.6

West Colton Division

Mojave Subdivision, Bakersfield Line, Road Milepost B–384.6
Mojave Subdivision, Bakersfield Line, Road Milepost B–400.0
Mojave Subdivision, Bakersfield Line, Road Milepost B–402.0
Yuma Subdivision, East Line, Road Milepost B–574.3
Gila Subdivision, Phoenix Line, Road Milepost R–922.8

El Paso Division

Carrizozo Subdivision, Tucumcari Line, Road Milepost B–1298.2
Carrizozo Subdivision, Tucumcari Line, Road Milepost B–1300.2
Carrizozo Subdivision, Tucumcari Line, Road Milepost B–1300.4

The reason given for the proposed changes is that due to the crossings being closed for a number of years, the barricade detectors are no longer required, and will eliminate unnecessary train delays associated with vandalism.

BS–AP–No. 3377

Applicant: National Railroad Passenger Corporation, Ms. Alison Conway-Smith, Vice President/Chief Engineer, 30th and Market Streets, Philadelphia, Pennsylvania 19104

The National Railroad Passenger Corporation (Amtrak) and the Massachusetts Bay Transportation Authority (MBTA) jointly seek approval of the proposed modification of the traffic control system, between Hill Interlocking, milepost 219.1 and South Bay Interlocking, milepost 227.0 near Boston, Massachusetts, Dorchester Branch, New England Division; associated with the installation of a new ''Park Interlocking'' near milepost 224.0, the discontinuance and removal of the intermediate wayside signals on the No. 1 and No. 2 main tracks between South Bay and Dana Interlocking in favor of operating by cab signals alone, and the installation of NORAC Rule 280(a) signals at South Bay, Park, and Dana interlockings.

The reason given for the proposed changes is that the existing wayside signals are at the end of their useful life span and will require replacement within the next four years. The Dorchester Branch is an extremely high crime and vandalism area, and the elimination of the wayside signals would increase the realiablity of the signal system, increase the safety of maintenance personnel, and maintain the safety of railroad traffic.

BS–AP–No. 3378

Applicant: Burlington Northern Santa Fe Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 1900 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102–5304

The Burlington Northern Santa Fe Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track, between Appleton, Minnesota, milepost 578.93 and Summit, South Dakota, milepost 633.2, Willmar Division, 12th Subdivision, a distance of approximately 54.3 miles; including conversion of Big Stone Control Point, milepost 602.2 to automatic switches, conversion of the remaining power-operated switches to hand operation, removal of all associated signals, and operate train movements by Track Warrant Control. The proposed changes also include the installation of an operative approach signal near milepost 579.5 and installation of a proximity warning system on all locomotives between Appleton, Minnesota and Terry, Montana.

The reasons given for the proposed changes are that reduced traffic patterns do not justify high cost to maintain an aging signal system; a late October snow storm broke miles of pole line, cross arms, and poles which to replace in kind is estimated at $110,000; large amounts of capital dollars will be required to replace pole line with electronic coded track circuits in the near future; and full radio coverage is reported.

BS–AP–No. 3379

Applicant: Burlington Northern Santa Fe Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 1900 Continental Plaza, Fort Worth, Texas 76102–5304

The Burlington Northern Santa Fe Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control and automatic block signal systems, on the single main track, between Summit, South Dakota, milepost 633.2 and Terry, Montana, milepost 1078.9, Willmar and Yellowstone Divisions, Appleton, Mobridge, and Hettinger Subdivisions, a distance of approximately 445.7 miles; including conversion of West End of Aberdeen Control Point, near milepost 709.1 to automatic switches, conversion of the remaining power-operated switches to hand operation, removal of all associated signals, and operate train movements by Track Warrant Control. The proposed changes also include the installation of a proximity warning system on all locomotives between Appleton, Minnesota and Terry, Montana.

The reasons given for the proposed changes are that reduced traffic patterns do not justify high cost to maintain an aging signal system; large amounts of capital dollars will be required to replace pole line with electronic coded track circuits in the near future; and full radio coverage will be provided.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 18, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–31114 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that First Trust of Illinois, National Association, with offices at 400 North Michigan Avenue, Chicago, Illinois, 60611, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: December 18, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 95–31105 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–81–P

Notice of Change of Name of Approved Trustee

Notice is hereby given that effective April 22, 1994, Bank of Delaware, with offices at 222 Delaware Avenue, Wilmington, Delaware, 19899–0791, has changed its name to PNC Bank, Delaware.

Dated: December 18, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 95–31104 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Volkswagen

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Volkswagen of America, Inc., (Volkswagen) for an exemption from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard for the Model Year (MY) 1997 Passat car line. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 1997 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: On September 1, 1995, Volkswagen of America, Inc., (Volkswagen), submitted a petition for exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Passat car line. The petition is pursuant to 49 CFR Part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire line.

Volkswagen's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Volkswagen requested confidential treatment for some of the information and attachments submitted in support of its petition, including the date of production for the Passat car line. In a letter to Volkswagen dated October 2, 1995, the agency granted the petitioner's request for confidential treatment.

In its petition, Volkswagen provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine starter-interrupt feature and an alarm function. The antitheft device is activated by removing the ignition key and locking either of the front doors with it. The alarm monitors the doors, hood, trunk and radio.

In order to ensure reliability and durability of the device, Volkswagen stated that it conducted tests based on its own specified standards. Volkswagen provided the test reports for its proposed antitheft device, which is essentially the same as that currently installed on the MY 1994 Volkswagen Corrado, showing that the reliability and durability of the device complied with specified performance requirements for each test. Volkswagen stated that the device complied with its standards for durability, electrical and electronic operating requirements, thermal and mechanical shock resistance and electromagnetic compatibility.

Volkswagen compared the device proposed for the Passat car line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Volkswagen stated that antitheft devices such as that proposed for its line and those already granted exemptions from the parts-marking requirements have been found effective in reducing motor vehicle theft. Specifically, Volkswagen based its belief on reduced theft rates for comparable lines such as the Mitsubishi Diamante, the Toyota Cressida, the Nissan Maxima, the Toyota Supra, the Nissan 300ZX, the Mazda RX–7, and the Audi 5000. Additionally, Volkswagen stated that the Passat car line experienced theft rates below the median theft rate (3.5826) for MYs 1990/1991 and 1992. Volkswagen believes that the low-theft ratings for those years may be attributable to the installation of an antitheft device as standard equipment on the line beginning with the 1991 model year. Volkswagen stated that it believes the theft rating for the MY 1997 Passat car line with the installation of the antitheft device described in its petition will also be below the 3.5826 median theft rate.

Based on evidence submitted by Volkswagen, the agency believes that the antitheft device for the MY 1997 Volkswagen Passat line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that Volkswagen has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Volkswagen provided about its device. This confidential information included a description of reliability and functional tests conducted by Volkswagen for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Volkswagen's petition for exemption for the MY 1997 Passat car line from the parts-marking requirements of 49 CFR Part 541.

If Volkswagen decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Volkswagen wishes in the future to modify the device on which this exemption is based, the company may have to submit

a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden with Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on December 18, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–31117 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–59–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice for the Federal Register.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet in Room 600, 301 4th Street, SW., on December 20, 1995 from 9:30 a.m. to 12:00 noon.

The meeting will be closed to the public from 9:30 a.m. to 11:30 a.m. because it will involve discussion of classified information relating to public diplomacy and the Bosnian peace process. The Commission will meet with Mr. Roberts Owen, Senior Advisor to the Secretary of State on the former Yugoslavia; Ms. Anne Sigmund, Director, Office of East European and NIS Affairs, USIA; Ms. Mary McIntosh, Chief, European Branch, Office of Research and Media Reaction, USIA. (5 U.S.C. 552b(c)(1))

The 11:30 a.m. to 12:00 p.m. portion of the Commission's meeting will be open to the public and will involve discussion of the U.S. Information Agency's budget with USIA's Comptroller Stanley Silverman.

Please call Betty Hayes, (202) 619–4468, for further information.

Dated: December 15, 1995.

Joseph Duffey,

Director.

Determination To Close a Portion of the U.S. Advisory Commission on Public Diplomacy's Meeting of December 20, 1995

Based on the information provided to the United States Information Agency by the United States Advisory Commission on Public Diplomacy, I hereby determine that the meeting scheduled by the Commission for December 20, 1995 may be closed to the public from 9:30 a.m. to 11:30 a.m.

The Commission has requested that its December 20 meeting be closed from 9:30 a.m. to 11:30 a.m., because it will involve discussion of classified information relating to public diplomacy and the Bosnian peace process. The Commission will meet with Mr. Roberts Owen, Senior Advisor to the Secretary of State on the former Yugoslavia; Ms. Anne Sigmund, Director, Office of East European and NIS Affairs, USIA; and Ms. Mary McIntosh, Chief European Branch, Office of Research and Media Reaction, USIA. (5 U.S.C. 552(2)(1))

The 11:30 a.m. to 12:00 p.m. portion of the Commission's meeting will be open to the public and will involve discussion of the U.S. Information Agency's budget with USIA's Comptroller Stanley Silverman.

Dated: December 15, 1995.

Joseph Duffy,

Director.

[FR Doc. 95–31094 Filed 12–20–95; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Thursday
December 21, 1995

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 266, and 268

Hazardous Waste: Identification and Listing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 266, and 268

[FRL–5337–9]

RIN 2050–AE07

Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Hazardous Waste Identification Rule (HWIR)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, tentative response to Chemical Manufacturers Association petition and the Hazardous Waste Identification Dialogue Committee recommendations, and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by establishing constituent-specific exit levels for low-risk solid wastes that are designated as hazardous because they are listed, or have been mixed with, derived from, or contain listed hazardous wastes. Under this proposal, generators of listed hazardous wastes that meet the self-implementing exit levels would no longer be subject to the hazardous waste management system under Subtitle C of RCRA as listed hazardous wastes. Today's Notice, commonly referred to as the Hazardous Waste Identification Rule (HWIR), establishes a risk-based ''floor'' to hazardous waste listings that will encourage pollution prevention, waste minimization, and the development of innovative waste treatment technologies.

Many of the exit levels are established using an innovative risk assessment which evaluates potential exposure pathways, both direct and indirect, from a variety of sources, such as waste piles and surface impoundments. This assessment focuses on both human and environmental receptors and is presented for comment in today's Notice. The remaining exit levels are based on an alternative risk analysis.

The Agency is also proposing to modify some of the land disposal restriction (LDR) numerical treatment standards listed in subpart D of 40 CFR part 268. This notice proposes to cap technology-based treatment standards with the risk-based exit levels which minimize threats to human health and the environment. This notice also takes comment on several general approaches and one specific approach for conditional exemptions from subtitle C management. Today's notice also contains the Agency's tentative response to a petition for rulemaking submitted by the Chemical Manufacturers Association and the Agency's tentative response to the recommendations made by the Dialogue Committee on Hazardous Waste Identification. This committee was formally chartered in July 1993 in accordance with the Federal Advisory Committee Act (FACA).

DATES: EPA will accept public comments on this proposed rule until February 20, 1996. Comments postmarked after this date may not be considered. However, the Agency recognizes that, because of the complexity of this proposed rulemaking, some commenters may want to request additional time for comment submittal. In anticipation of these requests, EPA will be communicating with the litigants and the court regarding the implications on our rulemaking schedule of a possible extension of the comment period for this proposal. If the comment period is extended, the Agency will provide notice of such in the Federal Register.

Any person may request a public hearing on this amendment by filing a request with Mr. David Bussard, whose address appears below, by January 5, 1996.

ADDRESSES: The public must send an original, two copies, and whenever possible, a 3.5 inch computer disk containing the comments in a common word processing format such as WordPerfect version 5.1 [1]. to: EPA RCRA Docket (5305W), 401 M Street, SW., Washington, DC 20460.

Place ''Docket number F–95–WHWP–FFFFF'' on your comments. The RCRA docket is located at: EPA's Crystal Gateway Office, 1235 Jefferson Davis Highway, Arlington, Virginia, and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy material from any regulatory docket at a cost of $0.15 per page. Copies of the background documents, Integrated Risk Information System (IRIS) chemical files, and other references (which are not readily available) are available for *viewing and copying only* in the RCRA docket.

Requests for a public hearing should be addressed to Mr. David Bussard, Director, Characterization and Assessment Division, Office of Solid Waste (OS–330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

[1] This will greatly facilitate EPA's preparation of the comment responses and will significantly reduce the cost associated with responding to the comments.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (703) 412–9810. For technical information contact Mr. William A. Collins, Jr., Mr. Greg Helms, or Ms. Pamela McMains, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 260–4770.

Preamble Outline

I. Authority

These regulations are proposed under the authority of sections 2002(a), 3001, 3002, 3004 and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6922, 6924 and 6926.

II. Background

A. Overview of the Hazardous Waste Identification Program

Section 1004(5) of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, defines ''hazardous waste'' as ''a solid waste, or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (A) cause, or significantly contribute to an increase in the 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.''

Section 3001 of RCRA requires EPA to identify those wastes that should be classified as ''hazardous.'' The Agency's hazardous waste identification rules designate wastes as hazardous in one of two ways. First, the Agency has established four hazardous waste characteristics which identify properties or attributes of wastes which would pose a potential hazard if the waste is improperly managed. See 40 CFR 261.21-261.24. Any generator of a solid waste is responsible for determining whether a solid waste exhibits any of these characteristics. See 40 CFR 262.11. Any solid waste that exhibits any of the characteristics remains hazardous until it no longer exhibits the characteristics. See 40 CFR 261.4(d)(1).

The other mechanism EPA uses to designate wastes as hazardous is ''listing.'' The Agency has reviewed data on specific waste streams generated from a number of industrial processes and has determined that these wastes would pose hazards if mismanaged for one or more reasons, including the presence of significant levels of hazardous constituents listed in appendix VIII to 40 CFR part 261, the manifestation of one or more of the hazardous waste characteristics, or the potential to impose detrimental effects on the environment. (See generally 40 CFR 261.11). As discussed in detail in the preambles and in associated dockets accompanying the listings, EPA has generally determined that these wastes contain toxic constituents at concentrations which pose risks which are unacceptable for human or environmental exposure and that these constituents are mobile and persistent to the degree that they can reach environmental or human receptors.

On May 19, 1980, as part of the final and interim final regulations implementing section 3001 of RCRA, EPA published two lists of hazardous wastes: One composed of wastes generated from non-specific sources (*e.g.*, spent solvents) and one composed of wastes generated from specific sources (e.g., distillation bottoms from the production of benzyl chloride). The Agency also published two lists of discarded commercial chemical products, off-specification species, container residues, and spill residues thereof which are hazardous wastes under specific circumstances. These four lists have been amended several times, and are currently published in 40 CFR 261.31, 261.32, 261.33(e) and (f), respectively.

B. The Mixture and Derived-From Rules and the Contained-In Policy

1. Mixture and Derived-From Rules

a. Scope and Purpose of the Rules

In 1980 EPA promulgated its first comprehensive regulatory program for the management of hazardous waste under RCRA. 45 FR 33066 (May 19, 1980). As part of that rulemaking EPA promulgated several rules to identify hazardous wastes. Two of these rules clarify the scope of the hazardous waste listings. Under the mixture rule, a solid waste is a hazardous waste if it is mixed with one or more listed hazardous wastes. 40 CFR 261.3(a)(2)(iv). Under the derived-from rule a solid waste generated from the treatment, storage or disposal of a listed hazardous waste is also a hazardous waste. 40 CFR 261.3(c)(2)(i).

EPA promulgated the mixture and derived-from rules to close potentially major loopholes in the subtitle C management system. Without a ''mixture'' rule, generators of hazardous wastes could potentially evade regulatory requirements by mixing listed hazardous wastes with other hazardous wastes or non-hazardous solid wastes to create a ''new'' waste that arguably no longer met the listing description, but continued to pose a serious hazard. Such a waste also might not exhibit any of the hazardous waste characteristics. Similarly, without a ''derived-from'' rule, hazardous waste generators and owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) could potentially evade regulation by minimally processing or managing a hazardous waste and claiming that resulting residue was no longer the listed waste, despite the continued hazards that could be posed by the residue even though it does not exhibit a characteristic. (See 57 FR 7628).

It is for these reasons that the Agency continues to believe that the mixture and derived-from rules are extremely important in regulating hazardous wastes and reducing risk to human health and the environment. However, EPA acknowledges that the mixture and derived-from rules apply regardless of the concentrations and mobilities of hazardous constituents in the waste. The purpose of this rulemaking is to reduce any overregulation of low-risk wastes captured by the mixture and derived-from rule.

b. Subsequent History

Numerous industries that generate hazardous wastes challenged the 1980 mixture and derived-from rules in *Shell Oil* v. *EPA*, 950 F. 2d 741 (D.C. Cir. 1991). In December 1991 the D.C. circuit vacated the rules because they had been promulgated without adequate notice and opportunity to comment. The court, however, suggested that EPA might want to consider reinstating the rules pending full notice and comment in order to ensure continued protection of human health and the environment.

In response to this decision, EPA promulgated an emergency rule reinstating the mixture and derived-from rules as interim final rules without providing notice and opportunity to comment. 57 FR 7628 (Mar.3, 1992). EPA also promulgated a ''sunset provision'' which provided that the mixture and derived-from rules would remain in effect only until April 28, 1993. Shortly after, EPA published the proposal containing several options for revising the mixture and derived-from rules. See 57 FR 21450 (May 20, 1992). This proposal also included options for exempting media contaminated with listed hazardous wastes that are regulated under the ''contained in'' policy.

The May 1992 proposal and the time pressure created by the ''sunset provision'' generated significant controversy. In response, Congress included in EPA's 1992 appropriations bill several provisions addressing the mixture and derived-from rules. Pub. L. No. 102–389, 106 Stat. 1571. First, Congress nullified the sunset provision by providing that EPA could not promulgate any revisions to the rules

before October 1, 1993 and by providing that the reinstated regulations could not be ''terminated or withdrawn'' until revisions took effect. However, to ensure that EPA could not postpone the issue of revisions indefinitely, Congress also established a deadline of October 1, 1994 for the promulgation of revisions to the mixture and derived-from rules. Congress made this deadline enforceable under RCRA's citizen suit provision.

On October 30, 1992 EPA published two notices, one removing the sunset provision, and the other withdrawing the May 1992 proposal. See 57 FR 49278, 49280. EPA had received many comments criticizing the May 1992 proposal. The criticisms were due, in a large part, to the very short schedule imposed on the regulation development process itself. Commenters also feared that the proposal would result in a ''patchwork'' of differing State programs because some states might not adopt the revisions. This fear was based on the belief that States would react in a negative manner to the proposal and refuse to incorporate it into their programs. Finally, many commenters also argued that the risk assessment used to support the proposed exemption levels failed to provide adequate protection of human health and the environment because it evaluated only the risks of human consumption of contaminated groundwater ignoring other pathways that could pose greater risks. Based on these concerns, and based on the Agency's desire to work through the individual elements of the proposal more carefully, the proposal was withdrawn.

Meanwhile, a group of waste generating industries challenged the March 1992 action that reinstated the mixture and derived-from rules without change. *Mobil Oil Corp*. v. *EPA,* 35 F.3d 579 (D.C. Cir. 1994). EPA argued that the 1992 appropriations act made the challenge moot because it prevented both EPA and the courts from terminating or withdrawing the interim rules before EPA revised them, even if EPA failed to meet the statutory deadline for the revisions. In September, 1994 the D.C. Circuit issued an opinion that dismissed the challenges as moot under the rationale that the Agency had offered.

In early October 1994 several groups of waste generating and waste managing industries filed citizen suits to enforce the October 1 deadline for revising the mixture and derived-from rules. The U.S. District Court for the District of Columbia Circuit entered a consent decree resolving the consolidated cases on May 3, 1993. *Environmental Technology Council* v. *Browner,* C.A. No. 94–2119 (TFH) (D.D.C. 1994) Under this decree the Administrator must sign a proposal to amend the mixture and derived-from rules by November 13, 1995 and a notice of final rulemaking by December 15, 1996. The decree also specifies that the deadlines in the 1992 appropriations act do not apply to any rule revising the separate regulations that establish jurisdiction over media contaminated with hazardous wastes.

c. Federal Advisory Committees Act (FACA) and Outreach

After the withdrawal of the HWIR proposal, the Agency initiated a series of public meetings with invited representatives from industry, environmental groups, hazardous waste treaters, and States. These meetings focused on three major issues: —RCRA regulation of low hazard wastes with a particular interest in addressing issues raised regarding the mixture and derived-from rules; concerns that full RCRA requirements for contaminated media may unnecessarily impede clean-ups; and need to regulate additional high-risk wastes outside the scope of the current listings and characteristics.

A strong and successful effort was made to encourage all the interested parties to participate in the public meetings. EPA forged a solid partnership with the States (both ASTSWMO and Environmental Commissioners under the National Governors Association) and the state representatives worked closely with EPA as co-regulators in our analyses of options.

In July of 1993, EPA chartered this group as an advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463)(58 FR 36200).

The committee rather quickly formed two sub-committees to allow separate discussion of the low risk waste problem associated with the mixture and derived-from rules and the rules for managing contaminated media and other wastes during remediation.

By September of 1994 the low risk waste group had made significant progress in identifying options for creating exemptions for low risk wastes. Despite significant investment of time and effort, however, the group was unable to reach consensus on many key issues.

With the statutory deadline for revisions to the mixture and derived-from rules approaching, EPA requested that group to present a final report in late September of 1994. EPA and representatives from several state environmental agencies then took up the task of selecting options for creating an exit rule, crafting regulatory language, and developing necessary supporting materials. The FACA subcommittee's final report was taken into consideration during the development of today's proposal.

2. Contained-In Policy

The Agency also has interpreted its regulatory definition of hazardous waste to extend to mixtures of hazardous wastes and environmental media (such as contaminated soil and groundwater).[2] See 40 CFR 261.3(c)(1) and (d)(2). Media that are contaminated with listed or characteristically hazardous waste must be managed as hazardous wastes until they no longer contain such wastes. To date, the Agency has not issued any general rules as to when, or at what levels, environmental media contaminated with hazardous wastes are no longer considered to ''contain'' those hazardous wastes. Media that contain hazardous wastes with constituent concentrations below the levels proposed today will be eligible for exemption under the procedures proposed today. In addition, in a separate rulemaking, the Agency plans to propose additional rules reducing regulation of contaminated media during remediation activities.

C. Overview of Expected Impacts of the Exit Rule

1. Listed Wastes

The purpose of this rule is to exempt from hazardous waste regulation those solid wastes currently designated as hazardous waste even though they contain constituent concentrations at levels that pose very low risk to human health and the environment. While facilities generating such wastes can petition for delisting by rulemaking under the provisions of 40 CFR § 260.20 and 260.22, EPA believes that the detailed waste-stream specific review required under delisting is not necessary for the low risk wastes that are identified by today's proposal. The alternative, generic exit rule proposed today will be faster and less resource-intensive for both the Agency and the regulated community. By providing an opportunity for a more self-implementing exemption, the Agency intends to create incentives for effective and innovative waste minimization and waste treatment and to reduce unnecessary demand for Subtitle C disposal capacity, without

[2] EPA's ''contained in'' policy was upheld as a reasonable interpretation of 40 CFR 261.3(c)(1) and (d)(2) by the D.C. Circuit in *Chemical Waste Management, Inc* v. *U.S. EPA*, No. 869 F.2d 1526 (D.C. Cir. 1989).

compromising needed environmental protection.[3]

By proposing a risk-based ''floor'' to listed wastes, today's proposal should give a very strong incentive to generators of listed hazardous waste to apply pollution prevention to their processes to avoid Subtitle C control. This action should also give incentive for the development of innovative treatment technologies to render wastes less risky.

Today's proposed rule specifies sampling and analysis requirements, public participation, reporting and record keeping requirements. Most of these provisions are alternatives to the safeguard of waste-specific review provided under the delisting program. The exit levels are risk-based concentrations at which a human or wildlife species could be directly or indirectly exposed to the exempted waste, and would be unlikely to suffer adverse health effects. The exposure scenario used to develop these levels assume that the exempted waste will no longer be subject to Subtitle C control, but will be managed as a solid waste in one of a variety of non-hazardous waste management units regulated under Subtitle D.

2. Characteristic Wastes

Listed hazardous wastes exempted under today's proposed rule which exhibit any of the characteristics will continue to be regulated as hazardous wastes until the characteristic is removed. In a number of cases, wastes were listed on the basis of containing both toxic hazardous constituents and exhibiting one or more of the hazardous waste characteristics that do not relate to chemical toxicity (e.g., ignitability, corrosivity, or reactivity). If such a waste still exhibits any characteristic after complying with the exemption criteria proposed in today's proposed rule, it must continue to be managed as a characteristically hazardous waste.

III. Scope of Revisions to the Mixture and Derived-From Rules

The mixture and derived-from rules promulgated in 1980 and reinstated in 1992 require Subtitle C regulation of all mixtures of listed hazardous wastes and solid wastes and all residuals from treatment of hazardous wastes. The rules proposed today, however, allow rapid exemptions for mixtures and derived-from wastes that present no significant threats to human health and the environment. Those wastes that would remain subject to the mixture and derived-from rules typically will pose risks that warrant regulation under Subtitle C. To the extent that this is not true for a particular mixture or treatment residual, the delisting process remains available (at least at the state level) to exempt wastes with constituents at more site- and waste-specific levels. Consequently, EPA has tentatively determined that further revisions of the mixture and derived-from rules, with the exception of the one minor change to the derived-from rule discussed later in this section, are not warranted in this rulemaking. However, EPA requests comment on this conclusion.

A. Rationale for Retention of the Mixture and Derived-From Rules

EPA continues to believe that it had ample statutory and regulatory authority to promulgate the original rules and that it also has ample authority to maintain the rules without further revisions. The mixture and derived-from rules, particularly with the revisions proposed today, ensure that hazardous wastes that are mixed with other wastes or treated in some fashion do not escape regulation so long as they are reasonably likely to continue to pose threats to human health and the environment. They thus retain jurisdiction over listed hazardous wastes and clarify that such wastes are not automatically eligible for exit when they are mixed or treated. Although RCRA sets out criteria for the identification of hazardous wastes to *enter* the subtitle C system, it is silent on the question of how to determine that a waste is eligible to exit the system. EPA's interpretation of the statute is thus entitled to deference so long as it is reasonable and consistent with RCRA's purposes.

EPA believes that its decision to retain jurisdiction over major portions of the universe of waste mixtures and treatment residues is consistent with its authorities under sections 3002–3004 of RCRA to impose requirements on waste handlers until wastes have ''cease[d] to pose a hazard to the public''. *Shell Oil Corp.* v. *EPA*, 959 F.2d 741, 754 (D.C. Cir. 1991). See also *Chemical Manufacturers Assoc.* v. *EPA*, 919 F.2d 158, 162–65 (EPA may regulate the disposal of nonhazardous wastes in a hazardous waste impoundment under section 3004) and *Chemical Waste Management, Inc.* v. *EPA*, 976 F.2d 2, 8, 13–14 (D.C. Cir. 1992) (EPA may require further treatment of wastes under section 3004 even though they cease to exhibit a hazardous characteristic).

The mixture and derived-from rules are also valid exercises of EPA's authority to list hazardous wastes under section 3001. That provision gives EPA broad authority to promulgate listing criteria. EPA's 1980 criteria authorize the listing of classes of hazardous wastes when it has reason to believe that wastes in the class are typically or frequently hazardous. See 40 CFR 261.11(b). Such class listings are permissible even if some members of the class do not actually pose hazards. Nothing in the section 1004(5) definition of hazardous waste, in section 3001, or in EPA's listing criteria require EPA to prove that every member of a class poses a hazard. In fact, many waste listings describe ''classes'' of hazardous wastes because they cover a range of materials that are not identical in composition. The mixture and derived-from rules thus are fully authorized as class ''listings'' under section 3001.

EPA has also made a reasonable factual determination that these classes of waste warrant regulation under sections 3002–3004 and section 3001. In 1980 EPA determined that the hazardous constituents contained in these wastes are not generally eliminated or rendered nontoxic simply because a waste is mixed with other wastes or managed in some fashion. In 1992, when EPA repromulgated the mixture and derived-from rules, it documented numerous instances of mixed and derived-from wastes that continued to pose hazards. See 57 FR 7629 (March 3, 1992). Today, EPA is proposing that members of this class of wastes that pose low risks will be eligible for an expedited, self-implementing exemption from Subtitle C regulation. Accordingly, EPA has an even better basis for believing that wastes which remain within the scope of the mixture and derived-from rules pose threats warranting regulation.

Additionally, EPA continues to believe, as it did in 1980, that it would be virtually impossible to try to identify all possible waste mixtures and treated wastes and assess their hazards individually. EPA's rule reasonably retains jurisdiction over both broad classes and places the burden of proof on the regulated community to show that a particular waste has ceased to present a hazard. Today's self-implementing exit proposal will reduce that burden significantly, ensuring that the mixture and derived-from rules represent a reasonable approach to regulating these classes of wastes.

[3] As will be discussed further in this notice, the Agency believes that the delisting process will continue to be valuable for certain types of wastes which are not eligible for an exemption under this proposal. Thus the Agency is not proposing to eliminate or modify the delisting program as a result of this proposal.

B. Revision to Derived-from Rule for Wastes Listed Because They Exhibit the Characteristics of Ignitability, Corrosivity, or Reactivity

In 1981 EPA responded to a number of comments on the scope of the original 1980 mixture rule by promulgating a number of exemptions for mixtures of solid wastes and listed hazardous wastes which, according to information submitted by commenters, posed no significant risk to human health and the environment. See 46 FR 56582 (Nov. 17, 1981). The 1981 rule included an exemption for mixtures of solid wastes and hazardous wastes listed solely because they exhibited one or more of the hazardous waste characteristics, if the resultant mixtures no longer exhibited a characteristic. The exemption was based on a finding that such mixtures did not pose threats to human health and the environment warranting Subtitle C regulation. See 46 FR 56568 and the current text of the exemption at § 261.3(a)(2)(iii). EPA notes that it has never promulgated any listings for wastes solely on the basis that they exhibit either the 1980 EP toxicity characteristic or the 1990 toxicity characteristic; consequently, only mixtures containing wastes listed because they exhibit the characteristics of ignitability, corrosivity, or reactivity have been eligible to exit Subtitle C when they no longer exhibit the characteristic.

The 1981 notice focused exclusively on issues concerning the mixture rule. Consequently, EPA did not propose any parallel exemption for such wastes for the separate derived-from rule (codified at § 261.3(c)(2)(i)), even though the derived-from wastes would appear to present similarly low risks if they no longer exhibited a characteristic and were treated to meet LDR standards before land disposal. Recent inquiries from the public have highlighted the discrepancy in the scope of the mixture rule and the derived-from rule for wastes listed solely because they exhibit characteristics. EPA believes it has no reason to treat derivatives of wastes listed solely because they exhibit the characteristic of ignitability, corrosivity, or reactivity any differently from the way it treats mixtures of such wastes because both present similar low risks to human health and the environment.

Consequently, EPA is today proposing a revision to the derived-from rule that will closely resemble the 1981 revision to the mixture rule. Since no listings to date have been based on the toxicity characteristic, EPA is proposing to limit the new revision to the derived-from rule to wastes listed because they exhibit only the characteristics of ignitability, corrosivity, or reactivity. EPA is also not proposing to exempt wastes that might in the future be listed only because of the toxicity characteristic because (as this rule proposal indicates) there can be risk concerns with the TC constituents below TC levels. EPA requests comment on this proposal to create a new exemption to the derived-from rule for this limited category of listed wastes.

The proposed exemption will also remind the regulated community of the separate duty to comply with requirements imposed by the part 268 regulations implementing the LDR program. In *CWM* v. *EPA,* 976 F.2d 2 (D.C. Cir. 1992), the U.S Court of Appeals for the D.C. Circuit interpreted RCRA section 3004(m) as requiring treatment of de-characterized hazardous wastes to meet LDR treatment standards even after the wastes cease exhibiting a characteristic. EPA believes that de-characterized derived-from residues from wastes listed because they exhibit characteristics also must meet LDR requirements, unless they are either delisted or are exempt at the point of generation pursuant to other provisions proposed in this rule (*e.g.,* meeting HWIR levels at the point of generation).

In 1992 EPA amended the 1981 exemption to mixture rule to provide a similar cross-reference and clarification for mixtures containing de-characterized listed wastes. See 57 FR 37194, 37210–11 (Aug. 18, 1992). That 1992 clarification, however, only covers nonwastewater mixtures. As explained in that mixture rule preamble, EPA then regulated de-characterized wastewaters much less stringently under the LDR program. Consequently, EPA did not believe it was necessary to remind the regulated community to comply with LDR requirements for wastewater mixtures.

Later in 1992 the *CWM* v. *EPA* decision invalidated most of the distinctions between the LDR rules for wastewaters and nonwastewaters. EPA is now revising the LDR program to comply with that decision in the LDR Phase III and Phase IV rulemakings. To reflect the changes in LDR regulation of wastewaters, the derived-from rule exemption proposed today reminds the regulated community of the need to comply with part 268 LDR requirements for all types of derived-from residues. EPA requests comment on this clarifying language. EPA also requests comment on whether it should revise the LDR clarification for the mixture rule as well.

IV. Development of Exit Levels and ''Minimize Threat'' Levels

A. Need for the Exit

The primary purpose of this rule is to address listed hazardous wastes, mixtures of listed hazardous wastes and solid wastes, and residues derived-from managing listed hazardous waste that, under current rules, continue to be designated as ''hazardous waste'' although they are either generated with constituent concentrations that pose low risks or treated in a manner that reduces constituent concentrations to low levels of risk.

EPA notes that there are currently exemptions, both codified and contained in policy directives, from the hazardous waste identification system, particularly the mixture and derived-from rules, for certain types of wastes or wastes with certain constituent concentrations. See e.g. 40 CFR 261.3(a)(2)(iv)(A) through (E) and policy memorandums such as the ''Skinner Memorandum'' dated August 23, 1995. EPA is not proposing to modify or replace any of these exemptions and policy statements.

B. *Overview of the Exit*

For 191 of the 376 constituents of concern, EPA conducted a detailed human health risk analysis to develop risk-based levels for either the wastewater or nonwastewater form of a constituent (or both). To conduct this analysis, EPA identified five types of units actually and rather frequently used to manage nonhazardous wastes that covered the full range of environmental releases needing analysis. The May 1992 proposal of exit levels for listed wastes, like many previous RCRA rules, assessed only risks from releases to groundwater. In response to complaints that such an assessment would not protect human health and the environment from other types of releases, EPA also assessed potential releases to air, surface water and soil in this proposal.

For each category of releases, EPA evaluated both relatively simple pathways (such direct human ingestion of contaminated groundwater) and more complex pathways (such as the deposition of windblown waste particles on agricultural land, followed by crop uptake, consumption of the crop by cattle, and consumption of contaminated beef or milk by humans). EPA assessed approximately 8 to 27 release pathways depending on the type of waste management unit.

Additionally, EPA screened the same group of 191 constituents to identify the highest priorities for assessment of

ecological receptors. In addition, EPA considered for its assessment the toxicological effects of silver on ecological receptors. EPA conducted a specific assessment of ecological risks for 47 constituents using the same five units and the same pathways (modified to reflect ecological exposures) for each unit. This risk assessment is described in more detail in sections V.B. and C.

Data limitations and resource constraints prevented EPA from conducting a risk analysis for the remaining constituents of concern. For each of these constituents, EPA extrapolated exit levels from levels derived-from the risk assessment for similar chemicals. EPA's extrapolation methodology is described in section IV.F.

The current capabilities of analytical chemistry constrain EPA's ability to use some of concentrations as exit levels. For approximately one-fourth of the constituents, EPA found that available methods could not routinely measure the constituent at the modeled or extrapolated risk-based exit level.

C. *Selection of Constituents of Concern*

1. Development of the Master List

EPA developed an initial ''Master List'' of 506 constituents to be evaluated for purposes of establishing exit criteria. This master list was developed by combining the constituents specifically listed in the following appendices of 40 CFR part 261: Appendix VII, Basis for Listing Hazardous Waste; Appendix VIII, Hazardous Constituents; and appendix IX of part 264, the Ground-Water Monitoring List. The master list includes the full list of constituents referenced in appendix VII, including the F039 constituents.

Appendix VII to part 261, which was originally promulgated on May 19, 1980 (45 FR 33084) sets out the chemical constituents found to pose threats to human health and the environment that served as the actual basis for each of EPA's original hazardous waste listings. Appendix VIII to Part 261, also promulgated in 1980, is a more general listing of chemicals found to pose potential threats to human health and the environment. (45 FR 33084). EPA considers wastes containing appendix VIII constituents to be candidates for listing determinations. EPA amends appendix VII from time to time as EPA identifies additional potentially toxic constituents.

EPA later promulgated appendix IX to part 264 to identify those appendix VIII constituents which it could routinely expect owners and operators of permitted hazardous waste treatment, storage and disposal facilities to monitor in groundwater. EPA also included in this appendix 17 additional constituents found to pose significant risks that the Superfund program routinely monitored in groundwater. (52 FR 25942, July 9, 1987).

EPA established in these rulemakings that each of these constituents had significant potential to threaten human health, and, by implication, potential to threaten the environment. (Most of the data EPA utilized predicted toxic effects on humans.) EPA finds it reasonable to include each of these constituents on the list of chemicals of concern.

Further, EPA believes that, with the exception of the six chemicals identified below, the three appendices identify the chemicals of current concern to EPA that are likely to be found in listed wastes.

The Agency requests comment on whether the master list should also include six constituents that are not listed in any of the above sources. These six constituents, which are listed in Table 1, are found in six ''U'' listed wastes (commercial chemical products that become hazardous wastes when discarded). See 40 CFR 261.33(f). EPA originally listed these wastes because they routinely exhibited the characteristic of ignitability. Since the original listings, however, sufficient toxicity data have become available for these constituents. (The risk number for dimethylamine was recently withdrawn; however, EPA understands that it will shortly be replaced). Because of the toxicity data associated with these constituents, the Agency is taking comment on whether exit levels should be established for these six constituents in today's rulemaking. The Agency also requests comment on whether these six constituents should be added to Appendix VIII.

TABLE 1.—CONSTITUENTS NOT ON APPENDICES VII, VIII, OR IX

CAS #	Constituent	Wastewater	Nonwastewater	
			Totals	Leach
75–07–0	Acetaldehyde (ethanal)	.....	.....	.....
98–82–8	Cumene	.67	18,000	2.5
124–40–3	Dimethylamine	.....	.....	.....
110–00–9	Furan	.16	1300	.06
79–10–7	Acrylic acid	(1)	(1)	(1)
98–01–1	2-Furancarbox- aldehyde (furfural)	(1)	(1)	(1)

[1] No exit levels because no EQC is available for this constituent. The criteria for exit would be to meet LDR treatment standards in § 268.

Full documentation concerning the selection of constituents of concern is available in the docket under *The Background Document to Support Development of the Final Constituent List under the Waste Exit Rule.*

2. Development of the Exit Constituent List

The Agency narrowed the list of 506 constituents to consist of 376 constituents that are included in the exemption list. 130 constituents were deleted from the master list. Criteria for constituent deletions from the master list include: Reactivity in air, analysis as a different constituent, reactivity in water, hydrolysis in soil or water, or is part of a chemical class with a specific constituent represented on the list. Because different methods and quantitation limits are necessary for solid and liquid matrices, two separate analyses were conducted. *The Background Document to Support Development of the Final Constituent List under the Waste Exit Rule* in the docket further justifies deletions of constituents from the master list and lists the deleted constituents.

Molybdenum is not on the Appendices VII, VIII, or IX, which provided the scope of today's master list of constituents. In anticipation of the Petroleum listing, due to a Drinking Water Sewage Sludge regulatory level, and due to available toxicity information, the Agency has included molybdenum on the exemption list. Due to modeling time constraints, Molybdenum was not modeled for groundwater risk. The groundwater

leach level was estimated by assuming a DAF of 10 and using the RfD. The Agency requests comment on whether molybdenum should be on the list.

Two modeled constituents do not have estimated quantitation criteria (EQCs—see section IV.G.) and therefore do not have associated exit levels. These constituents are ethylene thiourea and phenyl mercuric acetate. The Agency requests comment on how to deal with these two constituents. The following table represents modeled results for these constituents for comment.

TABLE 2.—MODELED CONSTITUENTS WITHOUT EQCS

CASNUM	Constituent	NWW totals	NWW leach	WW totals
96–45–7	Ethylene thiourea	0.51	0.00017	.00053
62–38–4	Phenyl mercuric acetate	0.0093	0.0045	0.012

EPA modeled chromium VI in the risk assessment. However, totals chromium appears on the exit tables based on the exit levels calculated from modeling chromium VI. This approach is consistent with the Toxicity Characteristic approach to chromium. The Agency asks for comment on this approach.

The cyanide exit level was extrapolated. It is meant to be totals cyanide. The Agency requests comment on whether testing for totals cyanide is appropriate.

The values in the exit tables for silver do not represent results of human toxicity data for silver, rather they represent ecological results from the risk assessment. The Agency has determined that the effect of silver on humans is not a human health problem, rather it is an aesthetic problem. The groundwater model did not model ecological exposure, therefore, there is no groundwater risk level for silver.

3. Constituents of Ecological Concern

As explained above, EPA established in previous RCRA rulemakings that the constituents on the exit list (376) present significant threats to human health. Numerous comments submitted on EPA's May 1992 proposal to establish exit levels urged EPA to conduct a more specific and detailed analysis of threats to non-human species. Consequently, in this rulemaking EPA determined the constituents it believed to also be reasonably likely to pose risks to ecological receptors.

EPA has not set benchmarks for ecological impacts for a large number of constituents under any of its programs. Establishing such benchmarks for this proposal would be a resource-intensive and time-consuming task. Accordingly, EPA narrowed the list of exit constituents for which ecological receptors would be evaluated. First, EPA decided to consider only the 191 constituents which it had already targeted for analysis to protect human health. Second, the Agency developed a methodology for screening the 191 constituents to identify those most likely to pose significant risks to ecological receptors.

Based on an extensive review of available literature, EPA developed five criteria to indicate the potential for ecological risks:

(1) Constituents that bioaccumulate (and possibly biomagnify) in the food chain that can present elevated exposures to certain predators;

(2) Persistent constituents that are likely to increase long-term multi-generational exposures in wildlife;

(3) Constituents that cause reproductive and developmental effects that can elicit adverse effects at sensitive life stages;

(4) Constituents that may cause ecological effects that have no human analog (e.g., eggshell thinning); and

(5) Constituents that may cause effects to ecological receptors continuously exposed.

EPA also developed operational definitions for each criterion. The definitions were quantitative where possible. Further details can be found in appendix B of the Technical Support Document for the Risk Assessment for Human and Ecological Receptors.

EPA decided to designate as constituents of ecological concern the 47 constituents that exhibited at least two of the five criteria. The Agency believes these constituents present the highest priorities in terms of environmental risk. An additional 36 constituents exhibited only one criterion. EPA, however, chose not to designate them as constituents of concern because time and resource constraints would prevent the Agency from completing an analysis with these constituents. EPA, nevertheless, believes it has identified and analyzed sufficient constituents of concern to ensure that the exit levels proposed today provide for reasonable protection of the environment. Only 83 of 191 screened constituents showed any significant potential to pose threats to the environment at levels protective of human health. Further, as discussed in more detail below, of the 47 constituents that EPA actually assessed for ecological impacts, only 6 wastewater constituents and 18 nonwastewater constituents required exit levels to protect environmental receptors lower than those necessary to protect human health under the baseline proposal. Consequently, EPA believes it is unlikely that all of the remaining constituents will present significant threats to ecological receptors at levels that would adequately protect human health.

D. Risk-Based Information

The Agency's proposed option for establishing exit values is based on risk modeling to a hazard quotient of 1 and a 1×10^{-6} cancer risk. The Agency chose a hazard quotient of 1 as its toxicity benchmark value for non-carcinogens because evaluation of these compounds presumes there is a threshold exposure above which individuals would be at significant risk of suffering the adverse effects attributable to the compound. The HQ is the Agency's best attempt to estimate that level. Therefore, the Agency believes all exposures should remain below HQ 1. Some Agency programs rely on HQ values less than 1 in standard setting (the drinking water program uses an HQ of 0.20 to provide a safety factor which allows for exposure to the constituent from sources other than drinking water).

The Agency chose a toxicity benchmark of 1×10^{-6} cancer risk for carcinogens for several reasons. A cancer risk level of 1×10^{-5} risk was used as a clearly hazardous level in establishing the toxicity characteristic. Second, in the listings program, a 1×10^{-4} cancer risk is used as the presumptive listing risk, and a 1×10^{-6} as the presumptive no-list level. A cancer risk of 1×10^{-5} represents a level of initial concern about risk. Therefore, in allowing listed hazardous waste to exit the requirements of Subtitle C, the Agency was targeting waste that is clearly not hazardous. Thus, the Agency believes the risk level should be at the

low end of the risk range used to bring waste into the hazardous waste system.

Similarly, the Agency sought to be protective of public health in developing its fate and exposure modeling. For the groundwater evaluation, the Agency used a DAF 10 (which represents an approximate 90th percentile protection level) for infinite source type constituents. (Constituent-specific DAFs were developed using the same input assumptions, and different DAFs result from modeling of degradation or retardation factors in the environment). This is the generic DAF used in the delisting program for large volume wastes. Since this is a national program which will largely benefit the largest volume generators, the DAF 10 assumption is consistent with delisting practice. Also, the toxicity characteristic used a DAF of 100 (representing an approximate 85th percentile protection level) for identifying clearly hazardous waste (for infinite source type constituents; regulation of hydrolysers was deferred). Again the policy goal of exits was to strive to be well below clearly hazardous levels. The Agency also modeled exposure at the nearest downgradient well. The TC rule restricted well placement to within the plume. Today's proposal attempts to balance the protectiveness level and well placement by requiring a more protective level than the TC rule, but is less restrictive in well location, e.g., wells outside of the plume, at significantly lower risk, are averaged in.

For modeling of the non-groundwater pathways, the Agency used four high-end parameter values for which the modeling outcome is most sensitive as inputs to the analysis to be protective of public health and the environment. These include: Two high-end parameters in the waste management unit characterization and fate portions and two high-end parameters in the exposure portions of the model. The remaining input parameters were evaluated at typical values or central tendency values. The Agency sought to be protective of a high percentile exposed population (at least 90th percentile).

1. Human Health Benchmarks

For each constituent on the master list, the Agency evaluated the existing toxicity information to determine whether there were sufficient toxicity data to establish a benchmark. For those constituents with adequate data, the data were evaluated either by the Agency's CRAVE (Carcinogen Risk Assessment Verification Endeavor) Workgroup, Reference Dose/Reference Concentration (RfD/RfC) Workgroup, or the Office of Research and Development. This approach is consistent with the approach used in the Agency's other risk-based RCRA programs such as the Toxicity Characteristic, delisting petition evaluations, listings, as well as the CERCLA program. See Section 4, ''Benchmarks,'' of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors for more details.

a. Non-carcinogens

The Agency proposes to use oral reference doses (RfDs) and inhalation reference concentrations (RfCs) as the basis for developing the exit criteria for non-carcinogenic constituents. An RfD or RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to a constituent for the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

The approach used to derive an RfD or RfC is to identify the highest test dose of a constituent associated with no effects or effects that are not considered adverse in an appropriate animal bioassay test. These experimental no-observed-adverse-effect-levels (NOAELs) or no-observed-effect-levels (NOELs) are considered to be an estimate of the animal population's physiological threshold for adverse effects. The RfD or RfC is derived by dividing the NOAEL or other toxicity benchmark by suitable uncertainty and modifying factors. In the event that an appropriate NOAEL or NOEL is not available, the lowest-observed-adverse-effect level (LOAEL) may be used with additional uncertainty factors.

It is important to note that the contributions of the constituent from various sources in the environment (*e.g.*, air, food, water) are not considered in the development of an RfD or RfC. Rather, the RfD or RfC reflects the estimated total permissible daily human exposure from all sources of exposure. RfDs and RfCs have been calculated for many, but not all, of the non-carcinogenic constituents for which the Agency is establishing exit criteria.

The Agency prefers to use only RfDs and RfCs that have been evaluated and verified by the RfD/RfC Workgroup as the basis for setting regulatory levels. However, for some constituents, the Agency has not yet completed its verification process; thus, RfDs and RfCs under development are being used for purposes of this proposal for those constituents. If the final verified RfDs and RfCs differ from the RfDs and RfCs under development proposed in today's notice, the Agency will adopt the new (*i.e.*, verified) values for the final rule after noticing the data in the Federal Register.

b. Carcinogens

The Agency proposes to use the oral cancer slope factor and inhalation cancer unit risk as the basis for developing exit levels for carcinogenic constituents unless the non-carcinogenic effects occur at lower levels. EPA's CRAVE Workgroup and Office of Research and Development have estimated the carcinogenic slope factor (CSF) (*i.e.*, the slope of the ''dose-response'' curve) and inhalation unit risks for humans exposed to low-dose levels of carcinogens in the environment. The slope factors indicate the upper-bound confidence limit estimate of excess cancer risk for individuals experiencing a given exposure over a 70-year lifetime. In practice, a given dose multiplied by the slope factor gives an upper estimate of the lifetime risk to an individual of developing cancer. By specifying a level of lifetime risk (no matter how small), one can also estimate the corresponding dose using the slope factor.

EPA proposes to quantify on a weight-of-evidence basis, as described below. EPA promulgated ''Guidelines for Carcinogen Risk Assessment'' on September 24, 1986 (51 FR 33992), which defined a scheme to characterize substances based on experimental data and the kinds of responses induced by a suspect carcinogen. These guidelines specify the following five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiologic studies)
Group B—Probable human carcinogen
Group B_1—Limited evidence of carcinogenicity in humans
Group B_2—A combination of sufficient evidence in animals and inadequate or no evidence in humans
Group C—Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)
Group D—Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)
Group E—Evidence of non-carcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or in both adequate epidemiologic and animal studies).

The weight-of-evidence basis was used to eliminate Group D and E constituents from further consideration as carcinogens.

Under each of the regulatory options presented in today's proposal, the Agency is using the same risk level for Groups A, B, and C carcinogens. This approach is consistent with the way carcinogens were treated in the 1990 Toxicity Characteristic rule, hazardous waste listing determinations, and the delisting program. The rationale for this approach is that while the classifications indicate the type (human or animal) and strength of the studies available which reflects upon the uncertainty about the carcinogenic potential, the severity of the effect, cancer, warrants equal treatment. It is important to note that a few Group C carcinogens do not have slope factors or unit risks. In these cases the Agency used the benchmark developed for the non-cancer endpoint.

c. Consideration of MCLs

The Agency is proposing two approaches for setting human health-based levels for carcinogens and non-carcinogens in routes of exposure involving water ingestion. For the first approach, the Agency is proposing to use Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act (SDWA) of 1974, as amended in 1986, as the human health-based levels for the constituents for which they have been established. In general, MCLs for non-carcinogens are derived from the Reference Doses (RfDs), while MCLs for most carcinogens are set as close to zero as technically and economically feasible; this normally corresponds to risk levels that range from 10^{-4} to 10^{-6}. (Note that, although the derivation of MCLs considers feasibility of treatment, analytic chemistry, and cost factors in addition to health effects, it also considers other routes of exposure. The Agency's policy has been to use MCLs, when available, in other similar concentration-based programs.) For those constituents which do not yet have MCLs, the Agency is proposing to use oral reference doses (RfDs) for non-carcinogens and oral slope factors for carcinogens as described above. However, if new MCLs are finalized under the SDWA prior to the promulgation of today's rule, the Agency proposes to substitute the new MCLs for the RfDs and slope factor-derived human health-based levels for water ingestion presented in today's notice.

For the second approach, the Agency intends to propose to use only RfDs and slope factors in deriving human health-based levels for water ingestion. The Agency requests comment on these two approaches.

2. Ecological Benchmarks

Ecological benchmarks were developed for a variety of ecological receptors based on the availability of data. Benchmarks were needed for mammals, birds, plants, soil fauna, fish, aquatic invertebrates, aquatic plants, and benthos (sediment-dwelling organisms). A much smaller number of constituents have been evaluated by the Agency for ecological effects than have been for human health effects, as discussed under V.A. In general, measurement endpoints were selected: (1) For consistency with the Agency's Framework for Ecological Risk Assessment (U.S. EPA 1992x), the Great Lakes Initiative, and other ecological efforts within the Agency, and (2) relevance to the ecological receptor. As discussed in ''Section D—Risk Assessment'' the ecological assessment focussed on inferring the sustainability of populations and communities within ecosystems. Therefore, benchmarks were derived from measurement endpoints (i.e., reproductive, developmental, growth, survival, and mortality) from which such inferences could be made. Reproductive studies (e.g., number of viable young per female) were preferred over other endpoints. For some constituents, acute or mortality studies were used, however, this occurred only for developing benchmarks for fish, aquatic invertebrates, and benthos where protocol exists (AWQC development) for using such data. The Agency seeks comment on the measurement endpoints selected for each ecological receptor.

The toxicological benchmarks were established using the more conservative no effects level (or concentration) approach for ecological receptors as compared to a 20% effects level. The 20% effects level is the lowest level for ecological effects that can be detected in field population analyses (Suter et al., 1992). Although the 20% effects level may indeed be the lower limit that could be reliably confirmed in field studies, this level reflects our current analytical abilities and not necessarily the ecological significance of the effects level. The no effects approach was taken because the ecological analysis infers the sustainability of various populations under the assumption that if a sufficient number of populations within an ecosystem is protected, then the likelihood of adverse effects that are causally related to the chemical stressor will be reduced at the ecosystem level. The Agency was concerned that if an effects approach was taken, then the assumption underlying the ecological analysis would no longer be valid. The Agency seeks comment on the approach taken for setting toxicological benchmarks.

Given the number and variety of ecological receptors included in the analysis (predatory birds to soil fauna) as well as the variety of effects and endpoints considered, the benchmark development process required an approach that was internally consistent and acknowledged, at least qualitatively, the uncertainty involved in estimating ecological benchmarks. The Agency, therefore, developed a benchmark classification scheme to incorporate both the relationship of the benchmark to the entire toxicity data set and the adequacy of the database used to derive the benchmark. Three classifications were established: Adequate, provisional, and interim. These classifications were developed on a receptor group-specific basis (i.e., fish and aquatic invertebrates, benthos, mammals, birds, soil fauna, and terrestrial plants) and represent a weight-of-evidence designation for the toxicological benchmark. In many respects, this classification scheme is similar in meaning to the human carcinogen weight-of-evidence groups and the difference between ''verified'' values on IRIS and ''unverified'' values in HEAST. The classifications relate to the certainty assigned to a given ecological benchmark. The benchmarks were treated the same in the analysis regardless of classification. See Section 4 in the ''Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors'' for details on each classification and how they were used for each ecological receptor group. The Agency seeks comment on the classification developed for the analysis.

Below is a discussion of how benchmarks were developed for each of the receptor groups. For a detailed discussion of each of their developments, see Section 4, ''Benchmarks,'' and Appendix B, ''Toxicological Profiles for Ecological Receptors,'' of the ''Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors.'' The Agency seeks comment on the overall development of each of the ecological benchmarks generated for this proposed rule.

For populations of birds and mammals, the overall approach used to establish toxicological benchmarks was similar to the methods used to establish RfDs for humans as described in IRIS. Each method uses a hierarchy for the selection of toxicity data (e.g., no effects

levels are generally preferred to lowest effects levels) and extrapolates from a toxicity benchmark for the test species to a toxicity benchmark for the desired species. However, the procedures used to develop benchmarks (i.e., RfDs) for the protection for human health establish an acceptable daily dose for all individuals (including sensitive sub-populations) while the development of ecological benchmarks for this analysis establish a level that will sustain the reproductive fitness in a local population. Consequently, benchmarks for birds and mammals were established using three key guidelines. First, because the reproducing population was selected as the assessment endpoint, the benchmarks were developed from measures of reproductive success or, if unavailable, other effects that could conceivably impair the maintenance of the population.

Second, the taxon of the test species was matched to the taxon of the wildlife species to the greatest extent possible. The evolutionary processes that result in obvious differences in taxa (e.g., morphology) also result in differences in the physiological processes that govern chemical response. Moreover, taxonomic similarities are generally associated with similarities in feeding habits, physiology, and chemical sensitivity at the family classification and, to a lesser extent, the order classification. For example, herbivores are generally more resistant to toxicants than predators because they are exposed to plant toxins, and the enzymatic system that detoxifies plant toxins also detoxifies pesticides and other organic chemicals.

Third, a default safety factor of 10 was adopted only for extrapolating from an lowest-observed-effects level (LOEL) to a no-effects level (NOEL). A ten-fold safety factor was not applied to sub-chronic studies since reproductive and developmental toxicity studies are frequently short-term. Even among target organ toxicity studies, there are many instances where sub-chronic studies are actually more sensitive than chronic studies carried out on the same substance. Also, for mammals and birds, differences in interspecies uncertainty were indirectly addressed through the use of the species-scaling equation described in Section 4 of the ''Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors.'' The Agency requests comment on the use a safety factor of 10 when extrapolating from a LOEL to a NOEL. The Agency also requests comment on the use of a scaling approach to address interspecies uncertainty as described above. Furthermore, the Agency seeks comment on the inability of the Risk Assessment to evaluate the inhalation and dermal routes of exposure for birds and mammals.

For the terrestrial plants, the approach used to establish toxicological benchmarks was adapted from the Effects Range Low (ER-L) approach developed by the National Oceanographic and Atmospheric Administration (NOAA). The NOAA ER-L approach estimates a percentile of the distribution of various toxic effects thresholds. The measurement endpoints were generally limited to growth and yield parameters because (1) they are the most common class of response reported in phytotoxicity studies and, therefore, will allow for benchmark calculations for a large number of constituents, and (2) they are ecologically significant responses both in terms of plant populations and, by extension, the ability of producers to support higher trophic levels. It should be noted that these benchmarks were limited to soil concentrations and do not explicitly consider the adverse impacts on plants from ambient contaminant concentrations in the air. Further details can be found in section 4.3.3 of the ''Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors.'' The Agency solicits comment on the overall approach taken to develop benchmarks for the terrestrial plant community.

For the soil fauna, the toxicological benchmarks were established based on methods developed by the Dutch National Institute of Public Health and Environmental Protection (RIVM). The RIVM approach estimates a confidence interval containing the concentration at which the no observed effects concentration (NOEC) for p percent (95th percentile was selected) of the species within the community is not exceeded 50% of the time. A minimum data set was established in which key structural and functional components of the soil community (e.g., decomposer and grazing organisms) encompassing different sizes of organisms (i.e., microfauna, mesofauna, macrofauna) were represented. As with the Ambient Water Quality Criteria, measurement endpoints included reproductive effects as well as measures of growth, survival, mortality. The Agency requests comment on the use of the RIVM methodology, and protecting 95 percent of the community 50 percent of the time. The Agency also requests comment on its inability to fully quantify the effect of soil characteristics on toxicity of constituents to soil organisms.

For populations of fish and aquatic invertebrates (represented by daphnids), a hierarchical approach was taken for use of data sources in deriving benchmarks. The first choice was final chronic values (FCVs) from the Sediment Quality Criteria effort by the EPA Office of Water, followed by values from the Great Lakes Initiative (GLI) effort, and finally, the Ambient Water Quality Criteria (AWQC). If these benchmarks were not available, then a benchmark was developed using AWQC procedures or, if data were inadequate, the GLI Tier II procedures for establishing chronic values (termed secondary chronic values—SCVs). The AWQC ranked third since many years have passed since their establishment and the SQC and GLI efforts re-evaluated the toxicity data sets of several of these. The Agency solicits comment on the hierarchical approach described above for deriving toxicity benchmarks.

For aquatic plants, the approach used to establish toxicological benchmarks was adapted from the ER-L approach developed by NOAA. The NOAA ER-L approach estimates a percentile of the distribution of various toxic effects thresholds. However, due to the general lack of toxicity data, the default ER-L approach was used wherein the lowest LOEC for either vascular plants or algae was used. The Agency solicits comment on the overall approach taken to develop benchmarks for aquatic plants.

For the sediment organisms, the approach used to establish toxicological benchmarks for non-ionic, hydrophobic organic chemicals was based on sediment quality criteria methods for non-ionic constituents. Two key assumptions form the basis for the proposed sediment quality criteria. First, benthic species, defined as either epibenthic or infaunal species, have a similar toxicological sensitivity as water column species. As a result, FCVs (or SCVs) developed for the fish and aquatic invertebrates can be used for the benthic community. Second, pore water and sediment carbon are assumed to be in equilibrium and the concentrations are related by a partition coefficient, Koc. This assumption, described as equilibrium partitioning (EqP), provides the rationale for the equality of water-only and sediment-exposure-effects concentrations on a pore water basis: The sediment-pore water equilibrium system results in the same effects as a water-only exposure. The Agency requests comment on the use of this approach in support of today's proposal. In some cases, protecting these

ecological receptors represents the critical pathway that limits the projected exit level for management of a waste stream outside of the Subtitle C hazardous waste program. These ecological receptors serve as the basis for the proposed exit levels for 18 constituents, including 6 metals. To the extent that contaminants from these waste streams reach off site areas, the Agency based its proposal on modeling the ecological receptors on a neighboring land area of 500 acres or an adjacent stream (with a total length of 12 miles). This approach as currently modeled, may only serve as an indicator of a potential nearby threat to ecological receptors (e.g., the soil fauna and plant life), rather than serving as a measure or indicator of a broader threat to the environment. The Agency solicits comment on the appropriateness and relevance of these receptors as the basis for exit levels under the HWIR program.

3. Sources of Data

a. Human

The two primary sources used to identify human health benchmarks were the Integrated Risk Information System (IRIS) and the Health Effects Assessment Summary Tables (HEAST). Both of these sources were developed and are maintained by the USEPA. For a few constituents, other Agency sources such as Carcinogen Assessment Group (CAG) profiles, Health Effect Assessments (HEAs), and Health Assessment Documents (HADs) were used to fill data gaps.

IRIS is the Agency's official repository of Agency-wide consensus chronic human health risk information. IRIS evaluation are conducted by the Agency's Work Group review process that leads to internal Agency scientific consensus regarding risk assessment information on a chemical. This information is recorded on IRIS and is considered to be ''Work Group Verified.''

The HEAST is prepared by EPA's Office of Research and Development. They contain risk assessment information on chemicals that have undergone a more limited review and have the concurrence of individual Agency program offices; each is supported by an Agency reference. The information has not, however, had enough review to be recognized as Agency-wide consensus information.

b. Ecological

A thorough literature review was conducted to identify toxicological data from laboratory and field studies for each of the constituents of ecological concern. The review included secondary sources such as the Synoptic Review Series published by the U.S. Fish and Wildlife Service, the Ambient Water Quality Criteria documents, and other Federal compendia of toxicity data (e.g. HEAs, the Derivation of Proposed Human Health and Wildlife Bioaccumulation Factors for the Great Lakes Initiative, Agency for Toxic Substances and Disease Registry documents, PHYTOTOX, GRIN, TERRETOX, and AQUIRE). Toxicity data on soil organisms were obtained for several constituents from van de Meent et al. (1990). In addition to AQUIRE, the other primary data source for toxicity data on aquatic plants were the Toxicological Benchmarks for Screening Potential Contaminants of Concern for Effects on Aquatic Biota:1994 Revision (Suter and Mabrey, 1994). On-line literature searches were conducted to identify primary sources of toxicity data on constituents lacking sufficient data in the secondary sources. Additional studies were identified in conventional literature reviews.

E. Risk Assessment

1. The Non-groundwater Risk Assessment

a. Introduction

The risk assessment underlying today's proposed rule is based upon a comprehensive approach to evaluating the movement of many different waste constituents from their waste management units, through different routes of exposure or pathways, to the points where human and ecological receptors are potentially exposed to these constituents. This risk assessment is being used in today's proposed rule to determine which listed hazardous wastes can be defined as ''low-risk'' wastes, able to exit the Subtitle C system and be managed in non-Subtitle C units. The previous approach taken in the May 20, 1992, proposed HWIR rule also addressed the risks associated with the management of wastes containing hazardous constituents with very diverse physical and chemical properties; however, only groundwater ingestion exposures from landfill units were evaluated. That approach led to a concern by the Agency, as well as commenters on the proposed rule, that leachate from landfills contaminating groundwater and subsequent consumption of the contaminated groundwater by humans may not be the only exposure pathway important to evaluate. Although the ingestion of contaminated groundwater pathway may be appropriate to propose exit levels for some wastes and constituents, it may be under-protective for others, depending on the physical and chemical properties of each waste constituent. (For example, some constituents have a high potential to bioaccumulate or bioconcentrate in living organisms. Pathways in which these constituents come in contact with fish, grazing livestock, wildlife, or edible plants would be important to evaluate.) In addition, over the past 14 years of implementing the RCRA program, the Agency has learned more about potential routes of release to the environment from various management practices.

Therefore, for today's proposal the Agency undertook an extensive risk assessment that examines numerous exposure pathways, rather than just the groundwater ingestion pathway. In selecting the exposure pathways, previous rulemakings were used as a guide, as well as other special studies by the Agency that implement analyses examining numerous pathways. (Tables A–1 and A–2 contain the human and ecological pathways, respectively, evaluated in the assessment, and are presented in appendix A to today's preamble.) With regard to waste management units considered in the assessment, it is important to note that because today's proposal establishes criteria for waste to exit the Subtitle C system, the assessment evaluated exposures associated with managing wastes in non-Subtitle C units. The human and ecological receptors considered in the assessment were selected to represent a range of behaviors, activities, dietary habits, and trophic levels that influence exposure levels.

The risk assessment supporting this proposal is currently undergoing review by the Science Advisory Board and EPA's Office of Research and Development. As a result of these reviews, and of comments received during the public comment period, it is likely that EPA would make changes to the risk assessment or other parts of the rule. Topics on which the Agency has received informal comment include the use of ecological benchmarks for regulation and the overland transport of waste constituents. The Agency, to the extent consistent with the schedule negotiated in the consent decree for this rulemaking, would publish a supplemental notice proposing any significant changes before finalizing the rule.

b. How the Assessment is Structured

The non-groundwater assessment acknowledges that not all human and ecological pathways arise from each

source; for example, movement of particles from an active surface impoundment is not expected to occur. To account for this, the assessment matched the environmental transport pathways with both the releases from various types of waste management units and the various receptors for the nearly 200 constituents examined. All constituents were assessed in all pathways deemed plausible for a given waste management unit, if the data permitted. Tables A–3, A–4, and A–5 of appendix A show the pathways assessed for each waste management unit, human receptors assessed for each pathway, and ecological receptors assessed for each pathway, respectively. The assessment estimated the constituent-specific concentrations in a waste at the management unit that could be expected to result in an acceptable exposure for a human or ecological receptor (determined through using the toxicity benchmarks discussed in section V.B.), taking into account the various pathways by which the constituent may move through the environment from the waste management unit to the receptor.

The waste management units considered in the assessment are not all-inclusive but were selected to reflect those that might be commonly associated with the management of exited hazardous wastes (from wastewaters to nonwastewaters) in non-Subtitle C waste management units. These units were identified as commonly used in the management of solid wastes in the 1988 Report to Congress entitled *Solid Waste Disposal in the United States Report.* The Agency believes that risks posed by other types of management of these exited wastes will be no greater than those from the units assessed.

There is a high degree of variability in the physical and chemical properties of the approximately 200 constituents evaluated. An understanding of those properties and how they interact with the physical and chemical properties that control persistence and mobility in the environment is an essential element of the assessment. The management units could potentially be located in the range of environments that exist across the United States. These environments have differing characteristics (e.g., meteorological conditions, soil type) that are more conducive for the movement of certain constituents in certain pathways than others. For example, an environment with a high precipitation and high organic soil content may result in significant exposures to fishers by constituents that readily adsorb to soils (i.e., have a high log K_{ow}) through erosion of contaminated soil and uptake in the food chain. For other pathways, however, an environment with these characteristics may result in relatively low exposures. The assessment was designed to determine what conditions would need to exist to cause higher exposures for each pathway rather than developing a scenario and determining all the types of exposures and receptors for that scenario. By determining the appropriate conditions for which higher exposures from a given pathway will occur, the Agency believes that environments where the conditions are not as likely for a constituent to move through a pathway are protected.

The assessment was structured using a deterministic approach. A deterministic approach uses a single, point estimate of the value of each input or parameter and calculates a single result based on those point estimates. The assessment used the best data available to select typical (i.e., approximately 50th percentile) and high-end (i.e., approximately 90th percentile) values for each parameter or parameter group as discussed in Section E.2. below. Sometimes full distributions were available but, more commonly, ranges of values or point values were available with no description of distributions or variability. If there was not a sufficient distribution for the parameter, best professional judgement was used in determining typical and high-end values (which sometimes would be the maximum).

The assessment is constructed as a set of calculations that begin with an acceptable exposure level for a constituent at a receptor, and back-calculates to a concentration in a waste in a management unit that corresponds to the acceptable exposure level. For the human receptors, the assessment was designed to determine constituent concentrations in waste for each waste management unit that would correspond to protecting receptors at the high-end of exposure (i.e., above the 90th percentile of each of the receptor populations and types of exposures being assessed). The Agency estimated waste concentrations corresponding to the high-end exposure by identifying four critical or sensitive parameters in the source/pathway/receptor equations and using high-end input values for those parameters and using central tendency values for the remaining parameters. The Agency also estimated central tendency (approximately the 50th percentile) and bounding estimates (worst-case) of constituent concentrations in waste for each of the receptor populations and types of exposures being assessed. For ecological receptors, the approximate percentile level of protection is difficult to discern. The Agency believes the ecological analysis is conservative with respect to the overall assessment endpoint (e.g., sustainability of the reproducing populations) because of the way the source, fate and transport parameters are set, the dietary habits assumed, and how the toxicity benchmarks are developed. However, the degree to which this conservativeness transfers to ecosystems is not known.

The steps of the assessment which provide estimates of acceptable constituent-specific concentrations in waste include the following:

Step 1—Specify acceptable risk levels for each constituent and each receptor. See Section V.B. in today's preamble for a discussion of how benchmarks are set for both human and ecological receptors.

Step 2—Specify the exposure medium. Using the toxicity benchmarks as a starting point and the exposure equations, the assessment back-calculates the concentration of contaminant in the medium (e.g., beef, milk, plant, air, water, soil) that corresponds to the ''acceptable'' exposure level. The exposure equations include a quantitative description of how a receptor comes into contact with the contaminant and how much the receptor takes in through specific mechanisms (e.g., ingestion, inhalation, dermal adsorption) over some specified period of time. Thus, for the subsistence farmer eating contaminated beef, the exposure specifies the amount of beef eaten on a daily basis, the period of time over which the contaminated beef is eaten, and descriptions for the individual such as body weight and lifetime. For this example, the concentration in the beef is what is back-calculated.

Step 3—Calculate the point of release concentration from the exposure concentration. Based on the back-calculated concentration in the exposure medium (from Step 2), the concentration in the medium to which the contaminant is released to the environment (i.e., air, soil, groundwater) for each pathway/receptor was modeled. The end result of this calculation is a medium concentration at the point of release from the waste management unit.

Step 4—Calculate the concentration in the waste that corresponds to the medium concentration at the point of release. This step depends on the characteristics (e.g., area, cover practices, waste consistency) of the waste management unit.

The output of the assessment is a range of constituent concentrations, reflecting the range of pathway-receptor combinations considered for each waste management unit. The lowest concentration (per constituent) of this range represents the highest exposure pathway-receptor combination for that waste management unit.

c. How Uncertainty is Addressed

Any analysis of the magnitude used in this rule-making will have uncertainty associated with the outputs generated. The uncertainty can be associated with the models or equations used and the data relied on for the model parameters. In addition, policy assumptions, such as waste management units assessed and receptors assessed, may also affect the degree of representativeness of the assessment. In order to be consistent with Agency policy on the characterization of risk, stochastic and deterministic approaches were considered. A stochastic approach, such as Monte Carlo analysis, which produces a distribution of constituent concentrations, was initially considered due to the tremendous interest in, and use of, these techniques in risk assessment. However, after evaluation of the models and data available for use, the Agency decided to use a deterministic approach for the non-groundwater assessment.

The Agency's deterministic approach used for this assessment, like most such approaches, uses point values in all calculations and produced point estimates of constituent concentrations for waste in each management unit-exposure pathway-receptor combination. However, in selecting and developing point values for parameters, EPA considered all available data. Wherever possible, the Agency developed both a central-tendency and high-end value for each parameter used in the assessment. This was not possible in all cases because some parameters were a property, such as density of water, and because some values were fixed by Agency-wide policy decisions. (For example, EPA used standard Agency-wide human toxicity benchmarks and body weights.) EPA then calculated constituent concentrations based on a mixture of central-tendency and high-end values.

EPA believes that the deterministic approach described above (based on identifying critical parameters and using higher-end values only for those parameters and central-tendency values for the other parameters) allowed it to derive constituent concentrations in waste for each waste management unit that are reasonably protective across a range of conditions and for a range of receptors. EPA also believes that this approach is consistent with EPA's risk assessment policy.

EPA further believes that the approach chosen allows both the Agency and the public to determine more easily which parameters played the most critical roles in determining the constituent concentrations in waste for each waste management unit. This furthers general understanding of the assessment and helps commenters effectively target their resources for reviewing what EPA is proposing. It has also helped EPA target its own data collection and input selection efforts. It is often more difficult to identify critical parameters in a stochastic assessment because of the greater number of iterations and because results are reported as probability distributions. This is particularly true for an analysis with a large number of parameters such as the assessment used for this proposed rule.

EPA notes that stochastic approaches are also consistent with Agency risk assessment policy. In fact, EPA applied a stochastic ''Monte Carlo'' approach to the separate analysis of dilution and attenuation of groundwater performed for this proposal. That analysis, however, has been under development for many years and EPA is more familiar with the underlying data and the relationships between various parameters. In addition, the public has had a chance to comment on aspects of that analysis in previous rule-makings. EPA was more comfortable applying a stochastic analysis for the groundwater analysis than a stochastic approach to the non-groundwater analysis.

EPA believes that it is not necessary to resolve all issues relating to the relative merits of the two approaches or to determine which approach would be ideal for each of the assessments described above. Rather, the debate should focus on whether the approaches chosen allowed EPA to reach reasonable regulatory decisions.

The Agency solicits comment on the use of a deterministic approach as described above. Specifically, the Agency seeks comment on whether the approach proposed is a reasonable approach for setting protective levels across a set of types of management units and exposure pathways.

d. Linkage of the Non-groundwater Risk Assessment to the Groundwater Risk Assessment

In the non-groundwater risk assessment, the pathways involving potentially contaminated groundwater (e.g., bathing) are back-calculated from the receptor to the wellhead (i.e., the assessment provides constituent concentrations in the groundwater at the well). In order to determine the concentration of a constituent in leachate coming from a waste management unit that would result in the estimated constituent concentration at the water well, the Agency used a separate groundwater fate and transport risk analysis. That analysis is described in detail in Section D.8. elsewhere in today's proposal. The well concentrations estimated from the pathways involving bathing are used as input to the groundwater fate and transport modeling from which a leachate concentration is determined.

e. Risk Targets Used

As previously discussed in Section V.B. of today's proposed rule, the Agency used existing toxicity benchmarks when available. However, many ecological benchmarks were developed for this rule-making, as discussed in Section V.B. of today's proposed rule. As described in that section, the Agency used a cancer risk target of 1×10^{-6}, and a hazard quotient equal to 1 for non-carcinogens. For ecological benchmarks, a hazard quotient equal to 1 was used. The Agency solicits comment on the risk targets being used for today's proposed rule.

2. Detailed Overview of the Non-groundwater Risk Analysis

The assessment can be broken down into six components: Constituents; toxicity benchmarks; receptors; exposure; fate and transport; and waste management units. Each of these components is discussed in turn below, except the constituents and toxicity benchmarks which were discussed earlier in section V.A and V.B. It is important to recognize that the assessment was not able to evaluate all constituents in all receptor-pathway-waste management unit combinations because of data gaps in either toxicity or chemical properties, or inadequate methodologies. Many of these gaps have been identified in different sections of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors'' (denoted ''Uncertainties and Issues of Concern''). The Agency requests additional data or other information that would assist in filling these gaps.

a. Waste Management Units

The manner in which constituents are released to environmental media and the relative quantity released to each

medium will affect the pathways of most concern for a particular constituent. The pathway presenting the highest risk to human or ecological receptors is not always easily determined because of the complex interactions of the waste management unit and its types of releases, the physical and chemical properties of the constituent, and the properties that control mobility and persistence in a particular environmental medium. For some constituents, the management practice will determine which exposure pathway is of most concern. For example, benzene tends to migrate to both air and groundwater. Upon examining the risks from exposure to these two media arising from releases from a quiescent surface impoundment, the groundwater ingestion pathway may pose the highest risks. But, when examining the risks from these two media for releases from an aerated tank, the air inhalation pathway may pose the higher risks. Further, the air inhalation risks may even be higher than groundwater ingestion risks from the quiescent surface impoundment.

Therefore, and as stated earlier, the selection of non-Subtitle C waste management units examined in the assessment attempted to reflect both the influence of the type of unit on pathways and those that might be commonly associated with the management of exited hazardous wastes in non-Subtitle C waste management units. Again, the Agency believes that risks posed by other types of management of these exited wastes will be no greater than those from the units assessed. The management units examined include the following:

- Aerated treatment tanks. Relative to all other types of management, aerated tanks containing wastewaters can potentially have the most significant releases of volatile organics to air.
- Quiescent surface impoundments. This type of unit containing wastewaters also can potentially result in significant releases of volatile organic constituents to air. These units also have a potential to affect surface water bodies if the unit is not well maintained or constructed. The sludges generated, which may contain high concentrations of metals and hydrophobic constituents, may impact groundwater. (As discussed above, the groundwater fate and transport analysis was conducted in a separate analysis.)
- Land application. This type of unit, when used for non-wastewaters can potentially have significant releases of certain constituents to nearby land and surface water bodies through erosion and runoff, particularly if run-on and run-off control measures are not practiced. In addition, significant releases of volatile organics constituents to air are possible. Further, after the unit is closed, significant on-site exposures to some persistent and relatively immobile constituents may occur as well as continued long-term releases to the nearby land and surface water bodies. The Agency believes such units will pose higher exposures relative to landfills in all pathways except those arising from groundwater. Therefore, the non-groundwater assessment did not examine landfills, but they were examined in the groundwater fate and transport analysis.
- Ash monofill. This type of unit used for ash disposal can potentially have significant releases of particulates to air which may be inhaled or may deposit on land and plants, and result in exposure through food and soil ingestion.
- Wastepiles. This type of unit used for nonwastewaters can have significant releases of particulates to air as well as significant releases of particulates through erosion and runoff.

Each of the pathways that evaluates a receptor using contaminated groundwater other than as a source of drinking water (i.e., bathing) are back-calculated to a concentration in a drinking water well. The pathways are applicable to all of the waste management units modeled (except tanks). All of the waste management unit and chemical-specific portions of the groundwater fate and transport analysis and subsequent estimated leachate concentrations are contained in the Agency's separate groundwater fate and transport analysis (see Section E.3 below).

One exception to the above discussion of the types of waste management units evaluated involves the combustion of wastes. Although the Agency attempted to include this type of management in the assessment, it became clear that the emissions from combustion are not easily predicted from the waste inputs to the units. The combustion process both destroys and creates constituents. Although destruction of constituents can be predicted based on certain operating characteristics of combustion units, the creation of other constituents, referred to as products of incomplete combustion (PICs), is not easy to predict. It may be possible to make such predictions for a specific waste and a specific combustion unit; however, the extensive data (e.g., on the variety of combustion units, waste types, constituent combinations) needed for the assessment used in this rulemaking relating wastes with emissions are not available. Therefore, acceptable constituent levels in waste going to a combustion unit could not be established. However, the Agency is developing emission standards for various types of combustion units and those emission standards may be a more appropriate vehicle for addressing combustion.

In addition, the assessment does not address accidental or catastrophic releases, such as transportation accidents or tank failures. The Agency determined that, although such releases are possible, they are of low probability and non-routine and, therefore, are not appropriate for developing exit criteria that apply to all wastes.

The Agency has identified several specific areas giving rise to uncertainty in the characterization of the waste management units and for which the Agency seeks comment:

(1) Use of Subtitle D Survey.

- The Agency relied upon data from a 1987 survey of Subtitle D facilities to characterize waste management units. That survey, used in the 1988 Report to Congress on Solid Waste Disposal in the United States, was designed primarily to collect estimates of the following parameters:
- Number of establishments that manage Subtitle D wastes on site;
- Number of establishments that manage Subtitle D wastes on site in land application units, wastepiles, surface impoundments, or landfills;
- Number of land application units, wastepiles, surface impoundments, or landfills used to manage Subtitle D wastes;
- Amount of Subtitle D wastes managed on site in land application units, wastepiles, surface impoundments, or landfills.

In addition to these parameters, data were also collected for some other parameters, such as the area of the waste management units. Although the survey was not designed to collect accurate estimates for these other parameters, it is the most comprehensive date available to characterize these other parameters. One difficulty encountered in using these data is that the survey requested information on total area or waste quantity for all of each type of units at a facility. The total area or waste quantity was divided by the number of each type of unit at the facility (number of each unit being one of the primary parameters the survey was designed to estimate) to estimate average unit area. Further, it is not certain how well the on-site units (which are used routinely for wastes generated on-site) reflect the characteristics of off-site units. Uncertainty related to the

representativeness of the data is important because exited wastes could be managed in units off-site as well as on-site. The Agency seeks comment on the use of the Subtitle D survey to characterize the waste management units.

In evaluating the waste management unit components of the risk assessment, the Agency made certain assumptions when data were not available or were incomplete. A description of the waste management unit parameters for which there was little to no data is described below. The rationale behind these assumptions is presented (e.g., results of any sensitivity analyses, references to other work, etc.). The Agency requests comment on the specific issues raised for each management unit.

(2) Fate and Transport

Fate processes, particularly biodegradation and hydrolysis, were accounted for only in the land application unit since that unit had wastes applied intermittently and that unit was being examined for on-site risks after closure (assuming human occupation of the site begins 10 years after closure occurs). Because waste is continuously applied to the other waste management units, biodegradation and hydrolysis were presumed to have minimal influence on the subsequent availability of constituents to the above ground pathways. The Agency requests comment on not considering biodegradation and hydrolysis in waste management units other than the land application unit. The Agency also requests comment on the appropriateness of the data and methods used to account for the fate and transport of constituents in waste management units, with particular emphasis on data and methods of determining biodegradation and hydrolysis of constituents in land application units.

(3) Ash Monofill

(i) Particle Size Distribution for Air Dispersion Modeling

A size distribution of ash particles that become airborne from an ash monofill was not available. Therefore, a sensitivity analysis was performed to assess the importance of the particle size distribution in the calculation of air concentrations and deposition rates. Different distributions were modeled reflecting a variety of assumptions for particle size distributions between PM10 and PM30 classes. The greatest deviation among the modeled conditions in the estimated air concentration of PM10 was 12 percent; for the estimated deposition rate for PM30 the greatest deviation was 59 percent. Given the uncertainties and variabilities inherent in the assessment, these variations were considered minor, therefore, the Agency assumed an equal distribution of particle sizes between the two size classes used in the assessment.

(ii) Monofill Characterization

Because limited data were available to characterize hazardous waste ash monofills, data from municipal waste ash monofills were used. However, because ash generation rates for municipal waste incinerators ere more than 100 times greater than ash generation rates for hazardous waste incinerators and reuse-as-fuel combustors resulting in significantly larger municipal monofills, EPA calculated an ash monofill volume for this analysis based on generation rates reported in the 1988 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities, assumed bulk density of the ash, and assumed lifetime of the monofill. The Agency is not certain that hazardous waste monofills should be sized in the same manner as municipal waste monofills. The Agency also assumed that each waste monofill would accept ash from only a single combustor. Accepting wastes from more than one combustor may underestimate monofill size.

(iii) Vehicle Traffic

The estimates of number of ash trucks per day are dependent on the size of truck. Limited data were available on the sizes of trucks hauling ash. These data were used to characterize a range of truck sizes. The truck sizes may either under- or overestimate the size of trucks actually used at hazardous waste ash monofills depending on the representativeness of municipal waste ash truck sizes.

No data were available on other vehicular traffic; therefore, these values were estimated, introducing additional uncertainty into the overall amount of traffic at the ash monofill.

(iv) Emission Equations for Ash Blown From Trucks and During Spreading and Compacting

The emission equation used for ash blown from trucks was developed for windblown emissions from storage piles. This was adapted to trucks by using the truck speed to estimate frequency of wind greater than 5.4 m/s. Because this equation was not derived for windblown emissions from moving trucks, the results of its application to such emissions are uncertain. It may over- or underestimate actual emissions of particulates blown from trucks.

Similarly, the emission equation used for spreading and compacting was developed for agricultural tilling. Agricultural tilling was thought to approximate the process of spreading and compacting; however, the use of this equation may under- or overestimate emissions due to spreading and compacting.

(4) Land Application Unit

(i) Particle Size Distribution for Air Dispersion Modeling

A size distribution of soil particles that become airborne was not available. The same assumption was made for soil particles as was done for ash particles when modelling the monofill (see above). As described above for ash particles, the Agency assumed an equal distribution of particle sizes between the two size classes.

(ii) Area of Land Application Unit Relative to Agricultural Field

The assessment examined the impact of subsistence farming on the land application unit beginning 10 years after closure. Based on the distribution of sizes for land application units and agricultural fields, the Agency selected a combination of fields such that the central tendency land application unit (61,000 m^2) is smaller in area than the central tendency agricultural field (2,000,000 m^2). The significantly larger size of the agricultural field suggests that the model may inappropriately average the constituent concentration over the agricultural field. However, the Agency does not believe this to be a significant impact on the analysis because: (1) The area of the agricultural field is not an explicit input to the model; (2) the size of the land application unit is large enough to support a subsistence farmer; and (3) this pathway is driven by the assumptions for the high-end analysis. The Agency requests comment on the relationship between the land application unit and the agricultural field.

(iii) Application Rate

The waste application rate is an important parameter in determining the constituent's soil concentration after application. In practice, this rate is a function of the characteristics of the waste being applied, the characteristics of the receiving soil, the environmental conditions, and the purposes for which the waste is being applied. Information from the Subtitle D survey was used to calculate the rates, since those rates

were not expressly requested in the survey. The rates were calculated from the area receiving the wastes and the waste quantity applied. This introduces uncertainty for it combines rates applicable to both treatment of wastes and rates for specific uses (e.g., farming, mine reclamation). To account for the potential of having application rates be much too high for the site they are being applied to, the data on receiving area and waste quantity applied were linked.

(iv) Waste Characteristics

Limited data were available on the characteristics of wastes being land applied. As a result, soil values for most parameters (e.g., hydraulic conductivity, moisture retention index) were used to characterize nonwastewaters. It is not known to what extent these soil values differ from the waste properties.

(v) Depth of Contamination

Depth of contamination affects the amount of constituent available for exposure. For the non-groundwater pathways, only constituents at the soil surface were assumed available for each exposure pathway. The Agency selected tilling depth as the depth of contamination available to the non-groundwater pathways as over time, the depth of the waste layer would increase and a portion of the mass of waste would move out of the zone available for the surface pathways. The model kept the depth of contaminated soil constant that was available for the surface pathways. The Agency recognizes that the use of the tilling depth may underestimate the depth of contamination in some cases and overestimate it in others. Thus, the Agency requests comment on the use of tilling depth as a surrogate for depth of contamination.

(vi) Partitioning

Releases from the land application unit were partitioned among volatilization, evaporative losses, hydrolysis, erosion, runoff, and leaching. Periodic application of waste was factored into the partitioning model during the active life of the unit. Biodegradation was factored in during both the active life and closed period. The finite source Jury model was used to estimate volatilization emissions. The Jury model, which models the convection of constituents caused by the flux of water in soil, was used for evaporative losses. Runoff and leaching losses were calculated using the soil-water partition coefficient (K_d) to determine constituent concentration in the soil water and multiplying that by the land application unit area and runoff rate for run-off losses or recharge rate for leaching losses. (See Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors, Section 7, Land Application for full description.)

(5) Waste Pile

(i) Waste Pile Height

No data were available on this parameter; therefore, the value is an estimate based on heights attainable by a front-end loader. This parameter is important in the air dispersion modeling, which is sensitive to the height of the pile. The Agency requests suggestions for alternatives to determining waste pile height and any data which would support those determinations.

(ii) Particle Size Distribution for Air Dispersion Modeling

The same sensitivity analysis and assumptions discussed above for ash monofills were used for waste piles. Given that the air dispersion analysis is not very sensitive to particle size distribution, the simple assumption described above was believed to be an adequate approximation for the assessment.

(iii) Waste Characteristics

Limited data were available on the characteristics of wastes in waste piles. As a result, soil values for most parameters (e.g., hydraulic conductivity, moisture retention index) were used to characterize the nonwastewaters disposed in piles. It is not known to what extent these soil values differ from the waste properties. The soil values, however, were not used for the ash waste pile. The ash disposed in the piles had the same properties as that disposed of in a monofill.

(iv) Vehicle Traffic

The estimates of number of trucks per day are dependent on the size of truck and waste quantity. Limited data were available on truck sizes. These data were used to characterize a range of truck sizes. These truck sizes may either under- or overestimate the size of trucks actually used around waste piles.

(v) Emission Equation for Ash Blown from Trucks

As described in the section above on ash monofills, the emission equation used for ash blown from trucks was developed for windblown emissions from waste piles. It may over- or underestimate actual emissions of particulates blown from trucks.

(6) Surface Impoundment

(i) Two-Phase Sludge Formation Model

The two-phase sludge formation model simplifies the solids concentration gradient in a surface impoundment into two distinct and homogeneous layers, a liquid layer with the same average solids content as the inflow and a sediment or sludge layer with a much higher solids concentration.

(ii) Dilution of Waste During a Spill

Overflows or breaches associated with surface impoundments are a waste release examined in the assessment. The algorithm used for spills does not account for dilution of the wastewater caused by excess run-on. Such run-on is presumably relatively uncontaminated; thus the spill volume, consisting partly of contaminated wastewater from the impoundment and partly of uncontaminated run-on would have a lower concentration than the wastewater in the impoundment. By using the concentration in the impoundment, the mass of contaminant released to surface water is overestimated. This effect could be considerable for the central tendency impoundment, as the quantity of run-on is significant compared to the capacity of the central tendency impoundment. However, to determine the extent of such dilution, the degree to which such run-on becomes mixed with the wastewater would need to be estimated. No model has been found to assist in this estimation.

(7) Tank

(i) Unit characterization

Limited data were available on Subtitle D tanks. The assessment used the profiles (specifies design and operating parameters) for uncovered aerated treatment tanks developed in the *Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards* (TSDF—BID, U.S. EPA, 1991)

(ii) Volatilization

The Agency used the well-mixed flow model. This model assumes that the contents of the system are well mixed and that the equilibrium concentration in the system is equal to the effluent concentration. The equilibrium concentration is the average concentration throughout the unit and the driving force for volatile emissions.

(8) Combustors

For the reasons stated below, EPA did not modelled a combustion unit in the risk analysis for this regulation. EPA,

however, asks for comments on that decision.

In initial analyses (see Multipathway Analysis Background Document available through the docket), EPA modeled potential risks from several types of combustion units, using engineering judgment to make a best estimate for destruction and removal efficiencies for non-hazardous waste combustors. Early comments suggested that the assumptions might have overstated or understated the estimated risks by not reflecting actual practice in industrial boilers or other likely combustion facilities not regulated by Subtitle C. However, initial comparisons indicated that the combustion risk estimates back-calculated to the combustion unit were not often the most significant risk and, therefore, would not be the basis for the limiting exit criteria.

EPA also recognized that there are many issues related to organics that are produced during the combustion process, but are not necessarily originally in the waste. The amount and type of these ''products of incomplete combustion'' are generally believed to be dependent on a number of aspects of the design and operation of a facility, and not easily related to the composition of the wastes fed into the combustion unit. For purposes of this proposal, EPA decided that because of the high degree of uncertainty associated with developing waste concentrations from combustion units, it was not appropriate to use risks from combustion as a factor in deciding what wastes remain under the hazardous waste regulations. Rather, EPA believes there are more appropriate ways to regulate emissions from combustion units through various regulatory authorities, including regulation of a range of units under the Clean Air Act.

EPA, however, asks comment on the appropriateness of this approach. In particular, there may be some constituents (e.g., certain metals that are difficult to capture in pollution control equipment) where a better correlation exists between waste input and potential risk from combustor emissions than for organics that are in the waste and also created as PICs during the combustion process.

b. Fate and Transport

(1) Pathways

In selecting environmental fate and transport pathways to include in the assessment, EPA used as a guide previous rulemakings and other special studies by the Agency that examine numerous pathways. For example, the Agency has used similar risk assessment methodologies in several recent rules including: Wastes from Wood Surface Protection, Final Rule (59 FR 458, January 4, 1994); Standards for Use or Disposal of Sewage Sludge, Final Rule (58 FR 32, February 19, 1993); Corrective Action Management Units, Final Rule (58 FR 29, February 16, 1993); and rulemaking efforts on the Pulp and Paper Industry (56 FR 21802, May 10, 1991 and 58 FR 66078, December 17, 1993).

The sewage sludge and pulp and paper rulemakings in particular examined both human and ecological risk. Other rulemakings under development within the Office of Solid Waste also use non-groundwater risk assessment methodologies including various hazardous waste listing determinations and the dioxin emission rules for hazardous waste combustion units. Most of these assessments rely on several Agency guidance documents issued in recent years. In January 1990, the Agency issued an interim report, Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (EPA/600/6–90/003 and referred to as the Indirect Exposure Document). This document served as the basis for further development of non-groundwater pathway assessments by the Agency. In November 1993, the Agency issued an Addendum to the Indirect Exposure Document that updated and revised portions of the methodology presented in the Indirect Exposure document. In April 1994, OSW issued a draft implementation guidance entitled Implementation Guidance for Conducting Indirect Exposure Analysis at RCRA Combustion Units. In June 1994, the Agency released a review draft of Estimating Exposure to Dioxin-Like Compounds: Volumes I–III (EPA/600/6–88/005C), which presents an extensive and expanded version of the Agency's previous multiple pathway exposure assessments. Finally on November 16, 1994, the Agency issued Draft Soil Screening Guidance (59 FR 59225), which presents a multiple pathway assessment using air, groundwater, and soil pathways for soil screening levels at Superfund sites. The risk assessment presented relies on the methodologies presented in these Agency guidance documents to maintain consistency with previous Agency efforts.

Based on these efforts by the Agency in conducting non-groundwater pathway assessments, comments by reviewers on previous draft versions of the risk assessment, and some screening analyses to identify pathways that are either very similar or unimportant compared to other pathways, the Agency selected the human and ecological exposure pathways presented in Table A–1 (human exposure pathways) of appendix A and Table A–2 (ecological exposure pathway) of appendix A. These exposure pathways are described in greater detail in the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors.

Tables A–1 and A–2 presents four columns: column 1 (exposure media), identifies the medium, such as air or soil, to which the receptor is exposed; column 2 (route of exposure), identifies the route, such as inhalation or ingestion, by which a receptor is exposed to the exposure medium; column 3 (type of fate and transport), classifies the pathway by the primary mode of fate and transport of the contaminant to the exposure medium, including direct air, air deposition, air diffusion, groundwater, overland, and soil; and column 4 (exposure scenario), identifies the compartments in the pathway (e.g., source to air to humans), and describes the exposure scenario (e.g., inhalation of volatiles).

The fate and transport pathways examined can be grouped into six types of initial release and movement away from a waste management unit, as follows:

- Direct air pathways—air emissions of volatiles and respirable (PM_{10}) particulates;
- Air deposition pathways—air emissions of particulates that deposit on soil or plant surfaces;
- Air diffusion pathways—air emissions that, while in the vapor phase, diffuse directly into surface water or plants;
- Groundwater—groundwater releases (These are the pathways that link to the separate groundwater fate and transport analysis that then links to the waste management units.);
- Overland pathways—overland transport (i.e., surface runoff and soil erosion) to surface water or transport by soil erosion to off-site fields;
- Soil pathways—on-site soil exposures.

There are three types of pathways not included in the analysis. Pathways involving the use of contaminated water (groundwater and surface water) for irrigation were removed due to modeling difficulties that could not be resolved, however early results indicated these are not the most significant pathways for any of the waste management units. Pathways involving the deposition of contaminated particles directly onto

surface water bodies were not included because previous efforts by the Agency have shown these pathways not to be as significant when compared to particle deposition onto the watershed and subsequent erosion to the surface water body. Pathways involving wet deposition were not examined. An air model recently developed evaluates the impact of wet deposition and was not available to use at the time of this proposed rule. This new model also was addressing problems with the area component of earlier models. When the model is available, the Agency will determine whether its use will have an impact on the proposed exit criteria. If the Agency determines that there will be an impact, it will provide an opportunity for public comment on use of the updated model.

As stated earlier, not all exposure pathways were evaluated for all waste management units. Constituents may be released from each waste management unit by a variety of mechanisms. Each release mechanism may be associated with certain exposure pathways. By examining the release mechanisms assumed for each waste management unit and identifying the exposure pathways associated with those release mechanisms, the appropriate pathways to be modeled for each waste management unit were identified. The exposure pathways modeled for each waste management unit are presented in Table A–5 of appendix A.

b. Equations

Since the objective of the assessment was to generate acceptable levels in waste rather than determining risks posed by waste, the equations, which are designed to calculate risks, had to be turned around or run in reverse. The assessment began with a target risk (or acceptable risk to the receptor) that was used to back-calculate what constituent concentration in a waste would not exceed the target risk.

Wherever appropriate, the equations used in the back-calculation were taken from Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (U.S. EPA, 1990x; hereafter, the Indirect Exposure document, or IED) as modified by the November 10, 1993, draft of Addendum: Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions, Working Group Recommendations (U.S. EPA, 1993x; hereafter, the Addendum). The Addendum is currently being revised based on comments from the Science Advisory Board and is being combined with the IED to generate a single methodology guidance document. Therefore, the equations may change after that revision is completed. If this occurs, the assessment used for this rule-making will be revised. If such a revision is needed and occurs, the Agency will provide an opportunity for public comment on those changes. For convenience, the methodology presented in the IED as modified by the Addendum will be referred to as the Indirect Exposure Methodology, or IEM.

The equations presented in the IEM were modified to estimate the soil concentration for constituents eroding to an off-site field. The IEM did not address this pathway because it was developed for stack emissions from combustors rather than releases from land-based units. However, because soil erosion is a critical release pathway for this analysis, the Agency applied the Universal Soil Loss Equation (USLE) and other equations presented in the IEM to calculate soil erosion to the off-site field. However, the application of these equations resulted in concentrations greater at the receptor than in the waste management unit. This phenomenon, first noted in the Dioxin reassessment, occurred because the equations assumed that the amount of uncontaminated soil that was eroded into the field was negligible in comparison to the total mass of soil in the field. Therefore, the Agency modified these equations to reflect erosion of uncontaminated soil together with the constituents.

Certain modifications to the equations used in the assessment were made for dioxin-like compounds to reflect the different behavior of these constituents in the environment. These modifications were based on Estimating Exposure to Dioxin-like Compounds, Volume III: Site-Specific Assessment Procedures (U.S. EPA, 1994x), hereafter referred to as the Dioxin document. The Dioxin document defines dioxin-like compounds as ''* * * compounds with nonzero Toxicity Equivalency Factor (TEF) values as defined in the 1989 International scheme * * * [which] assigns nonzero values to all chlorinated dibenzodioxins (CDDs) and chlorinated dibenzofurans (CDFs) with chlorines substituted in the 2,3,7,8 positions. Additionally, the analogous brominated compounds (BDDs and BDFs) and certain polychlorinated biphenyls (PCBs) have recently been identified as having dioxin-like toxicity * * * and thus are also included in the definition of dioxin-like compounds.''

Although the modifications presented in the Dioxin document may be applicable to other highly lipophilic compounds, in keeping with this definition, the modifications for dioxin-like compounds were made only for 2,3,7,8–TCDDioxin Toxicity Equivalents (TEQs), and PCBs. Other dioxin congeners are addressed through the 2,3,7,8-TCDDioxin TEQ. The Agency solicits comment on not using these modifications for other highly lipophilic compounds.

(3) Specific Issues on Pathways and Equations

Below are specific issues of the risk assessment related to the modeling of the fate and transport pathways on which the Agency is requesting comment on their use, improvements to them, or alternative ways to model them. A detailed discussion of these aspects is in Section 6, Fate and Transport Modeling, of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors. (Air emission and dispersion modeling is discussed in Section 7, Waste Management Units, in the technical support document. To be consistent, issues related to that modeling were presented earlier in this preamble in Section D.2.a.)

(i) Hydrolysis

The Agency accounted for fate processes (e.g., biodegradation, hydrolysis) and transport processes (e.g., volatilization) for constituents throughout their movement from the point at which the constituent leaves the waste management unit until it reaches the location at which contact with the receptor occurs. During an initial screen, the Agency identified four constituents that were known to hydrolyze completely or rapidly. These constituents were not included in the detailed assessment and include: Benzotrichloride (98–07–7); maleic anhydride (108–31–6); phthalic anhydride (85–44–9); and 1,2-diphenylhydrazine (122–66–7). In addition, 16 inorganic salts known to dissociate completely were also not assessed. These included: Calcium cyanide (592–01–8); copper cyanide (544–92–3); potassium cyanide (151–50–8); potassium silver cyanide (506–61–6); silver cyanide (506–64–9); sodium cyanide (143–33–9); thallium (I) carbonate (6533–73–9); thallium (I) chloride (7791–12–0); thallium (I) nitrate (10102–45–1); thallium (I) sulfate (7446–18–6); zinc cyanide (557–21–1); zinc phosphide (1314–84–7); cyanogen bromide (506–68–3); cyanogen chloride (506–77–4); hydrogen cyanide (74–90–8); and thallium acetate (563–68–8). The Agency solicits comment on not assessing these constituents.

Of the 192 constituents evaluated in the non-groundwater analysis, the Agency directly accounted for chemical hydrolysis for 18 constituents. For the remaining constituents, hydrolysis was not considered for the following reasons: The constituent has no hydrolyzable chemical group; hydrolysis is not expected to be important or significant; the degradation half-life of the chemical, which includes hydrolysis, is greater than one year; or, there was no data available for the constituent.

The extent to which fate and transport processes play a role in the removal of a constituent from a pathway, or its movement from one environmental compartment to another is determined by site-specific environmental conditions as well as chemical-specific parameters. To simplify the analysis, the Agency used fate and transport data based on one set of environmental conditions to represent all possible spatial and temporal environments encountered in any given exposure pathway. The Agency solicits comments on this simplification for modeling fate and transport processes throughout the exposure pathways considered in the MPA.

(ii) Other Fate and Transport Processes

Fate and transport processes other than hydrolysis may be important in determining the concentration of a constituent reaching a receptor. The Agency's approach to incorporate consideration for these other processes involved the use of biodegradation and volatilization rates into the fate and transport pathways, when applicable. The Agency recognizes that the rate for many chemical-specific fate and transport processes (in particular, biodegradation) varies with characteristics of the environment (e.g., temperature, soil type). However, the Agency simplified the non-groundwater analysis by applying chemical-specific fate and transport rates generically across environmental settings found in the various exposure pathways. This simplification may overestimate the exit level in some instances and underestimate the exit level in other instances. The Agency solicits comments on this simplification for modeling fate and transport processes throughout the exposure pathways considered in the non-groundwater analysis.

(iii) Bioavailability

With regard to the metals examined in the risk assessment, there is considerable uncertainty about their bioavailability that affects their fate, transport, and uptake in various media (e.g., plant tissue, animal tissue) and receptors. Speciation and associated solubility of metal species in wastes which contain metals are key factors that influence the bioavailability of metals. The Agency had no information on the speciation, solubility, or availability of the metals in the wastes in which they are disposed or how they may transform in the environment. The Agency assumed that the metals were in a soluble form, mobile, and available. In the absence of this information, the Agency assumed that metals are soluble, mobile, and bioavailable. The Agency seeks comment on this approach, and requests data on the speciation and solubility of metals in wastes, together with the conditions of the waste (e.g., pH) that could be disposed by the methods considered in this rulemaking and methodologies that account for the transformation of the metals through changing environmental conditions.

(iv) Meteorological Data

The approach for setting central-tendency and high-end meteorological conditions in the risk assessment was to evaluate sets of meteorological data from a variety of locations, and then select locations that reflect central tendency or high-end conditions for a given exposure pathway.

The Agency used the set of 29 meteorological stations identified during its efforts to develop soil screening levels for Superfund sites. These are considered representative of the United States. Central-tendency and high-end locations were then selected from these 29 locations for the exposure pathways where meteorological conditions were required as input to the models; these were the air pathways and overland pathways. The meteorological data were evaluated as location sets as opposed to individual parameters. Once locations were selected, the annual average values for those locations were used.

For air pathways, which required data on wind speed, wind direction, temperature, sunshine, cloud cover, and air mixing height, selection of meteorological data was waste management unit-specific and based on extensive sensitivity analysis. EPA considered only the effect of meteorological data on emissions and dispersion in selecting locations for air pathways. However, for consistency, once a pair of high-end and central tendency locations were selected for a pathway, any meteorological data used in that pathway were selected to correspond to the locations chosen, even in any overland transport component of the pathway.

Overland pathways were driven by soil erosion, for which the critical meteorological input is the Universal Soil Loss Equation (USLE) rainfall factor (R). Therefore, to select central tendency and high-end locations for overland pathways, the 29 locations were ranked based on the rainfall factor, and the 50th and 90th percentile locations chosen for all overland pathways.

See Section 6.8, Fate and Transport Inputs and Section 7.1.5. Air Modeling, of the Technical Support Document for the Hazardous waste Identification Rule: Risk Assessment for Human and Ecological Receptors for a detailed discussion of how meteorological data were selected and used. The Agency solicits comment on how meteorological data was selected and used in the risk assessment.

(v) Soil Data

A variety of soil parameters were required for the modeling. These parameters are interdependent and vary with the type of soil (e.g., loam, clay). However, values for these parameters also vary within a soil type. Due to the interdependence of the parameter, the Agency chose to maintain them as a set and determine a central-tendency property set and a high-end property set.

The Agency used loam type soils to characterize all soils simulated in the risk assessment because these types of soils are fairly prevalent in the United States. All soils are composed of varying percentages of sand, silt, and clay. Loam, by definition, is composed of equal proportions of sand, silt, and clay; therefore, it represents a combination of each of the physical properties of the individual soil textures. Central tendency and high-end values were selected from the range of values for loam soil so that each individual soil parameter required by the model is consistent with a loam soil. (Sec Section 6.8, Fate and Transport Inputs, in the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors for more detail.) The Agency solicits comments its approach for characterizing soil in the assessment.

(vi) Soil Pathways

The Agency seeks comment on the following issues related to the modeling of soil pathways:

- Use of the Universal Soil Loss Equation to predict soil erosion in a generic application - This is a widely-used model intended for site-specific

applications where specific input data can be used for relatively small fields. Its use in a generic application, and for fairly large waste management units, may overestimate quantities of soil eroded.

- Handling of the Soil Loss Constant - This term is the sum of loss rates for leaching, erosion, runoff, biodegradation, hydrolysis, and volatilization. Possible uncertainties may arise because: the assessment assumes that these terms are first-order decay rates and therefore can be added together; loss processes are calculated independently, even though they may occur simultaneously.
- Use of the Soil Water Content Equation to predict soil water content in a generic application - The equation is from the Superfund Exposure Assessment Manual (U.S. EPA, 1988x), and was developed for site-specific applications.
- Area of garden and agricultural field - No data were available on the size of home gardens, gardens on subsistence farms, or yards of residential lots (for soil ingestion). Therefore, a single set of central tendency and high-end values was estimated for these, based on best professional judgment; this set is referred to as garden area, even though it might also apply to a yard. Because a larger area leads to greater dilution of deposited or eroded contaminant, a high-end garden would be one that was relatively small.
- Areas for agricultural fields were estimated from data in the 1992 Census of Agriculture (U.S. Department of Commerce, 1992). The Census gives average farm acreage by State for 48 States (the data are not yet complete for the two missing States). No percentile data were available. These data do not distinguish between commercial and subsistence farms.
- Mixing Depth—Mixing depth reflects the depth of soil to which deposited or eroded contaminant is mixed. It is important to distinguish between soil that is tilled for agricultural purposes and soil that is untilled in determining appropriate mixing depth values. A smaller mixing depth results in less dilution of a constituent, and therefore higher soil concentrations; therefore, a high-end mixing depth would be smaller than a central tendency mixing depth.

(vii) Surface Water Pathways

Water column as well as benthic sediment concentrations were estimated. Water column concentrations include dissolved, sorbed to suspended sediments, and total (sorbed plus dissolved, or total contaminant divided by total water volume). Benthic sediment concentrations included: Dissolved in pore water, sorbed to benthic sediments, and total. The model accounts for three routes of constituent entry into the water-body were examined: Sorbed to soils eroding into the water-body; dissolved in runoff water; and diffusion of vapor phase contaminants into the water-body. Air deposition of constituents bound to particles into a water-body was not examined because earlier analysis demonstrated that its contribution would be negligible when compared to that of eroding particles. Volatilization of dissolved constituents and removal of constituents through burial in bed sediments were modeled as loss processes.

Important assumptions made for the surface water modeling included: Water-body sufficiently large to support certain ecological receptors; sufficient fish to support a subsistence fisher; uniform mixing within the water-body (this tends to be more realistic for smaller water-bodies as compared to large river systems); and equilibrium is established between constituents within the water column, bed sediments, and air.

The Agency seeks comment on the following issues related to the modeling of surface water pathways:

- Water-body/Watershed Characterization—The water-body characterization parameters are another example of a set of parameters that are interdependent and therefore were used as a group. Watershed characterization relates to the water-body (in the case of the assessment, a stream) characterization. Streams are characterized (flow, water-body area, watershed area, depth, and various other parameters) by their ''order.'' A first-order stream has no tributary channels; a second-order stream forms when two first-order streams converge, and so on through stream order 10. The Agency used a stream order 4 as the high-end estimate because EPA believes this stream order would be among the smallest stream orders that would support sufficient fish or a subsistence fisher and the receptors assessed. A stream order 5 was used as the central-tendency estimate based on the number of streams within each stream order. (See Section 6.8 in the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors for more detail.)
- Total Suspended Solids—Total suspended solids (TSS) can range from 1 to 100 mg/L with a typical value being 10 mg/L for streams and rivers. This value is used as the central tendency value. No data on frequency of values in actual streams was available to estimate a 90th percentile value. Since 80 mg/L is believed to be the maximum tolerable value for aquatic life; this value was used as the high-end value.
- Bed Sediment Concentration—The bed sediment concentration term is analogous to the bulk density for soil in that it describes the concentration of solids in terms of a mass per unit volume. A single value of 1 kg/L was used in the assessment given that this is considered a reasonable value in most situations and the range is quite narrow, 0.5 to 1.5 kg/L.
- Gas-Phase Transfer Coefficient—The gas-phase transfer coefficient is used to estimate volatile losses from the water-body. Volatile losses are calculated using a two-layer resistance model that incorporates a gas-phase transfer coefficient and a liquid-phase transfer coefficient. Both transfer coefficients are controlled by flow induced turbulence in flowing systems. The liquid-phase transfer coefficient is calculated based on chemical-specific properties. A single value of 36,500 m/yr. was used. There is some uncertainty related to setting this parameter to a single value that is not chemical specific. It is reasonable to assume that chemical properties affecting volatility would have some effect on this value, although it is not known how large such an effect would be.
- Fraction Organic Carbon in Bottom Sediment—The fraction organic carbon in bottom sediment is derived from the fraction organic carbon in watershed soils. For a fraction organic carbon of about 0.01 in the watershed, the fraction organic carbon for bottom sediments is typically 0.03 to 0.05. The midpoint of this range, 0.04, divided by the fraction organic carbon of the watershed (0.01) derives a multiplier of 4 for calculating fraction organic carbon in bottom sediments from fraction organic carbon in watershed soils. The fraction organic carbon values used of 0.024 and 0.008 correspond to the central tendency and high-end values for soil fraction organic carbon of 0.006 and 0.002, respectively. The fraction organic carbon in the bottom sediments was varied with the fraction organic carbon in soil.

(viii) Food-Chain Pathways

The Agency seeks comment on the following issues related to the modeling of food-chain pathways: (Please note the fish uptake methodology is described below in Section D.2.c.2), Ecological Receptors and Exposure; the littoral methodology is used for humans):

- Use of regression equations based on Kow to derive biotransfer factors for plants—The biotransfer factors are based upon empirical relationships with Kow defined by studies on relatively few chemicals.
- The lack of accounting for translocation of contaminants within plants—The plant uptake models do not account for translocation of contaminants (should such a translocation occur) from one part of a plant to another. The Agency is considering two models developed by Stephan Trapp, plantx and plantE, and solicits comment on their use.
- Use of regression equations based on Kow to derive biotransfer factors for beef and milk—The biotransfer factors for beef and milk are based upon empirical relationships with Kow defined by studies on relatively few chemicals.

c. Receptors

Both human and ecological receptors are considered in the assessment. The human receptors evaluated were selected to represent a range of behaviors and activities that influence exposure levels. The Agency believes that these represent typical and more exposed types of behaviors and activities that might exist around waste management units or media contaminated by releases from waste management units. Each receptor was evaluated for individual exposure pathways (i.e., exposure to multiple pathways was not included). For ecological receptors, populations or communities were selected for the generic terrestrial and freshwater ecosystems based on behavior patterns such as dietary habits (plant-eater vs. meat-eater) as well as qualities such as significance and representativeness with respect to trophic structure in the ecosystem (bald eagle). The selection of ecological receptors was limited by the level of characterization available such as food intake and body weight. Again, the Agency believes that these represent the types of organisms that might exist around waste management units or media contaminated by releases from waste management units.

(1) Human Receptors and Exposure

Human receptors assessed in the assessment included the following:

- Adult resident living in the vicinity of a management unit—This individual is representative of the general population in the United States and is evaluated independently through the following potential exposure pathways: Inhalation, ingestion of contaminated soil, ingestion of contaminated drinking water, dermal contact with contaminated soil, and dermal contact during bathing. In addition, the analysis evaluates exposures to an adult resident living on-site of a land application unit begining 10 years after closure of the unit.
- Child resident living in the vicinity of a management unit—Children are a special population considered in certain pathways because of their low body weight compared to high intake rates or surface area. A child is evaluated through the following potential exposure pathways: ingestion of contaminated soil, dermal contact with contaminated soil, and dermal contact during bathing.
- Home Gardener—This individual represents a sub-population that supplements their fruit and vegetable consumption with fruits and vegetables they grow on contaminated land.
- Subsistence Fisher—This individual represents a sub-population that subsists on contaminated fish.
- General Fish Consumer—This individual represents a sub-population that consumes contaminated fish and supplements their intake with other non-contaminated foods.
- Subsistence Farmer—This individual represents a sub-population that grows or raises most of their own food on contaminated land. This individual is evaluated independently through the following exposure pathways: beef ingestion, milk ingestion, and fruit and vegetable ingestion.
- On-site Worker—This individual represents the working population that may be found at the waste management units. This individual is evaluated during the active phase of the unit for the following on-site exposures: Inhalation and dermal contact with contaminated soil.

Each of the receptors has been matched with the most relevant exposure routes. Table A–3 in appendix A shows the pathways were modeled for each receptor.

As previously discussed, the assessment begins with a target human toxicity benchmark and exposure assumptions tailored to each receptor, and back-calculates to constituent-specific concentrations in each media. In characterizing the exposure, two exposure parameters are set to high-end values and the rest of the exposure parameters are set to central tendency or default values. The two high-end exposure values were typically exposure duration and a parameter affecting intake of, or exposure to, a contaminant (e.g., fraction contaminated, consumption rate, inhalation rate).

The exposure equations used for back-calculating media concentrations are based on standard risk equations used in most Agency risk assessments. For all inhalation and ingestion pathways, these equations were adapted from Risk Assessment Guidance for Superfund (RAGS): Volume I—Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals) (U.S. EPA, 1991x; hereafter, RAGS Part B) and subsequent modifications. For dermal pathways, which are not covered in RAGS Part B, the equations presented in Dermal Exposure Assessment: Principles and Applications, Interim Report (U.S. EPA 1992x; hereafter, the Dermal document) were used; this document reflects the current techniques for assessing dermal exposure. The Agency requests comment on the data sources and assumptions used in the human exposure portion of the risk assessment, described in detail in Section 5.0 of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors.

The Agency seeks comment on the following types of human exposure that were not examined:

- Ingestion of contaminated water by humans while bathing or swimming—The ingestion rate of water while swimming or bathing is 30 times smaller than the normal consumption rate of water used in the drinking water ingestion pathways; therefore, the drinking water ingestion pathways should be protective of the incidental water ingestion pathways.
- Inhalation of volatiles while bathing—No appropriate, chemical-specific equations could be found to address this pathway.
- Ingestion of airborne particulates—The ingestion rate of soil used in the soil ingestion pathways is many times larger than the ingestion rate from airborne particulates; therefore, the soil ingestion pathways should be protective of the ingestion of airborne particulates. Also, given the way the soil ingestion rates were empirically derived, ingestion of airborne particulates should, in effect, be accounted for in the estimated soil ingestion rates.
- Ingestion of contaminated soil by resident on active site—While the waste management units are active, it is assumed that access is limited to workers.

(2) Ecological Receptors and Exposure

In addition to the human receptors, ecological receptors were evaluated in the assessment. Lacking an Agency precedent for the selection of ecological

receptors for a generic analysis, a simple framework was developed for ecological receptor identification based on EPA's Framework for Ecological Risk Assessment (U.S. EPA, 1992x). During the problem formulation phase, a suite of ecological receptors was selected to include species that represent each of the trophic levels or feeding habits within an ecosystem. At best, one can only infer that an ecosystem is protected from chemical stressors. In addition, the toxicological data support the evaluation of individuals, populations, and occasionally communities, but are inadequate to address the complexities of an ecosystem in most cases. Thus, the approach taken in the assessment was to estimate protective levels for the populations and communities (inferred from the measurement endpoints used) found in generic ecosystems. The species included in the ecological assessment encompass a wide range of dietary preferences, sizes, and trophic levels.

In selecting ecological receptors for the assessment, a number of ecosystem types (e.g., lakes, streams, estuaries, deserts, forests, grasslands) were considered because the waste could be disposed anywhere once it has exited the Subtitle C system. Two generic ecosystems were designed: A freshwater-based ecosystem and a terrestrial-based ecosystem. Specific details of these ecosystems are described in Section 3, Receptors, in the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment of Human and Ecological Receptors. The Agency solicits comment on both the adequacy of the design of the ecosystems used in the assessment and the use of generic ecosystems to assess potential ecological hazards.

Generally, ecological receptors were identified at different trophic levels as well as at different levels of biological organization and included species of relatively low ecological significance but high societal relevance (e.g., American kestrel). The final selection of receptors was based primarily on the availability of data with which to assess the risks to that receptor. As suggested in the Framework for Ecological Risk Assessment (1992x), the process of selecting appropriate assessment endpoints was iterative, including information from the other activities included in the assessment phase—the characterization of ecological effects. The ecological receptors included in the assessment were:

- Mammals—Mammals were evaluated for both generic ecosystems and include upper trophic level predators such as the mink or red fox, lower trophic level consumers such as the whitetail deer, and insectivores such as the meadow mole; species were selected to represent a variety of body sizes, habitats, and dietary habits for which data on body weight, food intake, etc., are available. Mammals may be exposed by eating contaminated prey items (e.g., fish, other vertebrates, insects) or plants, through incidental ingestion of contaminated soil while eating or preening, or through lactation or placental transfer.
- Birds—Birds were also evaluated for both generic ecosystems and include upper trophic level predators such as the red-tailed hawk and lower trophic level consumers such as the American robin; species were selected to represent a variety of body sizes, habitats, and dietary preferences for which input parameters (e.g., body weight, diet, ingestion rates) are available. Birds are exposed through the ingestion of contaminated prey items (e.g., fish, worms), through incidental ingestion that occurs while eating or preening, or through maternal transfer to eggs.
- Terrestrial Plants—Vascular plants that might be common in a generic terrestrial ecosystem were evaluated. The species of plants used to represent plants within the terrestrial ecosystem were determined by the availability of data and included primarily forage grasses and food crops. Plants are exposed through soil-to-root uptake, deposition on the surface of leaves or bark, and during air-to-leaf transport of volatile or semi-volatile constituents.
- Soil Community—Representative species for the soil community were based on six metrics for measuring ecological function: (1) Location, (2) size, (3) abundance, (4) taxon richness, (5) trophic structure, and (6) energy metabolism. Organisms living in or on the soil are exposed through direct contact (e.g., insects), through the ingestion of contaminated soil (e.g., earthworms), and through the ingestion of other soil dwellers (e.g., centipedes). The Agency solicits comment on the representative species selected to comprise the soil community.
- Fish—Given the small percentage of freshwater species for which toxicological data are available, all species of freshwater fish were considered as potential receptors, regardless of size or dietary habits. Fish are subject to continuous exposure to contaminated water via gill exchange and may be exposed to bioaccumulative chemicals through the food chain.
- Aquatic Invertebrates (Daphnids)—Aquatic invertebrates are believed to be among the most sensitive aquatic species (Suter, 1993x), daphnids were selected to represent free living aquatic invertebrates. Continuous exposure to contaminated water is considered the primary route of exposure.
- Aquatic Plants—Vascular aquatic plants and algae typical of aquatic ecosystems were evaluated. Aquatic plants are exposed during sediment-to-root uptake and through water-to-leaf transport.
- Benthic Community—Representative species include organisms that fall within any of the eight taxonomic genera used in the development of the Ambient Water Quality Criteria for the protection of aquatic life. Because these organisms spend most (if not all) of their lives in the sediment, they are exposed through direct contact and ingestion of contaminated sediments as well as through the ingestion of other sediment dwellers.

Each of these receptors has been matched with the exposure pathways and waste management units likely to result in exposure. Table A–4 of appendix A shows which pathways were modeled for each receptor. The Agency solicits comment on the use of a single species to represent major trophic elements.

The development of medium-specific concentrations for the protection of ecological receptors was based on ingestion of contaminated vegetation, water, soil, or prey or through continual contact with a contaminated medium (e.g., aquatic invertebrates with water or soil fauna with soil).

Numerous studies have demonstrated the capacity of hydrophobic organic chemicals to bioaccumulate in the food chain that are orders of magnitude above the concentration in the contaminated medium (e.g., Oliver and Niimi, 1988x). However, it is important to recognize that food-chain pathways may be significant even for constituents that do not bioaccumulate appreciably. Dietary exposure to constituents that concentrate weakly in fish tissue (e.g., bioconcentration factor below 10) may be more significant than exposure to contaminated drinking water simply because a particular animal may ingest relatively more fish than water.

For constituents that bioaccumulate, particularly those that biomagnify, benchmarks should account for exposure through the ingestion of contaminated prey as well as contact with or ingestion of contaminated media. The majority of toxicological studies examined a single route of exposure and seldom considered the potential increase in exposure concentrations through successive

trophic levels. As a result, toxicity benchmarks for bioaccumulative constituents cannot be used as acceptable medium exposure concentrations; exposure estimates must incorporate the bioaccumulation potential in the food chain. For nonbioaccumulating constituents, where toxicity benchmarks that are medium specific (i.e., concentration units—mg/kg or mg/L)) can be used as acceptable medium concentrations for ecological receptors (e.g., Ambient Water Quality Criteria).

In the aquatic ecosystem, for bioaccumulative chemicals (log K_{ow}>4), bioaccumulation factors (BAFs) were estimated using models developed by Thomann (1989x) for the limnetic (or pelagic) food chain and Thomann et al. (1992x) for the littoral food chain (i.e., sediment-based). However, for constituents with log K_{ow} above 6.5, only measured values were used. The Agency is considering using the Gobas model since it can be used for constituents with log K_{ow} above 6.5. Further, switching to the Gobas model would be consistent with the Great Lakes Initiative which recently switched to that model. The results produced by either the Thomann models or the Gobas model are very similar. The tissue concentration (TC) was estimated for prey based on the intake, body weight, and dietary preference (i.e., trophic level of fish consumed) of the representative predator species. Protective surface water concentration was calculated by dividing the tissue concentration (TC) by the bioaccumulation factor for the appropriate trophic level. For nonbioaccumulative chemicals, the protective surface water concentration for fish and aquatic organisms was the Final Chronic Value (FCV) or Secondary Chronic Value (SCV) as described in Section 4 of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors. For upper trophic level aquatic wildlife such as mink and osprey, protective surface water concentrations were calculated based on the consumption of contaminated fish and water. The benthic community was included in the littoral ecosystem. Protective sediment concentrations were estimated using the equilibrium partitioning (Eqp) methods developed by Di Toro et al. (1991x). As explained in Section 4 of the Technical Support Document for the Hazardous Waste Identification Rule: Risk Assessment for Human and Ecological Receptors, the sediment benchmark was calculated by multiplying the FCV (or SCV) by the octanol/carbon partition coefficient (K_{oc}) and adjusting for the fraction organic carbon (f_{oc}) in the sediment. EPA requests comment on the selection of the bioaccumulation model, the potential switch to the Gobas model, BAFs used, dietary assumptions, and how tissue concentrations were calculated.

For receptors in the generic terrestrial ecosystem, methods used represented a range of dietary habits across trophic levels for wildlife, including plants and organisms that live in the soil (i.e., soil fauna). (See the discussion on the development of soil and plant benchmarks elsewhere in today's rule.) For higher trophic level wildlife, dietary preferences, daily intake, and bioconcentration factors for prey items were identified or estimated to calculate protective soil concentrations. The key equation used to back-calculate soil concentrations as a function of dietary exposure (including soil ingestion), and the exposure inputs (e.g., body weights, daily intake) for ecological receptors are discussed in Section 5.3 of the Risk Assessment. The Agency requests comment on the equations and inputs used in the generic terrestrial ecosystem modeling.

The following types of exposure were not assessed in the assessment:

- Inhalation by ecological receptors—No suitable methodology was available.
- Dermal contact with soil—No suitable methodology or sufficient toxicity data were available.
- Dermal contact with water—No suitable methodology or sufficient toxicity data were available.

3. Groundwater Fate and Transport Modeling

In the risk analysis previously described in the section, the pathways involving groundwater are only modeled (back-calculated) to the wellhead, i.e., to the point of exposure at a water well. For groundwater modeling from the waste management unit (i.e., surface impoundment) to the water well, the Agency used a separate fate and transport analysis. This section describes the groundwater model and the modeling procedures for the various waste management scenarios for the groundwater path. The details of the model and the modeling procedures are presented in the background documents (USEPA, 1995 a-f).

The Agency has developed specialized subsurface fate and transport modeling for four waste management options: (1) Landfills; (2) surface impoundments; (3) waste piles; and (4) land application units. All four waste management scenarios assume that the waste if exempted could be managed in the respective RCRA Subtitle D units. In deriving the exemption levels, the Agency needs to evaluate the fate and transport of constituents from the waste unit to the nearby drinking water wells. The potential migration of constituents from a waste unit to the leachate at the bottom of the waste unit can be simulated by the laboratory test, the Toxicity Leaching Procedure (TCLP), or the Synthetic Precipitation Leaching Procedure (SPLP), Method 1312. Although one procedure may be more applicable for some wastes than the other procedure, as described on page 21483 of the Federal Register Notice of May 20, 1992 (57 FR 21450), the Agency is soliciting comments on the applicability and use of one test over the other for this proposal.

The fate and transport of constituents in leachate from the bottom of the waste unit through the unsaturated zone and to a drinking water well in the saturated zone is estimated using a fate and transport model. The Agency proposes to use EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) for this purpose. The EPACMTP considers not only the subsurface fate and transport of chemical constituents, but also the formation and the fate and transport of transformation (daughter) products. The Agency also solicits comments on the technical correctness and applicability of the model and the data for this proposal.

The Agency proposed the use of a subsurface fate and transport model (EPASMOD) on June 13,1986 (51 FR 21648) in the Toxicity Characteristic (TC) Rule. However, after receiving numerous comments, the Agency revised the model and the data used in the model (53 FR 28692) and the enhanced model (EPACML) was used in the TC Final Rule (55 FR 11798). The EPACMTP replaces the EPACML for use in this proposal. The EPACMTP was recently published in a refereed journal (Kool, Sudicky and Saleem, Journal of Contaminant Hydrology 17(1994) 69–90) and has been reviewed by the EPA's Science Advisory Board (SAB). The SAB commended the Agency for making for its significant improvements to the model. They also stated that it represents the state of the art for such analyses. However, they also recommended additional testing of the model.

The modeling approach used for this proposed rulemaking includes three major categories of enhancements over the EPACML and the approach for the TC rule. The enhancements fall into the

following categories: (1) Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents); (2) Use of enhanced flow and transport solution algorithms and techniques (e.g., three-dimensional transport); and (3) Revision of the Monte Carlo methodology (e.g., site-based implementation of available input data). A discussion of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents (USEPA, 1995a-g). The Agency is soliciting comments on the modeling enhancements and the modeling methodology as well as on the values derived for individual chemical constituents:

(1) Fate and Transport Processes

Effects of groundwater mounding underneath waste unit.—The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste units. These conditions increase the transverse horizontal as well as the vertical spreading of a contaminant plume. The EPACMTP accounts for these effects directly by simulating groundwater flow in the vertical as well as horizontal directions (USEPA, 1995 a).

Transformation products.—The EPACMTP model has capability to simulate the formation and fate of multiple transformation products (up to seven) in the unsaturated as well as in the saturated zones. For constituents which have toxic transformation products, the EPACMTP can provide an assessment of the groundwater impact of the transformation products, along with that of the parent constituent. This methodology has been implemented for hydrolyzing organic constituents included in this proposal.

Fate and transport of metals.—The EPACMTP can simulate fate and transport of metals, taking into account geochemical influences on the mobility of metals. The EPA's MINTEQA2 (USEPA, 1995 f) metals speciation model is used to generate effective sorption isotherms for individual metals, corresponding to a range of geochemical conditions. The transport modules in EPACMTP have been enhanced to incorporate the nonlinear MINTEQ sorption isotherms. This enhancement provides the model with capability to simulate, in the unsaturated and in the saturated zones, the impact of Ph, leachate organic matter, natural organic matter, iron hydroxide and the presence of other ions in the groundwater on the mobility of metals.

(2) Enhanced Solution Algorithms and Techniques

Linkage between unsaturated zone and saturated zone modules.—The saturated zone module implemented in the EPACML was based on a Gaussian distribution of concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table underneath the waste unit. The approximate nature of this mixing factor could sometimes lead to unrealistic values of contaminant concentration in the groundwater close to the waste unit, especially in cases of a high infiltration rate from the waste unit. The enhanced model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML.

Numerical transport solution modules.—To enable a greater flexibility and range of conditions that can be modeled, the analytical saturated zone transport module has been replaced with a numerical module, based on the highly efficient state-of-the-art Laplace Transform Galerkin (LTG) technique. The enhanced module can simulate the anisotropic, non-uniform groundwater flow, and transient, finite source, conditions. The latter requires the model to calculate a maximum receptor well concentration over a finite time horizon, rather than just the steady state concentration which was calculated by the EPACML. The saturated zone modules have been implemented to provide either a fully three-dimensional solution, or a highly efficient quasi-3D solution. The latter has been implemented for Monte Carlo applications and provides nearly the same accuracy as the fully three-dimensional option, but is more computationally efficient. Both the unsaturated zone and the saturated zone transport modules can accommodate the formation and the transport of parent as well as of the transformation products.

Solution for nonlinear metals transport.—A highly efficient semi-analytical unsaturated zone transport module has been incorporated to handle the transport of metals in the unsaturated zone and can use MINTEQA2 derived linear or nonlinear sorption isotherms. Conventional numerical solution techniques are inadequate to handle extremely nonlinear isotherms. An enhanced method-of-characteristic based solution has been implemented which overcomes these problems and thereby enables the simulation of metals transport in the Monte Carlo framework. Non-linearity in the metals sorption isotherms is primarily of concern at higher concentration values; for low concentrations, the isotherms are linear or close to linear. Because of the attenuation in the unsaturated zone, and the subsequent dilution in the saturated zone, concentrations in the saturated zone are usually low enough so that properly linearized isotherms are used by the model in the saturated zone without significant errors.

Elimination of biases in determination of receptor well location.—The internal routines in the model which determine placement of the receptor well relative to the areal extent of the contaminant plume have been revised and enhanced to eliminate bias which was present in the implementation in the EPACML. The calculation of the areal extent of the plume has been revised to take into consideration the dimensions of the waste unit. The logic for placing a receptor well inside the plume limits has been improved to eliminate a bias towards larger waste unit areas and to ensure that the placement of the well inside these limits, for a given radial distance from the unit, is truly randomly uniform. However, for this proposal, *the closest drinking water well is located anywhere on the downgradient side of the waste unit and the Agency is soliciting any comments on this procedure.*

(3) Revisions of Monte Carlo methodology for nationwide assessment

Data sources.—The data sources from which parameter distributions for nationwide Monte Carlo assessments are obtained have been evaluated, and where appropriate, have been revised to make use of the latest data available for modeling. Leachate rates for Subtitle D waste units have been revised using the latest version of the HELP model with the revised data inputs. Source specific input parameters (e.g., waste unit area and volume) have been developed for various different types of industrial waste units besides landfills. Input values for the groundwater related parameters have been revised to utilize information from a nationwide industry survey of actual contaminated sites.

Finite-source methodology.—The original version of the model was implemented for Monte Carlo assessments assuming continuous source (infinite source) conditions only. This methodology did not take into account the finite volume and/or operational life of waste units. The EPACMTP model has been

implemented for Monte Carlo assessments of either continuous source or finite source scenarios. In the latter scenario, predicted groundwater impact is not only based on the concentrations of contaminants in the leachate, but also on the amount of constituent in the waste unit and/or the operational life of the unit. The Monte Carlo methodology was enhanced to allow determination of regulatory threshold levels for these two waste characteristics USEPA, 1995.

Site-based regional analysis.—The Monte Carlo methodology has been fundamentally revised and enhanced to account for the interdependency among the various model input parameters based on regional distributions. The original methodology simply assumed that a waste site could be located anywhere in the US, and that the probability distributions of individual model parameters (e.g., infiltration rate, depth to groundwater, etc.) at any waste site were mutually independent and given by their nationwide frequency distributions. The model therefore only had limited capability to account for correlations and dependencies among the model parameters. To address this limitation, a site-based methodology has been implemented, based on the OSW's surveys of existing waste facilities in the US, and their geographical locations. The information of geographical location is used in this enhanced approach to select the other model parameters, such as infiltration rate and hydrogeological characteristics. A number of different sources were reviewed for the development of the site-based approach. Four of these sets were selected to derive the regional characteristics of the more important parameters for each sampled site: The OSW's survey of industrial waste management units (EPA, 1986); the infiltration and recharge analysis performed for U.S. climatic regions; the U.S. Geological Survey inventory of groundwater resources; and the API's (American Petroleum Institute) survey of hydrogeologic parameters for the different groundwater environments in the U.S.

(4) Implementation of EPACMTP

The specific modeling options selected for the modeling analyses are summarized in Table 3 below. All modeling analyses were conducted in the finite source, Monte Carlo mode, for four industrial Subtitle D waste management scenarios. The groundwater fate and transport model was used to predict the maximum concentration at a receptor well placed down gradient from the waste unit. A 10,000 years time limit was imposed on the exposure time period, i.e., the calculated concentration is the highest exposure concentration occurring within 10,000 years following the initial release from the waste unit. The Monte Carlo fate and transport simulation provides a probability distribution of receptor well exposure concentrations as a function of waste and leachate concentrations. For this proposal, the groundwater modeling results were used to derive leachate concentration thresholds. For carcinogenic constituents, the exposure concentration calculated by the model corresponds to the maximum 30-year average receptor well concentration. For non-carcinogenic constituents, the peak receptor well concentration is used. The regulatory threshold leachate concentration limits were determined using a back-calculation procedure, to correspond to an approximate 90th percentile protection level. This means that the closest downgradient drinking-water wells at 90% of the industrial Subtitle D waste management units would have water concentrations below the HBN/MCL. The wells further away at 90% of the sites would be protected at higher protection levels. The wells at the other 10% of the sites would be protected at lower protection levels.

The Agency uses a 95th percentile protection level in the RCRA Delisting program and the 85th percentile for the toxicity characteristic program. These two programs have slightly different goals from the exemption proposed today. The recently developed Superfund soil-screening levels use a 90th percentile protection level to identify sites at which no additional investigation for possible remediation is required. The exit proposed today is similar to the soil-screening levels program. Today's proposed exit is intended to identify wastes no longer needing Subtitle C management. Finally, the 90th percentile was chosen because it is nearly consistent with the protectiveness level in the other pathways of the multipath risk assessment performed for today's proposal as far as could be identified.

Table 3 provides a summary of the methodology and/or data sources used to obtain values for the source-specific parameters, chemical-specific parameters, unsaturated zone parameters, saturated zone parameters, and receptor well location parameters. Because the groundwater pathway analysis was performed in Monte Carlo mode, all parameters are in principle described by their probability distributions. Details on the actual distributions used are provided in the background documents (USEPA, 1995a-g). Probability distributions used for the unsaturated zone parameters, the saturated zone parameters, and receptor well location parameters were the same for all waste management scenarios and individual constituents that were analyzed for today's exit.

(5) Waste Management Scenarios

The waste management unit represents the source term in the fate and transport model for the waste management scenarios evaluated for groundwater contamination. In the modeling framework, the source is defined in terms of four key parameters: (i) Waste unit area, (ii) Leachate flux (infiltration) rate, (iii) Leachate concentration, and (iv) Duration of leachate pulse. The first of these parameters, waste unit area, was determined from the nationwide OSW survey of industrial Subtitle D waste management facilities (USEPA, 1995 a-b). After screening out records with unreliable waste site area and/or volume, the OSW Industrial Subtitle D survey provides data on location, area and volume of 790 landfills, 1655 surface impoundments, 774 waste piles, and 311 land application sites nationwide. The weighted distributions of waste unit characteristics used as input to the model are based on the results of the survey.

The leachate flux, or infiltration rate, and duration of the leachate pulse are determined from the design and operational characteristics of the waste management scenario being modeled. Consideration of a leachate pulse of finite duration is a fundamental aspect of the present analysis and distinguishes it from the continuous source (infinite source) assumption used for the 1990 Toxicity Characteristic (TC) Rule (55 FR 11798). It should be emphasized though that the results of the finite source analysis are not necessarily different from those of the continuous source analysis. If the source leaching duration is long enough to drive the maximum receptor well concentration to its steady state value, the finite source and continuous source analyses are in fact the same. In practice, the distinction between continuous source and finite source analysis is the most important for chemicals which are subjects to sorption, speciation, and/or degradation, including hydrolyzing organics and metals.

The leachate concentration of specific constituents in the waste forms the basis for regulating the wastes. The leachate concentration is not specified a-priori, but rather it is back-calculated at the end of the Monte Carlo analysis to satisfy the regulatory criterion that the

maximum groundwater exposure concentration should be at, or below, the constituent-specific health-based drinking water standard, in at least 90 % of the cases.

The following sections present background on the determination of the source parameters for each waste management scenario.

Landfills.—The key characteristic of the landfill scenario is that the duration of the leachate pulse is independent of the operational life of the waste management unit, i.e., the period of time required to fill the landfill. The landfill is taken to be filled to capacity and covered when leaching begins. The time period during which the landfill is filled-up, usually on the order of 20 years, is considered to be small relative to the time required to leach all of the constituent mass out of the landfill. The model simulation results indicate that this assumption is not unreasonable; the model calculated leaching duration (see below) is typically on the order of several hundred years.

The leachate flux, or infiltration rate, is determined using the HELP model. The net infiltration rate is calculated using a water balance approach, which considers precipitation, evapo-transpiration, and surface run-off. The HELP model was used to calculate landfill infiltration rates for a representative subtitle D landfill with 2-foot earthen cover, and no liner or leachate collection system, using climatic data from 97 climatic stations located throughout the US. These correspond to the reasonable worst case assumptions as explained in the Risk Assessment Background Document (USEPA, 1995b). The model calculates the daily water balance for the total period for which climatic data are available. For each waste site in the OSW survey, an infiltration rate was calculated using the data from the closest climate station (USEPA, 1995b).

In the landfill scenario, the duration of the leaching period is not prescribed. Instead it is calculated as part of the Monte Carlo simulation from the total mass of constituent in the landfill, and the rate of leaching. This relationship is derived from a straight-forward mass balance principles. The methodology is documented in the Background Document for the Finite Source Procedure (USEPA, 1995-c); only the most salient aspects are presented here.

The duration of the leachate pulse, T_p, is determined by the total mass of constituent that is initially present in the landfill, and the rate at which the constituent is removed by leaching:

$$A_w \cdot d \cdot F_h \cdot P_{hw} \cdot C_W = A_w \cdot I \cdot C_L \cdot T_P$$

or

$$T_P = \{d \cdot F_h \cdot P_{hw}\} \text{ over } \{I\} \, C_W \text{ over } C_L$$

where

A_w=Area of the waste unit (m^2),
d=Depth of waste unit (m),
F_h=Fraction of waste unit volume occupied by this waste,
P_{hw}=Density of the waste (g/cm^3),
I=Leachate flux (Infiltration) rate (m/y),
C_W=Constituent waste concentration (mg/kg), and
C_L=Constituent leachate concentration (mg/L).

The determination of T_p according to (2) tacitly assumes that the constituent does not degrade inside the waste unit, does not consider removal by mechanisms other than leaching (e.g., volatilization), and assumes that all of the constituent mass will eventually leach out. The formulation given above also assumes that the leachate concentration, C_L, remains constant until all of the constituent mass has leached out. The methodology was adapted to handle a time-varying leachate concentration, e.g., a gradually diminishing leachate concentration to represent the depletion of the contaminant mass in the landfill over time. If it is assumed that the leaching of the constituent from the waste into the water phase is controlled by a linear equilibrium partitioning process, the reduction of the leachate concentration with time can be modeled as a first-order decay process (EPA, 1995c):

$$C_L(t) = C_L^0 e\{-\lambda t\}$$

where

C_L^0=Initial leaching concentration (mg/L)
λ=Apparent decay constant (y^{-1})
t=Time (y)

The rate at which the leachate concentration is reduced is determined by the coefficient λ, which is given by:

$$\lambda = \{I\} \text{ over } [\{d \, F_{hw} P_{hw}\} \{C_W \text{ over } C_L^0\}]$$

Using (3), the leachate concentration will gradually and asymptotically be reduced to zero. The total amount of constituent that is released into the subsurface will be the same whether a constant leachate concentration of finite duration, or a gradually diminishing leachate concentration is assumed. In the latter case, the duration of the release period is longer, but the average leachate concentration lower, as compared to the former case.

It can be seen from either (2) or (4) that the duration of the leachate pulse, or the rate of depletion, respectively, can be expressed as a function of the initial leachate concentration, C_L. For the modeling analyses, equation (3) was used for organic constituents. The underlying assumption that the concentration is controlled by linear equilibrium partitioning is reasonable for organic constituents. For metals, the pulse release option (equation 2) with constant leaching concentration was used.

The calculation of T_p (or λ) requires a number of ancillary source and waste parameters. These are the depth of the waste unit (d), the fraction of the waste unit occupied by the waste (F_h), and the waste density (P_{hw}). The waste unit depth is obtained directly from the OSW waste site survey. The survey provides data on both landfill areas and volumes, which allows the depth to be calculated for any landfill selected during the Monte Carlo simulation. The fraction of waste in the landfill is assigned a uniform distribution with lower and upper limits of 0.036 and 1.0, respectively, based on analysis of waste composition in Subtitle D landfills (EPA, 1995). The lower bound assures that the waste unit will always contains a minimum amount of the waste of concern. The waste density is assigned a value based on reported densities of hazardous waste, and varies between 0.7 and 2.1 g/cm^3 (EPA, 1995c).

Surface Impoundment.—The surface impoundment waste management scenario is that of a non-hazardous waste industrial impoundment. The area of the impoundment is obtained from the OSW Subtitle D Industrial Survey (USEPA 1995 b). No direct data is available on the rate of infiltration from surface impoundments. The rate of infiltration from the impoundment is calculated inside the EPACMTP fate and transport model. The rate of infiltration is calculated, using Darcy's Law, as a function of surface impoundment depth, and hydraulic conductivity and thickness of a low-permeability sediment layer at the base of the impoundment.

Impoundment depth is obtained from the OSW survey, for each impoundment site in the survey, in the same way as the landfill depth is obtained (see above). The sediment layer at the base of the impoundment is taken to be 2 feet thick, and have an effective equivalent saturated conductivity of 10^{-7} cm/s . These values were selected in recognition of the fact that most non-hazardous waste surface impoundments do have some kind of liners in place (USEPA, 1995b). During the Monte Carlo fate and transport simulation, the infiltration rate is calculated using the impoundment depth value for the specific unit selected for each Monte Carlo realization.

The leachate concentration again is not determined a priori, but is determined after the analysis, based on

the desired regulatory protection level (90th percentile). The surface impoundment is taken to have a 20-year operational life. After this period, the impoundment may be filled in, or simply abandoned. In the latter case, the waste in the impoundment will drain and/or evaporate relatively quickly. In the modeling analysis, the duration of the leaching period is therefore set equal to 20-years.

Waste Pile.—The waste pile management scenario is conceptually similar to that of the landfill, but differs in a number of key aspects. In contrast to landfills which represent a long-term waste management scenario, waste piles represent a more temporary management scenario. During the operational life of the waste pile, it may be regarded as an uncovered landfill. Typically at the end of the active life of a waste pile, the waste material is either removed for land filling, or the waste pile is covered and left in place. If the waste is removed, there is no longer a source of potential contamination. If a waste pile is covered and left in place, it then becomes equivalent to a landfill, and consequently is to be regulated as a landfill. For the analyses, therefore, only the groundwater impacts associated with the period that the waste pile is active, are considered.

Data on the waste pile area are obtained from the OSW Subtitle D survey. Infiltration rates for the waste pile are obtained by treating the waste pile as an uncovered landfill. HELP model derived landfill infiltration rates assuming a sandy loam soil cover were used to assign infiltration rates for waste piles. A sandy loam cover represents the most permeable cover considered for the landfill scenario, and most closely resembles a situation in which no cover is present. The methodology for assigning an infiltration rate to any specific waste pile in the OSW survey follows that used for landfills (see above).

An active life of 20 years is assumed for the waste pile. This also determines the duration of the leaching period. As with the landfill and surface impoundment scenario, the leachate concentration is determined at the end of the analysis, to satisfy the regulatory protection level.

Land Application Units.—Data on the location, area and waste application rates at industrial land application sites were obtained from the OSW survey of industrial Subtitle D sites. Location-specific infiltration rates were estimated for each land application site by applying the HELP model, using climatic data from the nearest climate station. Because wastes applied at land application sites typically have a high liquid content, this factor was accounted for in the water balance calculations. An annual waste application rate of six inches of waste, containing 85% water was assumed. This is typical of sludges which constitute a large fraction of waste at land application sites. Therefore, an additional 5.1 inches of water were added to the natural precipitation for the water balance evaluation at each land application site.

The leaching duration for the land application unit was set to 40 years, consistent with the release period modeled for the air pathway. No reliable data were available for the active life of land application units. Using a longer value than for surface impoundments and waste piles is warranted because part of the applied waste material may remain in the soil at the end of the active life of a land application unit, and may continue as a source of contaminant leaching.

(6) Determination of Regulatory Waste and Leachate Concentration Limits

The objective of the Monte Carlo fate and transport analysis is the determination of regulatory limits for the concentration of individual toxic constituents in the leachate, C_L. These limits are determined so as to satisfy the regulatory criterion that disposal of a waste in a subtitle D waste management unit should not lead to an exceedance of the health-based value or the drinking water standard, at a receptor well placed down gradient from the waste unit, in at least 90% of the cases.

The C_L limits are specific to each waste management scenario, and are also constituent specific. C_L limits are constituent specific because of their dependence on constituent specific health-based standards, as well as on constituent specific fate and transport characteristics that affect the concentration received at the receptor well. The latter factors are discussed in the following section; this section discusses the determination of regulatory C_L thresholds.

Using Equation (2) or (3) and (4), the groundwater exposure concentration calculated by the fate and transport model can be expressed as a function C_L. All other parameters used in the modeling analysis are obtained from prescribed probability distributions. Consequently, by comparing the predicted exposure concentration to the appropriate regulatory standard, e.g., health-based value or a drinking-water standard, threshold levels of C_L, can be calculated. Wastes for which the leachate concentration exceeds the C_L threshold would not be exempted. Because the Monte Carlo analysis produces a probability distribution of exposure concentrations, the back-calculation of C_L threshold levels can be performed for any desired level of protection.

For those constituents that degrade (see next subsection) and produce toxic degradation products, the development of regulatory threshold values for C_L considers not only the exposure concentration and toxicity of the parent constituent, but also the exposure concentration and toxicity of toxic transformation products. For instance, consider two waste constituents that have similar toxicity values, i.e., similar health-based levels, as well as similar fate and transport characteristics, so that they show comparable values for the model simulated receptor well exposure concentration. However, if one of the two chemicals produces toxic off-spring, but the other chemical does not, the chemical which has toxic daughter products will have more stringent limits for C_L.

(7) Chemical—Specific Fate and Transport Processes

The Monte Carlo fate and transport analysis considers chemical-specific sorption and hydrolysis (degradation) characteristics. These characteristics directly affect the model-predicted groundwater exposure concentration. Chemicals which are subject to sorption and/or hydrolysis will exhibit lower exposure concentration as compared to non-sorbing, non-degrading chemicals. This translates into higher regulatory waste and concentration limits. Two broad groups of chemicals are considered under today's proposal. They are organic constituents and metals.

Organic Constituents.—Organic constituents account for the largest group of chemicals addressed under today's proposal. The groundwater pathway analyses were performed for a total of 222 organic constituents. The fate and transport analysis accounts for sorption of organics onto soil and aquifer organic matter, as expressed by a chemical-specific organic-carbon partition coefficient (Koc), and degradation due to hydrolysis reactions, as expressed by chemical-specific hydrolysis constants. Sorption is modeled as a reversible, linear equilibrium process. Degradation due to hydrolysis is modeled as a first-order kinetic process. The groundwater pathway analysis utilizes a comprehensive set of Koc values and hydrolysis rate constants compiled by the EPA–ORD (Environmental Fate

Constants for Organic Chemicals Under Consideration for EPA's Hazardous Waste Identification Projects , EPA/600/R–93/132). Chemicals with identical Koc values and hydrolysis constants will exhibit the same fate and transport behavior, and given the same leachate concentration and leaching period, they will result in the same exposure concentration. Note, however, that they may still have different regulatory leachate concentration limits, if they have different health-based drinking water standards and/or produce toxic transformation products.

For the groundwater pathway analysis, organic constituents with a hydrolysis half-life of 6,900 years or less (first-order degradation rate of 10^{-4} or greater) were classified as degraders, the remainder were classified as non-degraders. The EPACMTP can simulate the formation and subsequent fate and transport of transformation daughter products, enabling the groundwater exposure concentrations of any toxic transformation products to be determined and, therefore, included in the determination of leachate concentration thresholds.

It has been established, by analyzing modeling results for different constituents with a range of sorption and degradation characteristics that, after normalizing the results against the chemical-specific HBN/MCL, the effect of sorption and degradation on the regulatory values can be expressed as a function of the Koc and hydrolysis rate coefficients, using a straight-forward scaling relationship. After these relationships have been established, it is not actually necessary to conduct the Monte Carlo fate and transport computer simulations for each individual constituent. Instead, for each waste management scenario of concern, a set of reference C_L values are generated by running the Monte Carlo model for a selected range of values of Koc and hydrolysis rate coefficients using a normalized HBN/MCL of 1 mg/L. Constituent-specific C_L^{MIN} values are then determined in two steps: First, the reference curves are scaled to the constituent specific Koc value, and (for degraders) hydrolysis rate coefficients. Secondly, an adjustment is made for the constituent-specific value of the drinking water standard. The final values of C_L^{MIN} are obtained by multiplying the concentration limits based on the normalized drinking water standard, by the actual value of the drinking water standard of that particular constituent. For constituents with toxic transformation products, this procedure is repeated for the transformation products, to find the minimum values of C_L (C_L^{MIN}) which ensure that the exposure concentrations of the parent constituent and any daughter products will not be exceeded. The benefit of this approach is that if additional constituents are to be regulated, or a different value of the drinking water standard HBN/MCL, the appropriate C_L^{MIN} can be determined with less effort, because it is not necessary to repeat the time-consuming complete Monte Carlo simulation.

Metals.—Fate and transport of metals in the subsurface may be controlled by complex geochemical interactions. To account for these processes, the OSW has developed and implemented a modeling approach which utilizes the MINTEQA2 metals speciation model in conjunction with the EPACMTP subsurface fate and transport model. The MINTEQ model has been applied to generate effective sorption isotherms reflecting variations in four geochemical master variables affecting metals fate and transport. These factors are: Ph, leachate organic matter natural organic matter in the soil or aquifer, and ironhydroxide content. Each of these parameters has a range of values, reflecting their nationwide probability.

TABLE 3.—EPACMTP MODELING OPTIONS

Management Scenarios	Industrial Subtitle D: (i) Landfill; (ii) Surface Impoundment; (iii) Waste Pile; and (iv) Land Application Unit.
Modeling Scenario	Finite Source Monte Carlo.
Regulatory Protection Level	90% (yields an approximate DAF of 10 for a continuous source landfill).
Source Parameters:	
Waste Unit Area	Site based, form OSW Industrial Subtitle D Survey.
Waste Unit Volume	Site based, from OSW Industrial Subtitle D Survey.
Infiltration Rate:	
Landfill	Site-based, derived from water balance using HELP model.
Surface Impoundment	Site-based, derived from impoundment depth using Darcy's law.
Waste Pile	Site-based derived from water balance using HELP model.
Land Application Unit	Site-based, derived from water balance using HELP model.
Leaching Duration:	
Landfill	Derived, continues until all constituent has leached out.
Surface Impoundment	20 years (operational life of waste unit).
Waste Pile Land	20 years (operational life of waste unit).
Application Unit	40 years.
Chemical Specific Parameters:	
Decay Rate:	
Organics	Hydrolysis rates based on measurements or based on appropriate structure-activity relationships.
Metals	No decay.
Sorption:	
Organics	K_{oc} estimated from K_{ow}, which is based on measurements or based on appropriate structure-activity relationships.
Metals	MINTEQ sorption isotherms (Pb, Hg, Ni, Cr (III), Ba, Cd). pH dependent isotherms (As, Cr (VI), Se (VI), Th)
Unsaturated Zone Parameters:	
Depth to groundwater	Site-based, from API/USGS hydrogeologic database.
Soil Hydraulic Parameters	National distribution for the main soil types.
Fraction Organic Carbon	National distribution for the main soil types.
Bulk Density	National distribution for the main soil types.
Saturated Zone Parameters:	
Recharge Rate	Site-based, derived from precipitation/evaporation and soil type.

TABLE 3.—EPACMTP MODELING OPTIONS—Continued

Saturated Thickness	Site-based, from API/USGS hydrogeologic database.
Hydraulic Conductivity	Site-based, from API/USGS hydrogeologic database.
Porosity	Effective porosity derived from national distribution of aquifer particle diameter.
Bulk Density	Derived from porosity.
Dispersivity	Derived from a national distribution and is based on distance to the receptor well.
Groundwater Temperature	Site-based, from USGS regional temperature map.
Fraction Organic Carbon	National distribution, from EPA STORET database.
pH	National distribution, from EPA STORET database.
Receptor Well Location:	
Radial Distance	Nationwide distribution based the survey.
Angle Off-Center	Uniform within ± 90° from plume centerline.
Depth of Intake Point	(No restriction to be within plume) Uniform throughout saturated thickness of aquifer.

4. Other Risk Assessment Issues

a. Differences Between the Groundwater and Non-groundwater Analyses

As mentioned previously, the Agency conducted separate analyses for the evaluation of risks from groundwater and non-groundwater pathways. The groundwater pathways relied on a full Monte Carlo analysis; whereas the non-groundwater pathway analyses were performed using high-end and central tendency parameters, consistent EPA's risk characterization guidance (EPA 1995).

Although the approaches to the modeling differed, the Agency used the same data for parameter inputs (i.e., OSW's Industrial Subtitle D Survey, U.S. EPA 1986) to describe the waste management units common to both analyses (i.e, surface impoundments, waste piles, and land application units). However, even though the same data were used, some differences exist based on the different modeling approaches. These differences are discussed below.

(1) Infiltration

For the groundwater pathway analysis, the Agency used the HELP model to calculate the net infiltration rate for landfills, land application units and waste piles, as a function of regional climatic conditions and waste unit design characteristics (see EPACMTP background Document). The analysis used the meteorological data from 93 meteorological stations located throughout the United States to develop infiltration rate distributions using the HELP model.

For the non-groundwater analysis, the Agency used rainfall to calculate the recharge rate. The rainfall was selected from 29 meteorological stations distributed among 9 climate regions. However, the method for selecting the rainfall factor differed between the air release pathways and the overland release pathways.

- For the air release pathways, the Agency conducted a sensitivity analysis for each waste management unit type to rank the 29 meteorological stations with respect to several air modeling outputs, including maximum air concentration of pollutants, average air concentrations over the agricultural field and water body, and average deposition over the agricultural field and water body. Based on these sensitivity analyses, the Agency selected a central tendency location and high-end location for the air pathway for each of the waste management units. Thus, locations with meteorologic data, including the rainfall factor, approaching the central tendency and high-end values were selected for each waste management unit.
- For the overland release pathways, the Agency ranked the rainfall factors from the 29 meteorological stations and selected the 50th and 90th percentile based on the distribution of the 29 meteorological stations.

(2) Density of Waste Applied to the Land Application Unit

The approach used in the groundwater analysis assumed the bulk density of the applied waste to be 1 gram per cubic centimeter (g/cc) because the waste was assumed to be comprised predominantly of water. However, changes in the density of applied waste do not significantly affect the results of the groundwater modeling results.

The approach used in the non-groundwater analysis assumed the bulk density of waste to be analogous to the density of sewage sludge (i.e., 1.4 g/cc). The waste in the LAU is a mixture of industrial waste and soil. The central tendency bulk density for soil (i.e., 1.5 g/cc) is similar to the bulk density assumed for industrial waste. Because the waste is incorporated into soil, the properties of the waste/soil mixture are needed. There is little variability in bulk density for the type of soil used in the analysis (i.e., loam), thus, the same value was used for central tendency and high-end estimates of the waste/soil mixture bulk density.

(3) Unsaturated Zone Characteristics

The groundwater pathway analysis used the characteristics (e.g., percent organic matter, saturated hydraulic conductivity) of the entire unsaturated zone as input into the modeling analysis. The non-groundwater pathway analysis used as input the characteristics of only the upper portions of the unsaturated zone because these characteristics were those significant for the surface exposure pathways.

(4) Hydrolysis Rates

The hydrolysis rate for a chemical constituent is used in the Monte Carlo groundwater pathway analysis as a function of temperature and pH of the groundwater at the Monte Carlo realized site. The Agency used hydrolysis rates for constituents that have been measured through appropriate structure activity relationships. They have been reviewed by a panel of experts from the Agency's Office of Research and Development (USEPA, 1993). The non-groundwater pathway analysis used hydrolysis rates from the ''Handbook of Environmental Fate and Exposure Data for Organic Chemicals'' (Howard et. al, 1993).

b. Other Groundwater Pathway Analysis Issues

(1) Use of 1,000 Year Versus 10,000 Year Exposure Time Horizon

The Agency's proposal is based on a 10,000 year time horizon for the groundwater pathway. This means that the determination of leachate concentration limits is based on the highest (30-year average) concentration that occurs within 10,000 years from the start of the release. Although this longer time horizon has been used in other programs (U.S. Nuclear Regulatory

Commission and U.S. Department of Energy), the Agency is considering using 1,000 years as an alternative time horizon. The Agency requests comment on this issue which is described in more detail below.

Using this shorter time horizon results in an increase of the leachate concentration limit for a number of constituents. The constituents affected are those which are strongly sorbed in the subsurface, and which therefore tend to migrate slowly. These constituents include organics with retardation factors (R) significantly greater than one. The organic carbon partition coefficient (k_{oc}) values for these constituents are about 3,500 g/cm^3 or greater, and certain metals such as lead and chromium(III). For organic constituents with k_{oc} values less than about 3,500 g/cm^3, the highest receptor well exposure concentration is generally reached in less than 1,000 years. Reducing the modeling time horizon from 10,000 to 1,000 years therefore does not affect the results of the pathway analysis for these constituents. The effect of using a 1,000 year versus a 10,000 year time horizon is illustrated in Table 4. The constituent-specific differences are shown in Table B–1 of appendix B to the preamble. The table is based on a landfill waste management scenario, and all constituents are assumed to have identical toxicity values and not be subject to hydrolysis. For reference, the leachate concentration limit for constituents with k_{oc}=0 (no sorption, R=1), and a 10,000 year time horizon is equal to 1.0 mg/L. This table shows that the increase in leachate concentration limit for organic constituents is affected for a shorter modeling horizon (1,000 years) only when k_{oc} values (or R values) are very large. (About fifteen percent, out of a total of approximately 200, including eight metals, fall into this category.) The effect of hydrolysis rate is not considered in results shown in the table. While hydrolysis influences the magnitude of the exposure concentration at a receptor well, the time that it takes for a contaminant to reach the receptor well is independent from the chemical-specific hydrolysis rate. It is, however, strongly influenced by chemical-specific sorption characteristics, which for organics are expressed in terms of k_{oc} or R values.

TABLE 4.—EFFECT OF 1,000 YEAR VERSUS 10,000 YEAR MODELING TIME HORIZON ON LEACHATE CONCENTRATION LIMIT

k_{oc} (cm^3/)	10,000 years	1,000 years
0.0	1.0	1.0
3,384 (R=10)	1.0	1.0
37,224 (R=100).	1.0	60

(2) Implementation of Parameter Bounds in Monte Carlo Procedure

The Monte Carlo modeling procedure used in the groundwater pathway analysis uses data on waste site location from the EPA's Industrial Subtitle D Survey (USEPA, 1986). These data are combined with other data sets for climatic and hydrogeological parameters. Auxiliary parameters for which no direct data is available are calculated internally in the model. For instance, ground-water velocity is calculated from hydraulic conductivity, gradient and effective porosity, and the dispersivity is calculated from the receptor well distance (See EPACMTP Background Document and User's Manual). Each parameter furthermore can have specified upper and lower bounds to guard against the possibility that physically infeasible parameters and/or parameter combinations are not used. When the latter condition occurs, the particular Monte Carlo realization is rejected, and another realization is generated. The Agency is considering an alternative procedure in which only the offending parameter is regenerated, or, if necessary, set equal to its upper or lower bound to avoid selection of values beyond the minimum to the maximum values range. In first case, the frequency distribution of parameter values generated by the Monte Carlo module, may be different from its input distribution. The Agency has determined that the two alternative procedures have little impact on the overall modeling results in the case of landfills and land application units, but that the default procedure tends to favor the selection of sites with larger waste unit area in the case of waste piles and surface impoundments. Therefore it produces more conservative (lower) values for the final leachate concentration limits. The analysis results show that for the two alternative Monte Carlo procedures for surface impoundments, the default procedure results in a leachate concentration limit of 1.0 mg/L, the alternative procedure results in a concentration limit of about 31 mg/L for a chemical with R=1. The effect of changes in the hydrolysis rate or the R value on the resultant regulatory leachate concentration do not impact the results obtained by using the alternative Monte Carlo procedure described in this subsection. The Agency is also soliciting comments on the Monte Carlo parameter rejection procedure used for the results presented in this subsection.

(3) Hydraulic Conductivity of Surface Impoundment Bottom Layer

The surface impoundment scenario modeled in the groundwater pathway analysis incorporates a 2 feet thick layer at the base of the impoundment. In the base case for this proposal, the layer is assigned a hydraulic conductivity of 10–7 cm/sec. The Agency recognizes that this value may or may not be appropriate value for bottom sediments as a nationwide typical for industrial Subtitle D surface impoundments. To evaluate the impact of varying this parameter, the Agency has compared modeling results obtained using a 10 times higher conductivity of 10–6 cm/sec. A higher conductivity value corresponds to a greater leachate flux from the impoundment, and generally higher receptor well concentrations, which translates into a more conservative (lower) regulatory leachate concentration limit. The regulatory limit calculated for a conductivity value of 10^{-7} cm/sec is 1.0 mg/L, the corresponding value for a conductivity of 10^{-6} cm/sec would be 0.35 mg/L. The effect of changes in hydraulic conductivity on the results is believed to be independent of the sorption or the hydrolysis characteristics of the chemical. The Agency is inviting comments on the appropriate value for the hydraulic conductivity of the bottom sediment layer for industrial D surface impoundments. In addition, the Agency requests the submission of hydraulic conductivity data for industrial Subtitle D surface impoundment bottom sludges.

(4) Waste Pile Infiltration Rates

The Agency used the HELP model to calculate the net infiltration rate for landfills, land application units and waste piles, as a function of regional climatic conditions and waste unit design characteristics (see EPACMTP background Document). For waste piles, the Agency considered two alternatives. The procedure used in the base case considered a waste pile, for the purpose of estimating infiltration rates, to be similar to an uncovered landfill. The Monte Carlo modeling analysis therefore used landfill infiltration rates corresponding to the most permeable (sandy loam) of the three cover types

used for landfill modeling. As an alternative, the Agency has used the HELP model to calculate infiltration rates for waste piles directly. In the initial evaluation, the runoff used in the water balance calculation was computed by the HELP model as a function of soil texture and vegetative cover (bare ground).The Agency has evaluated the impact of representative bare, but unevenly surfaced, waste piles on simulated runoff using the HELP model. A comparison of the impact of using this alternative procedure against the values used in this proposal for the base case, on the regulatory leachate concentration limit, was conducted. The comparison of regulatory leachate concentration limits is based on a non-degrading, non-sorbing constituent, which has a concentration limit of 1.0 mg/L in the proposal. Using the alternative procedure, the corresponding leachate concentration level changes to 0.77. The Agency is inviting comments on the two methods for the waste piles for the estimation of infiltration rates through them. If you have any data and other information to support your comment, send it along with your comments to the Docket.

(5) Land Application Unit Infiltration Rates

In the calculation of infiltration rates for land application units for the base case in the proposal, it was assumed that land application units receive, on average, 1,295.4 m^3ha (5.1 inches) of water annually through the application of the waste. This amount of water was included in the HELP model water balance calculation, resulting in an increased net infiltration as compared to ambient conditions. The waste application rate may or may not represent true field situations. As an alternative to the modeling procedure used for the base case of this proposal, the Agency evaluated the effect of using ambient recharge rates, i.e., the application of waste does not significantly alter the water balance, on the calculated leachate concentration limits. The comparison of this alternative with the procedure used for the base case shows that the regulatory leachate concentration limits for a non-degrading, non-sorbing constituent in land application units changes to 1.12 mg/L from 1.0 mg/L for the procedure used in the base case.

(6) Aggregate Effects of Alternative Groundwater Modeling Procedures and Data

The preceding sections have presented the effect of alternative modeling options and data sources that have been considered by the Agency. A consequence of the Monte Carlo exposure modeling approach is that the effects of changes in model parameters are not always linearly additive; rather the aggregate effect of changing multiple parameters or options may be to either magnify or reduce the effect of the individual changes. The Agency, therefore, has conducted modeling analyses of the aggregate effect of the alternatives discussed above for each of the four waste management scenarios. In addition to the alternatives presented in the preceding subsections, a modification was also made in the procedure for modeling waste sites for which the corresponding hydrogeological region was initially assigned as ''not classifiable''. Rather than ignoring the small fraction of sites involved, they were incorporated into the analysis by assigning them nationwide average values for the groundwater parameters. Table 5 presents the aggregate effect of all changes for each of the four waste management scenarios modeled. The modeling results correspond to a non-degrading, non-sorbing constituent. The leachate concentration limits are normalized with respect to a value of 1.0 mg/L for the landfill scenario, under the modeling procedure for the base case of this proposal. The results are presented for a 1,000 year time horizon; however for a non-sorbing constituent, these same results also hold for the 10,000 year time horizon.

TABLE 5.—AGGREGATE EFFECT OF MODELING ALTERNATIVES ON LEACHATE CONCENTRATION LIMITS FOR NON-DEGRADING, NON-SORBING CONSTITUENTS FOR FOUR WASTE MANAGEMENT SCENARIOS

Waste management scenario	HWIR proposal	Alternative Options
Landfill	1.0	0.71
Surface Impoundment	0.22	0.27
Waste Pile	0.29	484
Land Application Unit	0.08	0.22

Table 5 shows that, except for landfills, the aggregate effect of the combined alternative options is a less conservative (higher) leachate concentration limit. For landfills, adoption of the alternative modeling options would have resulted in a 30 % less stringent regulatory leachate limit for the groundwater pathway for non-sorbing and non-degrading constituents. For surface impoundments, there is little overall impact because the opposing effects of increasing the impeding layer hydraulic conductivity, and the alternative Monte Carlo procedure for handling parameter bound exceedances, nearly cancel out. For waste piles on the other hand, the procedure used for the base case, results in a significantly more conservative leachate concentration limit as compared to the alternative modeling options. This is due to the handling of parameter exceedances in the Monte Carlo simulation. Because many waste piles have very small sizes (surface areas), the alternative Monte Carlo procedure has a large impact. For land application units, the procedures used in the proposal for the base case also result in a more conservative regulatory limit as compared to the alternative modeling options. The contributing factors are much the same as for waste piles, but the overall impact is much smaller, primarily because there are only few land application units with very small areas.

F. Additional Eco-Receptor Considerations

EPA considered two different policy goals with respect to protection of terrestrial ecological receptors (i.e., soil fauna, birds, mammals, and plants). One goal protected terrestrial ecological receptors outside the boundaries of the waste management site, thus, the constituent had to travel off-site before exposures would be assessed. The alternative goal protected terrestrial ecological receptors on the closed land application site.

The Agency chose to propose exit levels based on off-site impacts for several reasons. One reason is that there are many land use decisions that significantly affect terrestrial ecological receptors on the property of a party making those decisions (e.g., a decision to pave a portion of land as a parking lot). EPA does not generally regulate those sort of decisions. However, many impacts are judged through local zoning regulations. Congress has typically asked EPA or other Federal entities to regulate activities on a property when there are significant off-site impacts, such as a groundwater plume that migrates, an air release that moves beyond the property, a wetland (located on the property) that is a significant resource for migratory birds and has broader ecological significance, or an endangered species with social values beyond the impact on a specific landowners purview.

EPA asks for comment, however, on the alternative of protecting terrestrial ecological receptors on-site. The rationale for this alternative approach would relate to protection from impacts on bird and mammal populations, and

other ecological receptors, and to the regulation of certain constituents that could potentially result in environmental consequences that go significantly beyond the bounds of a current waste management unit.

G. Background Concentrations in Soils and Other Issues Relating to Results

EPA has compared the exit levels for nonwastewaters to data on the variation in mean background concentrations found in soils. For some metals, the exit levels calculated based on risks at land application units are below [4] mean soil concentrations. One reason exit criteria may be below soil concentrations is that these metals bioaccumulate, causing greater exposure for higher trophic levels. Also, the acceptable levels for some of the metals that would be calculated for practices other than land application are significantly higher and not below mean soil concentrations.

If the final exit levels are below typical soil levels, EPA would consider promulgating levels based on concentrations that are either typical soil concentrations (national mean levels) or some percentile or portion of the naturally-occurring range such as the 10th percentile. If the effect of concern is an ecological impact, the rationale for using the 10th percentile (or similar figure if the data available does not allow that precision) would be that in 90 percent of locations, if the soil already contains those or greater levels, the ecological receptors existing in the area should already reflect the toxicity of the waste material; the rational for using the 10th percentile (or similar value) value is that human behavioral practices (e.g., treatment of groundwater prior to use) may already reflect protection from the potential toxicity of concern. EPA asks for comment on whether these are reasonable arguments.

EPA is concerned, however, that there are also issues of the chemical and physical form in which compound or chemicals exist, in both natural conditions and in the waste and that a simple comparison of total concentrations in soils and in wastes might be misleading about potential ecological or human impacts. EPA requests comment on these issues. EPA's first preference will be to reexamine the risk modeling to identify any inappropriate assumptions or modeling issues that may explain the low proposed exit level, and to look more carefully at those constituents where this issue only arises from the modeling of risks from land application units, to identify potential contingent management solutions to this problem.

Finally, EPA requests comment on whether these arguments could be extended to site-specific determinations where information on local background constituent concentrations and form in soil are available and have been reviewed by a State regulatory authority. EPA assumes that such an approach would only apply if the background concentrations were more than very localized and the concentrations were naturally-occurring rather than due to past contamination. If a site-specific determination were adopted, two approaches are available that have been used in other contexts. One statistical technique for determining whether background data conform to a normal distribution assumption includes combining the Student-t difference of means test, presented in the *Permit Guidance Manual on Unsaturated Zone Monitoring for Hazardous Waste Land Treatment Units*, (EPA, 1986) with the normal tolerance interval approach found in *Statistical Analysis of Ground Water at RCRA Facilities-Interim Final Guidance*, (EPA, April 1989). The Student-t test compares averaged waste/media concentrations to background concentrations, and is used to determine if the waste/media as a whole is within a specified criteria. However, even if the waste/media passes the Student-t test, individual sample concentrations may still exceed the tolerance interval limit. The normal tolerance interval approach is used to compare sample concentrations to an upper tolerance value based on the background mean, standard deviation, and sample size.

If such an approach is incorporated into the final rule, it would include criteria for defining and collecting adequate background samples. More specifically, the facility would be required to identify background locations, sample size, soil depth, etc. for at least four samples in a ''difference of means'' demonstration, and six to eight samples for a ''tolerance of means'' demonstration. The facility would also need to demonstrate the normalcy of the sample distribution. The Agency would require that this information be included as part of the facility's sampling and analysis plan and subject to review by the appropriate overseeing authority.

A more simplified approach would be to establish exit levels at 1/10 of the naturally occurring background level. The rationale for using 1/10 is that these levels would not appreciably contribute to the overall risk posed by elevated levels in the environmental media. EPA requests comment of this approach as well as the rationale.

Alternatively, the rule could defer any background level demonstrations to an omnibus authority for the overseeing agency. Under this concept, a claimant could submit information on naturally occurring background level and a request for modified exit levels to the agency overseeing the exemption process, which would have discretion to grant modifications where they are clearly justified. Comment is requested on the need for this authority.

The Agency solicits comments on other appropriate and generic ways (1) to identify background levels in soils, and (2) to incorporate the existing 40 CFR part 264, subpart F standards for establishing background levels for groundwater. Other suggestions that address the Agency's intent to promulgate a simplified exemption with little reliance on site-specific considerations but also allow for consideration of elevated background levels will be considered.

EPA also observed that some of the exit levels for organic chemicals appear relatively high (see, for example, the level for xylene). EPA believes that these results occurred primarily because these chemicals either are toxic only at relatively high concentrations or undergo high dilution during transport. EPA, however, requests comment on whether these chemicals are frequently co-disposed and, if so, whether they might pose cumulative risks not assessed by the risk analysis. EPA is interested in information on issues such as whether a waste containing one or more of these constituents at concentrations near exit levels would be ignitable or threaten the integrity of control measures such as liners.

H. Constituents with Extrapolated Risk-based Levels

EPA was unable to conduct the risk assessment for 187 of the 376 constituents on the exit list. In most of these cases, EPA was unable to find acceptable human health benchmarks to serve as the starting place for the assessment. In a few cases, EPA could not find values for critical physical or chemical properties, such as log K_{ow}s. Based on its past experience, EPA believes it would need at least a year to develop a new human health benchmark value for any constituent. EPA has less experience with the type of research and peer review needed to develop values for physical and chemical properties, but it believes that this process also would be time-consuming.

[4] When compared with mean soil background levels provided by the USGS, the exit levels are not more that 1 order of magnitude more restrictive.

Rather than not consider the 187 constituents for which EPA was unable to conduct the risk assessment as potential candidate constituents for exit criteria, EPA developed an approach for establishing exit criteria for these constituents. The Agency grouped the constituents on the exit list into classes, based on chemical structure. EPA selected the 50th percentile value from the range of modeled risk levels for each chemical class. This 50th percentile value serves as the extrapolated risk-based level for the un-modeled constituents in the corresponding chemical class. The constituents and their 50th percentile extrapolated risk-based levels are presented in a background document *Background Document to Support the Methodology used in Extrapolating Exit Levels to Constituents with no Health-Based Benchmarks.* EPA is proposing the 50th percentile level to avoid adding another conservative assumption to the derivation of exit levels for these constituents. EPA believes that the multipathway approach is already sufficiently conservative to protect human health and the environment even for these chemicals. EPA, however, requests comment on the alternative of using the 10th percentile or a different percentile from the modeled exit levels from each class. Such an approach would reduce the chances that the actual health benchmark for a particular level was lower than the extrapolated estimate. However, it would also increase the odds that the extrapolated level was higher than needed for many constituents. A complete list of extrapolated constituents and associated risk levels may be found in appendix C to today's preamble.

EPA recognizes that this approach to generating exit levels is much less sophisticated and precise than the multipathway analysis. Nonetheless, EPA prefers it to any of the available alternatives. If EPA set no exit levels and made wastes containing any of these constituents ineligible for exit, a significant number of waste streams would probably be ineligible, even though they may pose no significant threat to human health and the environment. EPA's RIA data shows that some of these constituents, such as Cyanide and Anthracene, are fairly prevalent. Although other constituents, such as those found in the commercial chemical products on the P and U lists of hazardous wastes, are not very prevalent, they may be significant for generators that manage multiple waste streams in centralized wastewater treatment plants. In the absence of extrapolated exit criteria, a generator would lose its opportunity to claim an exit for an entire combined stream if any of these constituents is found in the waste stream. Furthermore, it would take a long time to complete the work necessary to conduct exposure pathway assessments for any significant number of these 187 constituents.

Alternatively, EPA could propose to allow wastes to exit without testing for constituents lacking modeled exit levels. EPA, however, finds this approach insufficiently protective, especially when it can at least approximate likely risk levels as described above.

Finally, EPA considered the alternative of basing exit levels for these constituents on quantitation limits. As explained below, EPA is proposing to use EQCs as exit levels where they are higher than a constituent's multipathway or extrapolated exit level. (EPA is also proposing that wastes with such constituents meet the technology-based LDR standards for those constituents prior to exit.) EPA considered using this EQC and LDR approach for constituents lacking multipathway levels. Such an approach would actually produce more conservative exit levels, because EPA would not use extrapolated levels that are higher than EQCs. EQCs (and technology-based LDRs), however, are not based on risk. EPA prefers the extrapolated approach because it takes into account the toxicity and fate and transport of structurally similar chemicals. EPA believes it would be unreasonable to continue to regulate a chemical because chemistry can detect it, where the extrapolation described above suggests that the chemical poses no significant risks at the EQC level.

EPA finds the option of basing exit levels on the extrapolation procedure described above to strike a reasonable balance between the goals of protecting human health and the environment and eliminating regulation of low-risk wastes. EPA, however, requests comment on all of the alternatives described in this section.

I. Analytical Considerations

Some of the proposed exit levels established by the risk assessment and the extrapolation methodology are low. In some cases, existing analytical methods cannot routinely detect the constituents at those levels. EPA is proposing to cap these potential exit levels with reasonable analytical quantitation limits. The Agency is proposing quantitation limits that represent the lowest levels that can be reliably measured within acceptable limits of precision and accuracy during routine laboratory operating conditions using appropriate methods. These concentrations are referred to as ''exemption quantitation criteria,'' or EQCs. It is necessary to specify EQCs because a number of the constituents on the exemption list have either modeled or extrapolated risk-based levels that are not analytically achievable in all matrices. Appendix C to today's preamble lays out the comparison between the modeled or extrapolated risk level and the EQC for every constituent. Approximately one-quarter of the constituents have proposed modeled or extrapolated risk-based levels lower than EQC.

1. Development of Exemption Quantitation Criteria (EQC)

To develop the EQCs proposed in today's notice, EPA compiled a master list of the quantitation limits published for the identified constituents in the Third Edition of Test Methods for Evaluating Solid Waste, (SW–846), including the first and second updates (both of which are widely distributed throughout the regulated community). The Agency believes that the resultant EQCs present achievable quantitation limits for the proposed exemption constituents in most matrices. The Agency requests comment on the proposed quantitation limits as well as any data supporting those comments.

A regulatory action level (e.g., exit levels) must provide a clear distinction between those wastes subject to the regulation and those excluded. Action levels based on analytical determinations within a methods quantitative range can be used to determine regulatory status with a high degree of confidence. On the other hand, when an analyte is present at a concentration equal to the detection limit (DL) it will be detected only half the time. In other words there is a 50% risk of a false negative result when the analyte is present at the DL concentration. There is, however, a less than 1% risk of false positive results at this level. Therefore, regulations set at the detection limit would not identify non-compliance reliably.

The Agency is in the process of re-evaluating EQCs for some constituents. Preliminary updated EQCs could not be incorporated into today's proposed rule, but have been included in the docket for comment.

2. EQCs and LDR Requirements as Exit Levels

A comparison of the modeled or extrapolated risk-based levels with the EQCs reveals a number of cases where

quantitative measurement of analyte concentration at the modeled or extrapolated risk-based level cannot be reliably achieved, using standardized analytical methods. In today's proposed rule, for wastes containing constituents with a modeled or extrapolated risk-based level lower than the EQC, exit criteria include meeting the EQC along with an additional requirement that the waste meet Land Disposal Restrictions (LDR) treatment standards from part 268, regardless of whether or not the waste is to be land disposed. The exit table for constituents with EQCs as exit levels is proposed appendix X of 40 CFR part 261, Table B.

a. EQCs as exit levels

Only when the comparison between the modeled or extrapolated risk-based level with that constituent's EQC level reveals that the constituent cannot be quantitated at the modeled or extrapolated risk-based level, does the EQC become the exit level. For example, the modeled risk-based level for 2-nitropropane in wastewaters is 0.00019 µg/L. The EQC for 2-nitropropane in wastewaters is 0.0058 µg/L. 2-nitropropane is listed in appendix X, Table B, with an exemption level of 0.0058 µg/L. In other words, the exemption level for 2-nitropropane has been met if the claimant demonstrates that the method used can achieve the EQC of 0.0058 µg/L in the waste matrix, and the level detected by the method does not exceed 0.0058 µg/L.

The Agency believes that, for those constituents that have a modeled or extrapolated risk-based level lower than the achievable quantitation limit, demonstration that the constituent is not present above the EQC is the most reasonable approach to setting a national exemption level. The Agency is proposing that quantitation limits cap the modeled or extrapolated risk-based levels because a reliable, consistent measure of the constituent below the quantitation limit is not achievable. By establishing EQCs as benchmarks (or maximum allowable quantitation limits), the Agency is ensuring that all exemption demonstrations will achieve acceptable analytical sensitivity, and that wastes with high levels of contamination that tend to confound analytical protocols are not exempted.

The Agency requests comments on whether an exemption demonstration should be considered adequate if all proper method selection and QC procedures are followed and the constituents are not detected, even though the EQC level has not been analytically attained. This situation could arise even in relatively clean matrices if the constituents bind strongly to the matrix or if the constituents degrade rapidly during the analysis. However, the Agency would not want the exemption to be allowed if the EQC could not be achieved because of interference from other contaminants in the matrix, or if inappropriate methodology, i.e., sample preparation, cleanup (if necessary), or determinative, was used.

EPA is not proposing that any exit level based on an EQC can serve as a ''minimize threat'' level capping current 40 CFR part 268 treatment standards. Such levels are not sufficiently related to a constituent's risk.

b. LDR Requirements for Constituents With EQC Exit Levels

EPA considered the option of setting exit levels for all constituents at their modeled or extrapolated levels, regardless of analytical considerations. EPA also considered the alternative of making wastes containing constituents with analytical limitations ineligible for exit. Both of these options, however, are likely to constrain significantly the number of waste streams eligible for exit. Approximately one-quarter of the constituents on the exit list have EQCs above risk-based or extrapolated levels. Some of these constituents, such as Beryllium and Arsenic, are fairly prevalent. For less prevalent constituents, EPA has the same concerns about limiting exit for wastes managed in centralized wastewater treatment systems that it described above in the section on extrapolated risk levels. Further, this approach would overregulate wastes where constituents were in fact below risk levels. EPA prefers options which would not prohibit all wastes with these constituents from exiting.

The most promising alternative EPA found was setting exit levels for these constituents at EQC levels, and also requiring all wastes containing these constituents to comply with LDR treatment standards, even where such waste are not destined for land disposal. This alternative offers the possibility of additional risk reductions and, therefore, reduces the possibility that wastes posing significant threats will escape Subtitle C control.

EPA is unable to characterize the amount of additional risk reduction for a number of reasons. First, as explained in more detail in the Minimize Threat section of the preamble, compliance with LDRs already will be required after exit before land disposal for all wastes (except those that are below exit levels at their point of generation). The LDR requirement for constituents with EQC exit levels may provide additional risk reduction, even for those constituents that are not managed in land disposal units. EPA currently does not know how frequently nonhazardous wastes are burned as fuel, incinerated, or otherwise managed outside of land disposal.

Additionally, the Universal Treatment Standards (UTS) for nonwastewaters, were developed based on similar analytical chemistry considerations of detection limits. The majority of the UTS limits for nonwastewaters were based, however, on analysis of residuals from the treatment of what EPA determined to be the most difficult to treat wastes and, as a result, this often represented the most difficult to analyze treated matrix (i.e., higher detection limits than those represented by the EQCs). The majority of the UTS limits for wastewaters, on the other hand, were not developed based on limits of detection but rather they were based on analysis of treated effluents regulated under EPA's National Pollution Discharge Elimination System (NPDES).

LDR requirements for all wastes subject to the UTS would be equal to or higher than the EQC exit levels themselves. However, for wastes subject to treatment standards based on application of specified treatment methods under § 268.40, extending LDR requirements may provide additional risk reduction.

EPA believes that the combined approach of requiring non-detection at EQC levels and compliance with LDR standards for all waste streams, regardless of whether or not the waste will be land disposal, offers a reasonable balance between the goals of reducing overregulation and ensuring that wastes with significant risks remain subject to Subtitle C. EPA, however, requests comment on all of the alternatives described above. EPA also requests comment on the option of basing exit levels for these constituents on EQCs alone and relying on continued, independent applicability of LDR requirements for wastes that exit and are destined for land disposal.

3. Exemption for Constituents Without EQCs

There are several constituents covered in today's notice for which EQCs could not be developed. The universe of these constituents includes 78 constituents, most of which are not widely prevalent in wastes. Most are also found only in P and U listed wastes. These constituents are listed in table B to appendix X without associated exemption levels. The background document *Background Document to Support the Development of Exemption*

Quantitation Criteria (EQCs) and Description of Analytical Methods under the Waste Exit Rule explains why EQCs could not be created.

EPA is proposing that wastes containing these constituents (i.e., where an applicant has not documented that these constituents are not present—see section VIII.A.1.b.,) may remain eligible for an exemption under today's proposed rule by complying fully with LDR treatment standards applicable to the waste, as codified in 40 CFR part 268, regardless of whether the waste is to be land disposed. The Agency believes that any potential risks posed by these constituents are likely to be further reduced by applying LDR standards from part 268 to the waste, before the waste may be exempt, regardless of whether or not the waste is destined for land disposal. The Agency asks for comment on this approach.

An alternative approach would be to allow wastes with these constituents to exit without additional LDR obligations, but relying on continued, independent applicability of LDR treatment requirements to wastes destined for land disposal only. Another approach would be to prohibit wastes containing these constituents from being eligible for exemption under today's proposed rule. An additional approach would be that these constituents could be deleted from the exit table. The Agency requests comment on each of these alternatives.

EPA is not willing to propose to use LDR standards as exit levels for any other group of constituents. The technology-based LDR standards are not based on any risk assessment. A comparison of these standards with the multipathway risk levels that EPA produced shows that the LDR standards are sometimes more stringent and sometimes less stringent than risk-based levels. EPA believes that it is more prudent to base exit levels on risk assessment where possible because this better assures protection of human health and the environment. EPA views use of the LDR standards as the option of least preference, but necessary for exit for this group of constituents. EPA is willing to consider it only where there is no alternative to prohibiting a constituent from being eligible for exit.

V. Presentation of Exit Levels

Today's proposed exemption criteria involves setting exemption levels for toxicants in listed waste, and in some cases requiring additional compliance with the requirements set forth at 40 CFR part 268. To exit Subtitle C regulation as a listed hazardous waste, all the hazardous constituents listed in appendix X of part 261 would be required to be in concentrations less than or equal to the numeric exit levels and when specified, the waste would have to meet the applicable requirements at 40 CFR part 268. Appendix C to the preamble presents constituents, distinguishes between modeled and extrapolated constituents, and includes EQCs for each constituent.

A. Constituents With Modeled or Extrapolated Risk-Based Exit Levels

The Table A of proposed appendix X to part 261 presents exit levels for constituents with modeled or extrapolated risk-based levels which can be reliably quantified. See section IV.H. for a description of how this was determined. Listed hazardous waste would be required to contain concentrations at or below the specified exit levels to be eligible to be exempted from Subtitle C requirements other than LDR. In some cases we are proposing to change the land disposal restriction requirements at 40 CFR part 268 as well. A totals analysis would be required for both wastewaters and nonwastewaters to show that the constituent does not exist in the wastestream at levels above the exemption level.

For nonwastewaters, the Agency is also proposing that generators either use the TCLP test or a calculational screen to measure or calculate constituents' leachate from wastes. If the TCLP test shows leachate concentration in the waste is below the leach exit level, the waste would be considered to not pose a hazard to groundwater.

The Agency has in the past experienced difficulty in using the TCLP test for some types of waste. The Agency solicits comment on how to consider oily wastes and other wastes that are difficult to filter in the TCLP test or whose impact on groundwater is believed to be underestimated by the TCLP (such as materials subject to non-aqueous phase transport). Comment on alternative tests for these wastes, as well as comment on how to define such wastes for regulatory purposes is sought. A more complete discussion of oily waste can be found in VIII.A.1.a.iv.

Table A of appendix X of 40 CFR part 261 presents results of two alternatives for establishing the exit levels. These alternatives differ only in the benchmark used to calculate the modeled risk-based levels. For certain constituents there exists both a risk-based toxicity benchmark and a maximum concentration level (MCL) established under the Safe Drinking Water Act (SDWA). These numbers may differ because the MCLs are established using some non-risk considerations such as the cost of treatment and the availability of technology and consider exposure contributions from other sources for non-carcinogens. See section IV.D. of today's proposal for a complete discussion of toxicity benchmarks and MCLs.

B. Constituents With Quantitation-Based Exit Levels; Table B to Appendix X

Table B of proposed appendix X to part 261 presents quantitation-based exit levels for constituents with methods that cannot reliably quantify the modeled or extrapolated risk-based levels. All exit levels on Table B of appendix X to 40 CFR part 261 are based on EQCs. (See section IV.I.) Wastes containing any of these constituents must *also* comply with the applicable treatment standards set forth at 40 CFR part 268, the Land Disposal Restrictions (LDR) in order to meet today's proposed exemption, regardless of whether or not the waste is to be land disposed.

Some constituents on Table B of appendix X of 40 CFR part 261 do not have associated exit levels. Waste with these constituents may exit only after complying with the LDR treatment standards for the waste. (See section IV.I.2.b.)

C. How To Read the Exit Level Tables

For a waste to be eligible to exit Subtitle C under the exit proposed in today's rulemaking, every constituent in the waste must be below its exit level. Proposed appendix X of 40 CFR part 261, Tables A and B are the exit constituents and the exit levels. The following is a description of how to read the tables.

- The constituent list is derived from constituents listed in appendix VII, Basis for Listing Hazardous Waste; Appendix VIII, Hazardous Constituents; and appendix IX of part 264, the Ground-Water Monitoring List. (See section IV.C.)
- Table A represents constituents and their risk exit values—where the risk values can be measured analytically. (See sections IV.E., and IV.I.)
- Table B represents constituents with quantitation limits (EQCs) as exit levels—where the constituent cannot be measured at the modeled or extrapolated risk value. An additional condition of exit, compliance with treatment standards in 40 CFR part 268, exists for any waste becoming exempt under today's rulemaking by using a constituent exit level on Table B. (See section IV.I.2.b.)
- There will be overlap for some constituents between Tables A & B. For

example, the wastewater exit level for a constituent may be on Table A, whereas the nonwastewater exit level may be on Table B.

• Where an exit level does not exist on Table A or B for a particular constituent, the waste need not be tested for that constituent. For example, some constituents that are hydrolyzers have exit levels for nonwastewaters, but not for wastewaters. A complete discussion of deletions to the master constituent list can be found in section IV.C.

The tables' columns:

• Columns 1 and 2 are the CAS numbers & constituent names.

• There are two proposed options for the development of today's proposed exit levels. Option 1 is the option whereby Maximum Contaminant Levels (MCLs) from the Drinking Water program are used as an acceptable toxicity exposure for human drinking water exposure and toxicity benchmarks are used for other exposures. Option 2 is the option whereby toxicity benchmarks are used as acceptable exposure levels for all exposures. A more complete discussion of these two options is found in section IV.D. of today's proposed rule. The effect of co-proposing these two options is that there are two independent sets of proposed exit levels.

—Columns 3, 4, and 5 represent the exit levels that were derived by using an MCL benchmark for drinking water ingestion & using toxicity benchmarks for all other routes of exposure.

—Columns 6, 7, and 8 represent the exit levels that were derived by using toxicity benchmarks for all routes of exposure.

• The definitions of wastewater and nonwastewater are discussed in VIII.A.1.a.ii.

• Columns 3 & 6 represent wastewater exit values. If a generator determines he/she has a wastewater, if each constituent in the waste meets these wastewater exit levels, it is eligible for exemption.

—Values in columns 3 & 6 were derived from the most limiting of non-groundwater-ecological receptor, non-groundwater-human receptor, and groundwater pathway values from surface impoundments and tanks (the risk assessment's wastewater units).

• Columns (4 and 5) and (7 and 8) represent nonwastewater exit values. If a generator determines he/she has a non-wastewater, if each constituent in the waste meets both of these nonwastewater values, it is eligible for exemption. The totals level must be met by a totals analysis. The leach level must be met by a TCLP test or the calculational screen.

—Values in columns 4 & 7 were derived from the most limiting of the non-groundwater-ecological receptor and non-groundwater-human receptor pathway values from land application units, ash monofills, and waste piles (the risk assessment's nonwastewater units).

—Values in columns 5 & 8 were derived from the most limiting of the groundwater pathway values from land application units, landfills, and waste piles (the risk assessment's nonwastewater units).

VI. Minimize Threat Levels

A. *Background*

1. Summary of the Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, allow hazardous wastes to be land disposed of only if they satisfy either of two conditions: (1) They can either be treated or otherwise satisfy the requirements of section 3004(m), which requires EPA to set levels or methods of treatment, if any, which substantially diminish the toxicity of the water or substantially reduce the likelihood of migration of hazardous constituents from the water so that short term and long term threats to human health and the environment are minimized; or (2) they can be land disposed in units satisfying the so-called no migration standards in sections 3004(d)(1), (e)(1), and (g)(5). Land disposal includes any placement of hazardous waste in a landfill, surface impoundment, water pile, injection well, land treatment facility, salt dome formation, underground mine or cave. See RCRA section 3004(k).

EPA was required to promulgate land disposal prohibitions and treatments standards by May 8, 1990 for all wastes that were either listed or identified hazardous at the time of the 1984 amendments, a task EPA completed within the statutory time frames. See RCRA section 3004(d), (e), and (g). EPA is also required to promulgate prohibitions and treatment standards for wastes identified or listed after the date of the 1984 amendments within six months after the listing or identification takes effect. See RCRA section 3004(g)(4).

The land disposal restrictions are effective on promulgation. See RCRA section 3004(h)(1). However, the Administrator may grant a national capacity variance from the effective date and establish a later effective date (not to exceed two years) based on the earliest date on which adequate alternative treatment, recovery, or disposal capacity that protects human health and the environment will be available. (RCRA section 3004(h)(2).) The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year when an applicant(s) successfully makes certain demonstrations. (RCRA section 3004(h)(3).) See 55 FR 22526 (June 1, 1990) for a more detailed discussion on national capacity variances and case-by-case extensions.

As explained in the legislative history, the purpose of the land disposal restrictions is to reduce the risks associated with land disposal. Congress also intended the restrictions to reduce reliance on land disposal and promote waste minimization since land disposal was its least favored method of managing hazardous wastes.

2. EPA's Interpretation of Standard for Treatment Requirements

The heart of the LDRs are the standards for treatment prior to land disposal, which must meet the statutory requirement to ''substantially diminish the toxicity of the water or substantially reduce the toxicity of the waste so that short term and long term threats to human health and the environment are minimized.'' RCRA Section 3004(m): EPA's interpretation of this ''minimize threat'' requirement has evolved through a long series of rulemakings.

When EPA proposed its first set of LDR treatment standards it took the position that the most effective way to minimize threats was to base standards on the capabilities of generally available treatment technologies. (51 FR 16011 (January 14, 1986).) To avoid unnecessary treatment, however, EPA also proposed to ''cap'' the technology based standards with risk-based screening levels based on human health toxicity thresholds for individual hazardous constituents and modeling of the groundwater route for exposure. (51 FR 16011–13.)

In the final rule EPA promulgated only the technology based standards. EPA explained that although it believed it had authority to promulgate risk-based standards, it was not promulgating the proposed risk-based caps because of extensive comments raising concerns about the scientific uncertainties of risk analysis. (52 FR 40578 (November 7, 1986).) Industry challenged the final standards, claiming that they required treatment to concentrations below ''minimize threat'' levels. On review, the Court held that section 3004(m) authorized both

technology based and risk-based standards, but remanded the rule to EPA for a fuller explanation of its decision to rely on technology-based standards alone. (*Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355 (D.C. Circ. 1989). (''HWTC III'').) The court also held that EPA was not obligated to adopt either the RCRA characteristic test levels or the Safe Drinking Water Act Maximum Contaminant levels (MCLs) as ''minimize threat'' levels because neither ''purports to establish a level at which safety is assured or 'threats to human health and the environment are minimized'.'' (886 F. 2d at 363.)

In its response to the remand, EPA stated that the best way to fulfill the requirements of section 3004(m) would be to ensure that no technology-based treatment standard required treatment of hazardous waste containing levels of hazardous constituents posing insignificant risks. (55 FR 6641 (Feb. 26, 1990).) EPA, however, explained that it was not yet able to promulgate such levels. EPA believed that it lacked a reliable predictive model for ground-water exposure, needed to assess exposure scenarios for air pathways, needed to consider impacts on ecological receptors, needed to develop additional analytic methods for hazardous constituents, and needed to develop an approach for constituents with threshold effect levels lower than detection limits. (Id. at 6642.)

In the same notice, EPA noted that the ''minimize threat'' language of section 3004(m) could reasonably be interpreted to require more protection than the ''normal subtitle C command that standards be those necessary to protect human health and the environment.'' (Id. at 6641.) EPA found that the many portions of the 1984 amendments stressing the inherent uncertainties of land disposal buttressed this interpretation. See, e.g., RCRA sections 1002(b)(7), 3004(d)(1)(A), 3004(e)(i)(A), 3004(g)(5). EPA also found support in the legislative history. For example, the Senate amendment containing the ''minimize threat'' standards replaced a committee bill that only would have required treatment to be ''protective of human health and the environment.'' See S. 757, section 3004(b)(7), printed at S. Pep. No. 284, 98th Cong., 2nd Session 86. Further, EPA noted that the ''no threat'' levels it had been using in site-specific and waste stream specific contexts, such as clean closures, delistings, and no-migration petitions, would not necessarily be appropriate for generally applicable standards required to minimize threats to health and the environment. (55 FR 6641, note 1.)

At the same time, EPA took the position that section 30004(m) does not require the elimination of every conceivable threat posed by land disposal of hazardous waste, citing a statement by Senator Chafee that ''[i]t is not intended that every waste receive repetitive levels of treatment, nor must all inorganic constituents be reclaimed.'' 130 Cong. Rec. S.9179 (daily ed., July 25, 1984). (55 FR 6641, note 1.) Clearly EPA did not interpret the minimize threat language to require the elimination of all threats.

Today, the Agency is proposing to re-evaluate the basis for some of the existing performance standards established for listed wastes. Since EPA's response to the HWTC III remand in 1990, the state-of-the-art in making quantitative determinations of risk has advanced and available methods have improved significantly. In addition, the increased sensitivity of analytical methods has lowered achievable detection limits, better bioassays exist than in the past, and more extensive biological data is available for extrapolation. As a result, the universe of available health-based and ecological data has grown significantly, and the reliability of this information has improved. The Agency now believes that these data can be used to establish levels that minimize threats to human health and the environment.

B. Risk Assessment and Minimize Threat Levels

1. Rationale

a. Overview

Today the Agency is proposing to establish risk-based LDR treatment requirements for some of the hazardous constituents for which exit levels are being proposed. These risk-based LDR requirements will minimize the short-term and long-term threats to human health and the environment posed by the hazardous waste constituents. The risk-based LDR levels (or ''minimize threat'' levels) would have the effect of capping, or limiting, treatment of those waste constituents where the current technology-based UTS standards require lower concentrations. EPA also hoped to propose most of these constituent-specific levels as ''minimize threat'' levels under section 3004(m) of RCRA that would cap current technology-based treatment standards under at these levels the LDR program. However, EPA is proposing ''minimize threat'' levels only for those constituents that were evaluated under the multipathway risk analysis and are not capped by quantitation (EQC) limitations. EPA is proposing to promulgate such levels as replacements for the constituent-specific treatment levels in the LDR Universal Treatment Standards (UTS). (As explained in more detail in Section VI, EPA is not proposing to cap any LDR standards requiring the use of specified technologies.) As shown on Table 1, § 268.60, EPA is proposing ''minimize threat'' levels to cap UTS treatment requirements for either the wastewater or nonwastewater (or both) for approximately 70 wastewater constituents and 90 nonwastewater constituents.

EPA, however, is not proposing that any extrapolated levels serve as ''minimize threat'' levels for LDR purposes. EPA does not have as much confidence that this alternative methodology provides enough information on risks to human health and the environment to enable EPA to determine that risks have been minimized. Similarly, EPA is not proposing that any levels based on quantitation limits serve as ''minimize threat'' levels. Such levels are not based on any analysis of risks to human health and the environment. In fact, as explained above, EPA is proposing to require compliance with technology-based LDR standards for all wastes which contain such constituents.

If a claimant finds that all constituents in a waste are below exit levels at the waste's point of generation and if the claimant meets all of the requirements for filing an exit claim, EPA will not require compliance with the LDR treatment standards for the waste. EPA will take the position that such as waste never became subject to subtitle C regulations, so that LDR standards never applied to the waste. EPA is proposing to take this position for all exit levels, regardless of whether they were generated by the multipathway analysis, the extrapolation method, or EQC limitations. For further explanation, see section VI.D.

EPA, however, is proposing that all listed wastes which as generated contain constituents exceeding exit levels must meet LDR requirements (current or as modified by this proposal), even if the waste subsequently becomes exempt from hazardous waste regulation under this rule. This requirement resembles EPA's current rules for ''de-characterized'' wastes, which must meet LDR requirements even after they cease to exhibit the hazardous characteristic that made them subject to Subtitle C in the first place.

b. ''Minimize Threat'' requirement of Section 3004(m)

EPA continues to believe that the minimize threat language of section 3004(m) does not require the elimination of every conceivable threat posed by land disposal of a hazardous waste. The legislative history of LDR indicates that Congress did not intend to require wastes to undergo repetitive or ultimate levels of treatment. Rather, Congress wanted to require use of effective, but widely available treatment technologies. See 130 Cong. Rec. S 9178 (daily ed. July 25, 1984) (statement of Senator Chafee introducing the amendment that became section 3004(m).)). Requiring elimination of all conceivable threats would almost certainly require use of the most effective treatment methods available, and this appears to conflict with Congresses' treatment goals. Moreover, although the DC Circuit has cited the dictionary definition of ''minimize'' to uphold technology-based treatment standards below EPA standards such as MCLs and TC levels, EPA does not believe that the court meant that EPA literally must reduce threats to the maximum extent possible. (See *Hazardous Waste Treatment Council III*, 886 F.2d at 361; *Chemical Waste Management II*, 976 F 2d. at 14.) EPA notes that the court indicated that risk-based treatment standards would satisfy section 30004(m). *Hazardous Waste Treatment Council III*, 866 F.2d at 364–65. Further, in his concurring opinion, Judge Silberman stated that Congress would allow EPA to exercise reasonable amounts of discretion in determining the level of risk reduction needed to meet the minimize threat requirement. Id. at 372.

The Agency believes that today's exit concentrations can serve as risk-based land disposal restriction levels for several reasons. First, the risk assessment, described in Section IV of today's proposal, significantly expands beyond the scope of past Agency risk assessment for wastes and waste constituents. Where adequate data are available, the analysis can evaluate the potential for waste constituent migration through almost all significant environmental fate and transport pathways leading to exposure for human and ecological receptors. As explained in more detail below, the Agency is also relying on reasonable conservative risk targets for both humans and ecological receptors in developing this risk assessment. The Agency believes that the proposed exit levels represent levels below which further treatment would not be needed to minimize threats to human health and the environment.

c. Scope of Risk Assessment

The broad scope of the risk analysis is a critical factor in the Agency's conclusion that proposed exit levels minimize both short term and long-term threats to human health and the environment, for those constituents where data are relatively complete.

The risk analysis evaluates all of the most common non-Subtitle C disposal options available to waste generators and treaters. These include disposal in landfills/monofills and by land farming, and management in surface impoundments, tanks and waste piles. The risk analysis assumes no minimum level of regulation of these facilities, and relies on available data to characterize them. As described in detail in Section IV and in the risk analysis report (EPA 1995), EPA modeled each disposal alternative using median values for most inputs, and high-end or conservative values for the two fate and transport and two exposure parameters for which the modeling outcome is most sensitive. The Agency believes that the modeling will also protect against exposures from similar disposal alternatives not specifically modeled.

The risk analysis evaluates the movement of waste constituents from each of these disposal options through numerous environmental fate and transport pathways. These include pathways involving volatiles and respirable (PM10) particulates, particulate deposition on soil and plant surfaces, vapor phase diffusion into surface water and plants, and surface run-off and soil erosion. Many of these pathways can result in waste constituent movement through the food-chains. Therefore, human exposures resulting from these fate and transport pathways include inhalation, soil or groundwater ingestion, and dermal contact, as well as exposure through consumption of contaminated foods such as fish, beef or vegetables.

EPA screened all multipathway constituents for potential to pose threats to ecological receptors. For 45 constituents, EPA quantitatively assessed likely risk to selected ecological receptors. Risks to both fresh water aquatic and terrestrial organisms were evaluated, representing different trophic levels and feeding habits of the ecosystem. Fish, daphnids, and benthic organisms, mammals, birds, plants, and soil organisms (nematodes, insects, etc.) were evaluated. The sustainability of the ecosystem and reproducing populations within the aquatic and terrestrial ecosystems was selected as an assessment endpoint, as described in Section IV of this Notice and in detail in Chapter 3 of the risk analysis support document (EPA 1995).

In addition, as part of this overall risk assessment effort, the Agency has reviewed and reevaluated its modeling of waste and waste constituent movement through groundwater. As described in Section IV above, this responds to comments by interested parties on the original HWIR proposal, as well as incorporates additional data submitted to the Agency (API data base), and updated modeling of leaching from wastes (new HELP model; get Cite).

In evaluating groundwater, the Agency examined both wells located on the landfill edge and closest wells anywhere down-gradient. Also, both finite source type and infinite-source type constituents (which behave as though there is an infinite supply of the constituent in the landfill, and will continue to leach forever) were evaluated. For finite source type constituents, the available constituent was not apportioned over the groundwater and other pathways, i.e., groundwater was modeled separately. Adsorption to soil and degradation of waste constituents (but not biodegradation) is modeled, and the toxicity of constituent daughter products (either more or less toxic than the parent compounds) is included. (There is a biodegradation module to the model; however, data to run that module for national conditions are not adequate at this time, although data were available for some sites. The Agency will continue to evaluate biodegradation data as they become available, and assess in the future whether national biodegradation estimates can be defensibly made). Leaching and groundwater migration from disposal in unregulated industrial landfills, surface impoundments, and waste piles have been modeled.

In evaluating the results of this series of groundwater modeling exercises, the Agency selected the approximate 90th percentile from a distribution of wells closest to modelled sites. This means that there is about a 90% probability that the drinking water well closest to the landfill would be protected at the target concentration (MCL or HBN). All wells more distant would be protected to a greater extent.

As described in section VI.E. above, the Agency then reviewed the risk assessment for groundwater and the pathways for each constituent, and selected as the exit level the concentration, back-calculated to the waste, from the most limiting (or highest risk) pathway. By using the most

limiting pathway as the basis for the risk criterion, the Agency believes it has accounted for all significant risks resulting from disposal and management of the waste outside of Subtitle C.

The agency believes it is also important to identify and discuss some of the limitations of the risk assessment, especially as they relate to determining whether short term and long-term threats to human health and the environment have been minimized.

The analysis does not account for additivity of risk for exposure to multiple constituents. Evaluation of risk additivity can be a complex analysis when even a few constituents are included. In the case of multiple waste constituents, potentially occurring in one or more waste streams that might be considered for exit, the complexity of conducting and analysis of additivity of risk quickly becomes overwhelming. However, EPA believes it will often be the case that one constituent typically drives determinations of whether waste streams exit and additivity would often make little difference with respect to the calculated exit levels.

Exposures to the same constituent from several pathways also are not added together, even though the risk analysis does apportion the available quantity of waste constituents over the different pathways evaluated. Again, EPA believes that often one result (in this case, one pathway) would contribute most of the risk and little would be gained from adding across pathways. EPA requests comment on this issue.

Data also were not available for all human exposure routes for all constituents, although data for high-risk pathways were usually available. Nonetheless, the Agency believes the exit levels can be considered to represent levels that minimize threats to human health and the environment because of the comprehensive evaluation of possible exposure routes, consideration of both human and ecologic risk, selection of the most restrictive pathway overall, and the relatively conservative risk target, 10^{-6}, used in setting the exit levels derived from cancer risk estimates.

As mentioned above, EPA conducted a screening analysis to identify 47 high priority constituents for ecological assessment. EPA did not model the ecological impacts for 36 additional constituents that displayed one characteristic indicating potential ecological impacts. EPA is proposing to set minimize threat levels for 19 of these constituents.

EPA believes that it has adequately assured that the caps to BDAT treatment standards proposed today minimize threats to the environment. The specific ecological risk assessment conducted for 45 constituents (19 of which have minimize threat levels under this proposal) is the most extensive EPA has ever conducted under the RCRA program to date. EPA did not find threshold effects data for all seven groups of ecological receptors for any constituent evaluated for ecological risks. Rather, EPA typically had benchmarks for three to five groups. Nevertheless, its consideration of a broad range of species and use of reasonably conservative endpoints ensures that threats to ecological receptors are minimized.

With regard to chemicals that did not undergo this detailed assessment, EPA has conducted an extensive review of risks to human health, including a thorough review of risks posed by indirect pathways and risks posed by constituents that bioaccumulate in plants and animals consumed by humans. (Bioaccumulation is a key concern for protection of many ecological species.) EPA believes that it is reasonable to assume that the exit levels identified by this analysis also minimize threats to ecological receptors unless it has some definite data indicating that additional protection is warranted. Reliance on these levels is particularly appropriate for those chemicals that did not display one of EPA's ecological screening characteristics. EPA finds it also appropriate for the 15 ''minimize threat'' chemicals which exhibited one ecological screening characteristic. EPA acknowledges that conducting a specific assessment of ecological risks for these 15 constituents would have provided additional assurance that threat to ecological receptors were minimized. EPA solicits comment on the option of declining to set minimize threat levels for these 15 constituents until it can complete an ecological assessment for them.

d. Risk Targets Minimize Threats

The Agency believes that the risk targets used in the risk analysis to back calculate to waste concentrations minimize threats to human health and the environment. For cancer risks to human, a risk target of one in one million, over a lifetime is the risk target. For non-carcinogens, a hazard quotient (HQ) based on a reference dose or other comparable value from the literature could not exceed one (hazard quotient (HQ)=1). Reference doses or comparable values are based on studies of toxicity and no-effect levels in test animals and extrapolated, using safety factors, to humans. For ecological receptors, population effects inferred from individual effects and effects on a substantial number of both aquatic and terrestrial species were evaluated.

Other risk targets may be considered in establishing minimize threat levels. The Agency solicits comment on whether apportionment of the RfD ought to be used in establishing minimize threat levels (i.e., HQ<1). The Agency uses 20% of the Rfd in setting drinking water standards; a similar approach might be appropriate in establishing minimize threat levels and in establishing exit levels. EPA requests comment on this issue.

2. Public Policy Considerations

Finally, the Agency believes that it represents good public policy to reduce or eliminate unneeded or duplicative regulatory requirements. In this case, the Agency believes that for the initial list of constituents listed in Table 1 of 40 CFR 268.60, treatment to the UTS/LDR standard is no longer required beyond waste constituent concentrations where risks to human health and the environment are insignificant. Because there is no purpose in terms of protecting human health and the environment for retaining the more stringent LDR requirements, the Agency is proposing to revise them to the risk-based levels. This would reduce the overall number of different and distinct regulatory requirements on waste generators and treaters, would rationalize the RCRA regulations, and will provide significant pollution prevention opportunities and incentives. Waste generators would have only one target level to direct their pollution prevention effort toward. If generators met the LDR/exit levels, the waste would not be considered hazardous, and no additional treatment would be required before disposal in a subtitle D facility. Where waste continues to exceed one or more exit levels after LDR requirements are met, subtitle C disposal would be required.

C. Risk-based LDR Levels

1. List of Constituents and Minimize Threat Concentrations

As was mentioned earlier in this section, only modeled constituents' risk-level results are eligible to serve as risk-based LDR levels meeting the statutory requirement of minimize threat. In addition, minimize threat levels are only proposed for those constituents where the risk level is higher (less stringent) than the associated

technology-based treatment standard in § 268.40 or the UTS level in § 268.48.

First, the Agency repeats that it is not proposing to set any alternative risk-based LDR standards expressed as specified technologies (rather than constituent concentrations.) Consequently, the option of complying with minimize threat levels in lieu of levels specified in part 268 will be available only for wastes with treatment standards expressed as constituent concentrations. This includes both wastes subject to waste-specific treatment requirements under the table to § 268.40 and wastes subject to the Universal Treatment Standard levels in the table to § 268.48

The Agency proposes that for purposes of establishing nonwastewater and wastewater minimize threat values for wastes with BDAT treatment standards expressed as constituent concentrations, the levels proposed would utilize the LDR definitions of nonwastewater and wastewater from 40 CFR 268.2(d) and (f). Therefore, any exit levels that are considered nonwastewater for purposes of exit will also be considered nonwastewater for purposes of minimize threat. Likewise, wastewater exit levels will be considered wastewater LDR levels. The Agency believes that consistent definitions of nonwastewater and wastewater is the only practical means to establish minimize threat levels. The Agency realizes, however, that the modeling and subsequent development of exit levels for today's proposed exit did not use the part 268 definition of nonwastewater and wastewater. (A complete discussion of this may be found in section VIII.A.1.a.ii.) The effect of this would be that some wastes that would be defined as wastewaters under today's proposed exit scheme would be considered LDR non-wastewaters. The Agency requests comment on whether the definition in Part 268 should be adopted for purposes of establishing minimize threat levels.

The Agency compared the exit levels to the current LDR treatment levels to determine whether a constituent's risk level should be proposed as a minimize threat level. For wastewater values, the LDR wastewater value was directly compared to the wastewater exit value. Where the UTS nonwastewater level is a total level, the comparison was made to the nonwastewater totals exit level. Where the LDR nonwastewater level is a leach level, the comparison was made to the nonwastewater leach exit level. However, for the reasons explained below, the nonwastewater minimize threat level would contain both a leach level and a totals level. For both wastewater and nonwastewater, where the most comparable exit level is higher (less stringent) than the current LDR level, the constituent's risk level is proposed as an optional minimize threat level. The Agency requests comment on this approach to determining which exit levels are higher than current LDR levels.

The Agency is proposing that testing requirements when using minimize threat levels would be consistent with the current LDR testing requirements found in § 268.7. The Agency proposes that if a claimant wishes to meet LDR requirements by complying with a minimize threat level, the claimant must meet the minimize threat levels with a totals analysis, and where specified, the waste must meet the leach level with a leachate analysis. The Agency believes that a totals analysis is preferable to a leach analysis for establishing minimize threat levels, as it more directly pertains to all pathways, not only the groundwater pathway.

Today's proposed exit levels for nonwastewaters consist of two risk levels for each constituent. The totals (mg/kg) nonwastewater risk level is the result of the most limiting non-groundwater pathway. The leach (mg/L) nonwastewater risk level is the result of the most limiting groundwater pathway. The Agency believes it would be preferable to have one exit level, but the groundwater model results are a leach (mg/l), whereas the results from the multipathway analysis are a totals (mg/kg), and the science to extrapolate from a leach to totals is highly variable. Using only the leach or only the total risk level would reflect only a portion of the risks presented by the waste. A waste must meet both of these limits before it minimizes threats to human health and the environment. Consequently, EPA is proposing to include both levels in the minimize threat standards for nonwastewaters. The Agency proposes to allow generators to either use a calculational screen or perform the TCLP to make a determination that constituent concentrations do not exceed nonwastewater leach minimize threat levels. A full discussion and explanation of the calculational screen can be found in section VIII.A.1.a.iii. of today's proposal.

Because extrapolating from a leach to a total varies with each constituent and is not easily measured, EPA has not directly compared both of the minimize threat levels with the LDR standard. The Agency requests data on specific constituents where the second, less easily-compared nonwastewater minimize threat level may be harder to achieve than the current LDR standard. If such results occur, waste handlers will not be required to use the new minimize threat levels. The levels in the tables to § 268.40 and § 268.48 will continue to satisfy LDR requirements as they always have. The minimize threat levels will be located in Table 1 of § 268.60, are optional, and are intended to be used to provide treatment relief. The Agency believes that minimize threat levels will only be used where they are less stringent than current LDR levels. The Agency requests comment on the proposed revisions to part 268 with respect to minimize threat levels.

Table D–1 of appendix D to the preamble presents for comparison current LDR UTS standards and proposed minimize threat levels. The Agency is proposing that for the constituents listed below, the risk levels may substitute for current UTS treatment levels in 40 CFR 268.48 or for treatment standards for these constituents in 40 CFR 268.40. A table of the proposed minimize threat levels can be found at proposed 40 CFR 268.60 subpart F in the regulatory text following this preamble.

2. Constituents for Which Exit Levels Are Not Minimize Threat Levels

As an alternative to the approach described in C.1 above, the Agency solicits comment on the background data underlying the risk evaluations for these constituents. The Agency believes, in general, that the constituents evaluated in the risk analysis have relatively complete assessments of risk. The Agency recognizes, however, that data quality and completeness can vary among constituents, even for those for which risk can be assessed. The Agency solicits comment on both general criteria for assessing completeness of data, and also specific constituents for which use as minimize threat levels to cap LDR requirements may be inappropriate.

D. Meeting LDR Requirements

1. Wastes Below Exit Levels as Generated

EPA proposes that, if a generator samples a listed waste stream at its point of generation and analysis of the sample shows all constituents to be below exit levels, LDR requirements would not apply to the waste. EPA is proposing this result both for constituents with exit levels based on multipathway analysis (where, since exit levels can serve as LDR ''minimize threat'' levels that cap current treatment requirements, the LDR program will never require treatment to levels lower than exit levels) and constituents with

exit levels based on extrapolation from the multipath analysis or quantitation levels (where, since EPA has not proposed to make exit levels into LDR minimize threat levels,the LDR programs may require treatment to levels lower than exit levels).

To claim this relief generators would have to certify that they sampled their wastes at the point of generation. In the interim between sampling and receipt of analytical results, the generator would be required to manage the waste as hazardous. However, EPA would take the position that this brief period of Subtitle C regulation would not subject the waste to LDR requirements.

EPA believes that position is consistent with its prior interpretations of LDR provisions and the D.C. Circuit's opinion in *Chemical Waste Management II.* At issue in that case was EPA's determination that LDR treatment standards apply to wastes that are characteristically hazardous at the point of generation but that *subsequently* cease to exhibit characteristics and become nonhazardous wastes. EPA took that position to ensure that characteristic wastes receive effective treatment. Without this requirement, for example, it would be possible to dilute characteristic wastes and evade LDR treatment requirements. The Court held that EPA must apply this interpretation consistently to characteristic wastes.

It is not necessary, however, to follow this interpretation for wastes that are generated with all constituent concentrations below exit levels. EPA can reasonably distinguish between wastes that are below exit levels at the point of generation and wastes which achieved such levels at some subsequent time. Only wastes which exceed exit levels at the point of generation need continued LDR applicability to ensure that they reduce constituent concentration or constituent mobility by complying with LDR standards rather than using dilution or some other inferior form of treatment. A generator of wastes that meet exit levels as generated would not use waste treatment to evade LDR requirements. Rather, he or she might use waste minimization techniques to reduce concentration or mobility of constituents in the precursor to his waste.

EPA notes that it is proposing to require listed wastes which exceed exit levels at the point of generation to meet LDR treatment requirements, even if the waste later meets exit levels. EPA believes that this requirement carries out the LDR requirements set out in the Third Third rule and the *Chemical Waste* decision.

Finally, EPA notes that it would be possible to articulate alternative rationales for exempting from LDR requirements wastes which meet today's exit levels as generated. For exit levels based on extrapolations from the multipathway analysis, EPA could argue that extrapolated levels are LDR ''minimize threat'' levels. EPA, however, thinks protection of the environment is better served by refraining from such a step and requiring wastes which exceed such levels at the point of generation to meet current technology-based LDR standards. (As explained above, EPA is not entirely certain that these extrapolated levels actually minimize risks for all constituents.) For exit levels based on quantitation limits, imposing LDR requirements would not have any practical impact. LDR treatment standards are limited by the same quantitation limits proposed for this rule. Consequently, treatment standards for constituents limited by analytical capabilities are not lower than the exit levels.

2. Wastes Above Exit Levels as Generated

Listed wastes that are above exit levels as generated would be required to be treated to the LDR standards in force at the time if they are placed on the land.

VII. Dilution

The 1984 RCRA Amendments (HSWA) established a vigorous national policy for minimizing the generation of hazardous wastes. Section 1003 of RCRA, as amended in 1984, established a national waste minimization policy stating that ''wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible''. The policy also cited the need to reduce the volume and toxicity of hazardous wastes which is nevertheless generated. Similarly, section 3005(h) prescribed that effective September 1, 1985, all RCRA permittees who generate waste disposed of, treated, or stored on-site certify, on an annual basis, that the facility has waste minimization programs in place. In addition, section 3002(b) mandates that hazardous waste generators include a certification with their hazardous waste manifests that the generator has a waste minimization program in place and that the proposed method of off-site management minimizes threats to human health and the environment. In concert with these HSWA mandates, it is the Agency's policy to encourage source reduction (*i.e.,* waste minimization) and waste treatment as preferable to disposal and dilution.

EPA has recognized that successful implementation of the land disposal restrictions requires that, in general, dilution be prohibited as a partial or complete substitute for adequate treatment of restricted wastes. The legislative history indicates that such a prohibition ''is particularly important where regulations are based on concentrations of hazardous constituents'' (H.R. Rep. no. 198, Part I, 98th Congress, 1st Session 38 (1983)).

The Agency also opposes the dilution of hazardous wastes for several technical reasons. Most importantly, dilution is an environmentally inappropriate means to reduce toxicant concentrations because it does not reduce toxicant loadings to the environment. The same mass of toxicant is released to the environment when a diluted waste is disposed as would be if that same waste, prior to dilution, were to be disposed. While mass loading of the environment is itself a serious concern, the potential for environmental damage is magnified when toxicants (for example, pesticides and metals) bioaccumulate in the food chain. In addition, diluted wastes can create an unnecessary demand for scarce solid waste disposal capacity.

For these reasons, dilution is generally prohibited as a means to achieve the exemption levels under today's proposal. Because today's rule proposes to amend the some of the current LDR levels by establishing minimize threat levels, allowing dilution as a means of achieving exemptions would be inconsistent with the ban on dilution included in the land disposal restrictions rule (40 CFR 268.3). In addition, dilution would be inconsistent with the Congressional purpose of encouraging waste minimization. Thus, today's proposed rule specifically prohibits dilution as a means of attaining the exemption levels except as provided under the LDR program under 40 CFR 268.3(b).

VIII. Implementation

Today's proposed rulemaking would establish a generic set of constituent-specific exemption levels for listed hazardous wastes. Wastes with hazardous constituent concentrations below the generic exemption levels would be conditionally exempt from Subtitle C.[5] Today's proposed

[5] Exempted wastes would continue to be solid wastes, and as such would require proper management under subtitle D and other applicable state laws.

rulemaking would be self-implementing; that is, no prior governmental approval or review of documentation would be required before wastes are eligible to exit. Claimants of an exemption, however, would be required to meet certain prerequisites in addition to the generic constituent concentration levels before the wastes would be considered non-hazardous. These testing and notification requirements are necessary to ensure that only those hazardous wastes which truly meet the exemption criteria exit the subtitle C system. In addition, certain testing and record-keeping conditions would be imposed to maintain the exemption to ensure that the waste continued to be eligible for the exemption. Failure to satisfy the conditions would void the exemption.

A. Implementation Requirements

To make an effective claim, persons would need to comply with the following requirements:

—The waste must be sampled and tested in accordance with a comprehensive sampling and analysis plan prepared prior to conducting sampling and analysis (EPA recommends, as guidance, using the basic elements of sampling and analysis plans described in Chapters One and Nine of SW–846);

—Representative samples collected in support of an exemption proposed in today's notice must consist of a sufficient number of samples to represent the spatial and temporal variability of the waste characteristics;

—The waste must be tested for all hazardous constituents except those that should not be present in the waste as defined by this rule, with documentation supporting determination not to test any constituent available on-site at the time of the notification;

—If the claimant must test for any hazardous constituents on table B of appendix X of 40 CFR part 261, the waste must also meet treatment standards for those constituents listed on UTS table of 40 CFR 268.48;

—A notification must be submitted to the Regional Administrator (or authorized State) (hereafter referred to as the implementation authority), along with

—A certification signed by the claimant's authorized representative attesting to the completeness and accuracy of the notification, and

—Verification that a notice of the exemption claim has been placed in a major local newspaper of general circulation.

Any deficiencies in compliance with these requirements would prevent the exemption from being valid; that is, the waste would not exit the subtitle C system. Claimants would not be able to use their knowledge of the waste alone to make a determination. Furthermore, in order to defend a claim that a waste was exempt under today's proposed rule and thus exempt from hazardous waste regulation, claimants would bear the burden in an enforcement action of establishing that the waste in question met the exit levels and the other requirements for the exemption.

1. Testing Requirements

In today's notice, the Agency is proposing concentration-based exemption criteria below which a listed hazardous waste would be conditionally exempt from subtitle C compliance. To best ensure accurate characterizations of constituent concentrations in these wastes, the Agency is also proposing sampling and analysis requirements for the exemption determination proposed today. Adherence to these requirements, however, does not ensure that the characterization is accurate and representative of a waste on a continual basis. It is the generator's responsibility to ensure that a waste always meets the exemption requirements proposed today for *all* appendix X of 40 CFR part 261 constituents, regardless of which constituents the facility is required to test and how often testing is performed.

To be eligible for an exemption, EPA is proposing that facilities must (1) demonstrate that each constituent of concern is not present above the specified exemption level in the waste, (2) demonstrate that the analysis could have detected the presence of the constituent at or below the specified exemption level, and, (3) where specified, comply with the LDR standards applicable to the waste. Today's proposed rule allows that any reliable analytical method may be used to demonstrate that no constituent of concern is present at concentrations above the exemption levels. It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the waste.

The Agency will consider that the exemption level was achieved in the waste matrix if an analysis in which the constituent is spiked at the exemption level indicates that the analyte is present at that level within analytical method performance limits (e.g., bias and precision). The Agency prefers this empirical demonstration of method performance through the successful analysis at the exemption level. The Agency requests comment on this and any other approaches to demonstrate method performance.

In general, the Agency is proposing testing requirements that would consist of an initial test to characterize the waste as exempt, followed by subsequent testing to ensure ongoing compliance with constituents of concern. A generator of a listed waste on a one-time basis will only be required to comply with initial testing requirements. Wastes produced on an infrequent (batch) or continuous basis will have to comply with initial testing requirements and subsequent testing requirements as appropriate based on the volume of the waste. The Agency asks for comment on this general approach to testing requirements.

a. Data Evaluation

i. Compliance With the Exit Levels

The Agency is requesting comment on three approaches of data evaluation.

First, the Agency is proposing that, for exemptions under today's proposed rule, generators would be required to evaluate their waste based on the maximum detected concentrations of the exemption constituents. If any constituent concentration is greater than its specified exit level, then the waste would be ineligible for exemption under today's proposed rule. One advantage of this approach is that facilities can use process and waste knowledge to determine the appropriate number of representative samples without relying on a complex, potentially costly statistical approach to determine an appropriate number of samples. However, generators will need to be sufficiently knowledgeable about their waste and process to make an unbiased determination regarding the appropriate number of samples. Actual sample representativeness might be difficult to verify or otherwise assess (on a statistical basis). Finally, the level of uncertainty associated with the results cannot be defined. Because of this, under this approach, a single composite sample that validly exceeds the HWIR exit levels would indicate that the waste is hazardous and must be handled in Subtitle C.

Second, the Agency requests comment on also allowing a second data evaluation method whereby the analytical results are evaluated in terms of an upper confidence limit around an average concentration. An example of one method for determining an upper confidence limit is presented in the statistical approach found in Chapter Nine of SW–846 (Third Edition, as amended by Updates I, II, IIA, and IIB),

where, for the purpose of evaluating solid wastes, the probability level (confidence interval) of 80 percent is used. Sample measurements for which the upper limit of the 80 percent confidence interval about the sample mean is below the regulatory level for the chemical contaminant are not considered to be present at levels of regulatory concern. One main advantage of this approach is that the number of samples is statistically determined and thus it eliminates any bias that might otherwise be introduced when using knowledge to determine the appropriate number of samples. In addition, the level of uncertainty associated with the results can be determined. However, the main disadvantage of this approach is that it could be more costly for some facilities than the proposed approach. For example, it might require multiple rounds of sampling to determine the mean and variance. Highly variable wastes may require the collection of many more additional samples than might otherwise be determined to be necessary using the first approach. However, this statistical approach allows occasional samples to be above exemption level, as long as the upper confidence limit of the data overall is below the exit level.

The Agency also requests comment on a third data evaluation method that would allow facilities to use long-term average data to demonstrate compliance without consideration of the upper confidence limit. A rolling average of samples would be taken over the course of a year on a schedule determined by the initial sampling and analysis plan. As long as the average of the samples was below the HWIR exit level, the waste stream would be considered non-hazardous. This approach would have the advantage of being simpler than the second option, while allowing occasional exceedences of the exit levels by single samples, as long as the average concentration is below exit levels.

EPA has modelled risk with the assumption that the constituents of concern are uniformly distributed within the waste at the exit concentrations. In discussion with the Hazardous Waste Identification Dialogue Group, some representatives noted that actual levels might need to average significantly below the exit levels if the exit criteria are to be consistently met. The second and third data evaluation methods discussed above help address this issue.

However, EPA and the States have noted that the only practical approach for enforcement purposes is to independently collect samples for analysis (which may represent a composite of materials spatially or over a short time span) and to set up the regulation so that an exceedence by any single composite sample during an inspection could constitute a violation. It would then be the responsibility of the generator to refute this, using historic sampling data and possibly additional samples to show that the sample exceedence does not constitute an overall violation of the HWIR levels.

EPA believes it is important to retain the practical approach whereby a single composite sample of a waste at some arbitrary point in time or space during a short visit is considered sufficient for enforcement purposes. However, because the exit numbers were modeled based on long-term average concentrations, the Agency requests comment on allowing occasional exceedences as long as the average concentration meets the exit level.

In addition to the concern about enforceability, however, EPA has identified two additional concerns about using average concentration to determine compliance. First, not all waste streams would be disposed of in the same place. Thus the wastes may on average be in compliance when they are generated, but the wastes arriving at the disposal site (possibly from multiple sources) may not be, on average, below the exit levels. Second, EPA has not modeled the constituents for acute risk. While the average concentration of constituents may be below the exit levels, the occasional ''high'' concentration may be of concern due to acute health or ecological effects.

One possible way to address some of these concerns is, in addition to requiring that the average meet the exit levels (as in the second and third data evaluation methods), EPA could require that all samples be below some ''peak'' concentration.

Under this approach, if the average concentrations are below the exit levels, and all individual samples are below the higher peak level, then the generator would be in compliance and need take no further action to support the exemption. EPA or a State would then be able to confirm waste status without total reliance on the generator's data and without the expense of periodic sampling by EPA or the State. EPA requests comment on this issue, including any information on setting peak levels.

For any of the three data evaluation approaches, representative samples must be collected in support of exemption under today's proposed rule, consisting of a sufficient number of samples to represent the spatial and temporal variability of the waste characteristics, regardless of how the sample number is determined.

For the identification and handling of ''outliers'', the Agency is recommending that testing for outliers should be done if an observation seems particularly high or low compared to the rest of the data set. If an outlier is identified, the result should not be treated as such until a specific reason for the abnormal measurement can be determined (e.g. contaminated sampling equipment, laboratory contamination, data transcription error). If a specific reason is documented, the result should be excluded from further data evaluation. If a plausible reason cannot be found, the observations should be treated as a true, albeit extreme, value and not excluded from the data evaluation, as waste composition can vary. The Agency solicits comments on implementable techniques for the identification of analytical outliers.

The results of the tests of all of the constituents on the exemption list would be required to show the constituent concentration to be at or below the exit level in order for the claimant to be eligible for an exemption. In the case where a constituent's exit level is based on the quantitation criteria (EQC, as described in section IV.E.), in addition to showing a non-detect at the exit level, the waste would be required to meet applicable requirements set forth at 40 CFR part 268. Certain facilities may have difficulty quantifying a constituent at the exit level due to matrix interference effects, but the Agency expects exempted wastes to have relatively clean matrices such that exit levels should be able to be achieved. The Agency believes that the exit level must be met in order for a waste to exit Subtitle C; therefore, waste streams that cannot meet exit levels would not exit under today's rule. The Agency asks for comment on this approach.

ii. Wastewater and Nonwastewater Categories

Throughout today's proposal and background documentation, all of the exit levels have been described as being applicable to two categories of wastes using the terms wastewater and non-wastewater[6]. EPA used these terms as an initial means of distinguishing two waste categories that are inherent to how the exit levels were developed, by taking into account how these wastes

[6] The terms ''wastewater'' and ''non-wastewater'' are used generically in today's preamble and rule, and do not represent the land disposal restriction definitions in 40 CFR 268.2(d) and (f), although one option EPA is requesting comment on in this section is the use of those definitions.

will be managed (i.e., stored, treated, and disposed), and also how the wastes would be expected to behave in the environment. In the development of the exit levels, several waste management units were evaluated in the underlying risk analysis. The units chosen for evaluation were those that are considered most likely to manage the types of wastes that would be expected to exit Subtitle C regulation under today's exemption. Although these units will likely receive to some degree both forms of waste, in general there are technical, physical, and sometimes legal constraints on what types of waste are managed in each. The Agency considered ash monofills, waste piles, and land application units as typically managing waste materials that can be considered ''solid'' or ''non-wastewater,'' while tanks and surface impoundments typically manage ''liquid'' or ''wastewater.'' Based on these assumptions, results from the analysis of risk from these specific waste management units were then used to generate the corresponding exit levels for non-wastewater and wastewater.

In considering how to develop final definitions and terms for these two waste categories, the Agency's goal is to establish definitions that are clear, concise, and easily distinguishable from other similar terms such that a generator can readily determine which set of exit levels to apply to the waste being evaluated for the exemption. EPA requests comment on three options for defining these two waste categories to determine which set of exit levels to apply to a listed waste eligible for today's proposed exemption. EPA emphasizes that these definitions will only apply in the context of today's exit rule.

The Agency also requests comment on whether it is reasonable in all three options to allow a generator the alternative options of separating in the laboratory the solid (or nonwastewater) portion of the waste from the liquid (or wastewater) portion of the waste, analyzing the resultant portions, comparing the results to the corresponding exit levels, and treating the waste as exempt if all exit levels are met in both portions.

Option 1: Using Percent Solids—EPA prefers the option of defining the two categories of exit levels as ''solid'' and ''liquid'' exit levels, where the distinction between solids and liquids is based upon the percent solids content of the waste, as determined using Section 7.1 of the Toxicity Characteristic Leach Procedure (TCLP) in SW–846. Specifically, the option would define wastes containing 15 percent solids by weight or greater as solids,[7], while wastes with less than 15 percent solids by weight be defined as liquids. EPA believes that the 15 percent cutoff is a reasonable distinction between the two categories of exit levels, for the following reasons. Because there are general prohibitions on liquids or wastes containing free liquids in non-hazardous waste landfills accepting municipal wastes, the Agency does not envision wastes containing less than 15 percent solids being managed in these units. Similarly, it is unlikely that waste containing less than 15 percent solids will be stored in waste piles due to obvious physical limitations. For land application units, EPA believes that 15 percent solids content by weight is a reasonable lower limit for the types of wastes typically managed in these units; indeed, this was the value used in the land application unit scenario in the groundwater modeling portion of the risk assessment underlying today's exit levels.

Because of these limitations, EPA believes that wastes containing less than 15 percent solids will more frequently be managed in the types of units associated with wastewater treatment, such as tanks and surface impoundments. In fact, EPA believes that many wastes falling into the liquid category under this definition, that can realistically exit under today's proposed exit rule, will likely be wastewaters that have undergone treatment and that contain much less than 15 percent solids. EPA presumes that in many cases the separation of water from solids will be occurring as part of routine wastewater treatment, and generators will be either be evaluating the solid residues (which would clearly meet our solid definition), or the treated water, much of which is currently discharged under the Clean Water Act and therefore likely has limits on the amount of solids present.

EPA also requests comment on alternative ways of determining percent solids content, including generator knowledge of the waste or results of previous analyses. The Agency believes that in many cases, particularly for fairly dry or fairly wet wastes, the generator can immediately ascertain from a visual inspection that the percent solids content is well above or well below the 15 percent solids value.

[7] EPA will avoid use of the term ''solid waste'' when describing the category of exit levels that are defined as solids under this option in today's proposal. This is to avoid confusion with the existing term ''solid waste'' in the RCRA program, which has specific statutory and regulatory definitions, which have no relationship to whether a waste is a physically a solid or a liquid.

Option 2: Using LDR Definitions—EPA also requests comment on the use of the same terms and definitions currently used under the land disposal restrictions. Wastewater is defined as waste containing less than 1 percent total suspended solids (TSS) and less than 1 percent total organic carbon, or TOC (40 CFR 268.2(f)). Non-wastewater is defined as any waste that is not a wastewater (40 CFR 268.2(d)). The principle advantage of this approach is it allows the use of consistent definitions for wastewater and nonwastewater in both today's exit system for listed wastes, and the LDR program. The advantage of this consistency is particularly apparent for those cases where LDR treatment standards are conditions of exit under today's rule. One disadvantage of this approach is that it defines wastes containing greater than 1 percent TSS as non-wastewater, even though these wastes will likely be managed in wastewater treatment systems using tanks and surface impoundments, which is inconsistent with the way in which the results from the risk analysis were used in developing exit levels. The Agency requests comment on this approach as an alternative to Option 1.

Option 3: Using the Paint Filter Liquids Test—The third option is to use the terms ''liquid'' and ''solid'' as in Option 1, but to use EPA Method 9095 from SW–846, the Paint Filter Liquids Test, to determine whether the waste being evaluated for exit is a liquid or a solid. Under this option, any waste determined to contain free liquids using Method 9095 would be considered a liquid, and the exit numbers currently in the wastewater category would apply to that waste. Conversely, a waste would be defined as a solid, and the nonwastewater exit levels would apply, if the waste does not contain free liquids using Method 9095. Under this option, EPA realizes that many wastes appearing like solid materials would actually be defined as liquids.

Method 9095 is presently used in defining the term ''liquid waste'' in the solid waste disposal facility criteria, for determining compliance with the prohibition on disposing of bulk or containerized liquid in municipal solid waste landfills (see 40 CFR 258.28). Method 9095 is also used in determining compliance with the prohibition on bulk or containerized liquids in hazardous waste landfills (264.314(c)).

iii. Totals and TCLP Analyses

Today's rule proposes that the claimant would be required to test the waste for which today's exemption is

being claimed to prove that constituent concentrations in the waste do not exceed the exit level(s) for each constituent that should be present in the waste.

The claimant would determine which category of exit levels would apply (e.g., wastewater or nonwastewater) to his waste. In a previous section of today's rule, the Agency requests comment on several options to define these two categories. For a wastewater waste to be eligible for exit, every constituent in the waste must comply with the wastewater total constituent exit concentration. For a nonwastewater waste to be eligible for exit, every constituent in the waste must comply with the nonwastewater total constituent exit level as well as the nonwastewater leach exit level.

A test for total concentration would be required for each constituent in the waste regardless of whether the waste is a wastewater or a nonwastewater to determine that the total constituent exit concentration has not been exceeded. For non-wastewaters, a claimant must also prove that the measurable leachate concentrations do not exceed the nonwastewater leach exit levels. The Agency proposes to allow claimants to either use a calculational screen or to use the Toxicity Characteristic Leaching Procedure (TCLP, Test Method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846) to make a determination that constituent concentrations do not exceed nonwastewater leach exit levels. Discussion concerning the methodology of a calculational screen is described below.

Section 1.2 of the TCLP allows for a compositional (total) analysis in lieu of the TCLP when the constituent of concern is absent from the waste, or if present, is at such a low concentration that the appropriate regulatory level could not be exceeded.

For wastes that are 100% solid as defined by the TCLP, the maximum theoretical leachate concentration can be calculated by dividing the total concentration of the constituent by 20. The dilution factor of 20 reflects the liquid to solid ratio employed in the extraction procedure. This value then can be compared to the appropriate regulatory concentration. If this value is below the regulatory concentration, the TCLP need not be performed. If the value is above the regulatory concentration, the waste may then be subjected to the TCLP to determine its regulatory status.

The same principal applies to wastes that are less than 100% solid. In this case, however, both the liquid and solid portion of the waste are analyzed for total constituency and the results are combined to determine the maximum leachable concentration of the waste. The following may be used to calculate the maximum theoretical concentration in the leachate.

$$\frac{[A \times B] + [C \times D]}{B + \left[20 \frac{L}{kg} \times D\right]} = E$$

where:

A = Concentration of the analyte in liquid portion of the sample (mg/L)
B = Volume of the liquid portion of the sample (L)
C = Concentration of the analyte in the solid portion of the sample (mg/kg)
D = Weight of the solid portion of the sample (kg)
E = Maximum theoretical concentration in leachate (mg/L)

If:

$E < exit_{leach}$

Then: A TCLP need not be performed for this constituent because, even if 100% of the constituent leaches, the TCLP results would be less than the regulatory leach standard. This calculation is adequate proof that this waste is at or below its leach exit level.

The above calculational screen may be used by a claimant in order not to perform the TCLP. The screen may be used to determine that a total analysis of the waste demonstrates that individual contaminants are at such low concentrations that the nonwastewater leach exit level could not possibly be exceeded, thus eliminating the need to run the TCLP.

Example: To illustrate the calculational screen, the following example is provided: An analyst wishes to determine if a leach processing sludge could fail the nonwastewater leach exit level for lead. The sludge is reported to have a low concentration of lead, and the analyst decides to perform a compositional analysis (totals test). A representative sample of waste is subjected to a preliminary percent solids determination as described in the TCLP. The percent solids is found to be 90%. Thus, for each 100 grams of this waste filtered, 10 grams of liquid and 90 grams of solid are obtained. It is assumed for the purpose of this calculation that the density of the filterable liquid is equal to one. The liquid and solid portion of the sample are then analyzed for total lead. The following data are generated:

Percent solids = 90%
Concentration of lead in the liquid phase = 0.023 mg/l
Volume of filtered liquid = 0.010 L
Concentration of lead in the solid phase = 85 mg/kg (wet weight)
Weight of the solid phase = 0.090 kg.
The calculated concentration is as follows:

$$\frac{\left[0.023 \frac{mg}{L} \times 0.010L\right] + \left[85 \frac{mg}{kg} \times 0.090kg\right]}{0.010L + \left[20 \frac{L}{kg} \times 0.090kg\right]} = 4.23 \frac{mg}{L}$$

In this case, the maximum leachable concentration is below the 10 mg/L regulatory concentration for lead, and the TCLP need not be performed.

iv. Oily Wastes

In this proposed rulemaking, the Agency has modelled the transport of solutes in groundwater as well as movement along other environmental pathways. This groundwater modeling involves predicting rates of constituent leaching from wastes in land-based waste disposal units. In using this fate and transport modeling to develop regulatory exit levels, the Agency is proposing to rely on the use of leach tests to ensure that groundwater is not contaminated. Among the test methods that have been developed and employed to identify wastes which might pose an unacceptable hazard are: Methods 1310 (Extraction Procedure), 1311 (Toxicity Characteristic Leaching Procedure, TCLP), 1320 (Multiple Extraction Procedure, MEP), and 1330 (Oily Waste Extraction Procedure, OWEP).

However, these leach test procedures all have deficiencies in predicting the mobility of toxic chemicals from oily

wastes. Method 1311 underestimates the mobility of constituents from many oily wastes due to filter clogging problems, can be imprecise for oily wastes, and has several operational problems. Conversely, Method 1330 is believed to overestimate mobility of constituents from oily wastes since it emulates a worst case scenario by using solvents to extract contaminants from the oil. None of the available laboratory procedures is fully satisfactory. Rather, they bracket the range of possible leaching for oily wastes.

In addition, EPA does not have a good definition for what constitutes an oily waste. EPA originally defined oily wastes as those materials that clogged the filter during Method 1311 (TCLP) extraction. EPA requests comment on how to better define what an oily waste is.

EPA also requests comment on which of the two tests methods (1311 or 1330) should be used and why should one test be chosen over the other for predicting the concentrations of contaminants in leachate from wastes being managed in landfills. EPA also requests comment on whether there are any alternative test methods or models that could be used for predicting the mobility of oily materials. Such procedures need to be both scientifically credible and environmentally protective. Methods need to identify material that might be released from the waste and enter the soil. Release is defined as movement of either the liquid phase of the waste or leached contaminants through the bottom of the waste unit to the subsurface soil immediately underlying the disposal point. Once contaminants pass this point their ultimate fate in terms of impact on down-gradient water supplies can be estimated by the ground-water fate and transport model (EPACMOW model).

EPA also requests comment on any additional problems with oily waste leachability not covered here, and whether the volatilization or other attributes of constituents should be considered in the development of a test.

Oily wastes also pose modeling challenges in groundwater because they do not disperse in the same pattern as aqueous liquids. This affects the movement of the constituents in the material. In the event of a release of waste at or near the soil surface, the waste will migrate downward until it reaches the water table. Light non-aqueous phase liquids (LNAPLs) will then tend to migrate laterally, forming a pancake on top of the water table. Dense non-aqueous phase liquids (DNAPLs) on the other hand will sink to the base of an aquifer and not show much lateral spreading until an impermeable layer is reached. EPA is requesting comment on what sort of wastes or what constituents exhibit these behaviors and how to define that set of wastes. Constituents that have been associated with DNAPLs include dichlorobenzenes, PCBs, napthalenes, chloroform, carbon tetrachloride pentachlorophenol, cresols, and several PAHs. However, trace amounts of these constituents are unlikely to pose a DNAPL problem. A DNAPL problem is likely to occur when there is sufficient concentration to flow as undissolved liquid that would then form the sort of complex reservoirs that subsequently slowly dissolve into groundwater. The Agency requests comment on concentrations of these or similar chemicals that are likely to pose DNAPL problems and whether the proposed exit levels in totals or, for nonwastewaters in leach levels, are sufficient to limit wastes exiting for which a DNAPL or LNAPL problem would need to be explicitly evaluated.

The Agency is continuing to work on developing tests and models for determining the leaching potential of oily materials and may propose them in future rulemaking. In the meantime, EPA is today proposing to apply the levels as proposed in this rule to oily wastes, but seeks comment on whether instead there is a definable class of wastes for which these levels cannot reasonably be concluded to be protective.

b. Initial Test

The Agency is proposing in today's rule that there would be an initial test before a facility would be eligible for an exemption. The initial test would be the primary tool to characterize the waste as exempt. Results from this initial test would be sent to the implementing agency. The public could request the implementing agency to make the results available.

EPA is proposing to require initial testing of all of the 386 constituents on appendix X of 40 CFR part 261 except those that the claimant determines should not be present in the waste. EPA would require the claimant to document the basis of each determination that a constituent should not be present. The claimant must submit the documentation to the implementing agency and retain a copy on site for three years. No claimant may determine that any of the following categories of constituents should not be present:

—Constituents set out in appendix VII to part 261 as the basis for listing the wastestream for which exemption is sought;

—Constituents listed in the table to 40 CFR 268.40 as regulated hazardous constituents for LDR treatment of the waste stream ;

—Constituents detected in any previous analysis of the same wastestream conducted by or on behalf of the claimant;

— Constituents introduced into the process which generates the wastestream; and

—Constituents which the claimant knows or has reason to believe are byproducts or side reactions to the process that generates the wastestream.

The Agency requests comment on whether these are the appropriate criteria to be used to determine what should not be present in the waste. The Agency also requests comment on requiring claimants who are not waste generators to consult the generator prior to determining that a constituent is not introduced into the process or that a constituent is not a byproduct or side product of the process. EPA believes that it is unlikely that a non-generator claimant would have sufficient knowledge of the production process to make adequate determinations on these issues. EPA requests comment on the type of documentation that it should require. The generator could co-sign the document that sets out the reasons for determining that the claimant need not test for a constituent, or the generator could prepare a separate supporting document that would be attached to the document for submission to the implementing agency and retention in the claimant's files.

The Agency is soliciting comment on whether the absence of constituents in the following documents could constitute sufficient justification for not analyzing all of the constituents listed in 40 CFR part 261 appendix X.

—40 CFR part 261 appendix VII highlighted to show which constituents are listed for each waste code applicable to that waste;

—40 CFR 268.40 highlighted to show which constituents are regulated under the land disposal restrictions for each waste code applicable to that waste;

—EPCRA Toxic Release Inventory reports highlighted to show which constituents are reported as being ''used'' in the manufacturing process from which that waste is generated (based on the EPCRA definition of ''use'');

—NPDES discharge permits highlighted to show which constituents are required to be monitored in wastewaters with which that waste is commingled or will be commingled;

—State or Local emissions monitoring permits or documents (e.g., stack emissions, fugitive emissions, groundwater monitoring, wastewater discharges, etc.,) highlighted to indicate which constituents are required to be monitored as potential emissions from units in which that waste is managed or will be managed;
—Responses to government and/or trade group data collection efforts (e.g., biennial reports, TSD surveys) that require submission of waste-specific constituent information;
—Published literature (e.g., journals, presentations, chemical and engineering reference documents, health and safety handbooks, material safety data sheets, etc.,) highlighted to indicate constituents that are formed or potentially formed from side reactions, degradation, or reactivity of the products, reactants, or solvents used in the manufacturing process generating that waste;
—Plant-specific process flow diagrams or process descriptions highlighted to indicate constituents that are formed or potentially formed from side reactions, degradation, or reactivity of the products, reactants, or solvents used in the manufacturing process generating that waste;
—Product specifications or constituent-specific labeling requirements under federal regulations, state regulations, or non-governmental standards (i.e, per product-grade) that identify constituents that are expected to be present in the products from which the waste was generated, highlighted to indicate those constituents identified as part of these specifications or standards (excluding chemical additives or preservatives that are placed in the products subsequent to the generation of the waste for which exit is claimed);
—Waste profile data sheets, such as those submitted to commercial waste handlers, highlighted to show the constituents that were found or expected to be present in that waste; and/or
—A certified, third party engineering analysis of the process generating that waste that provides qualitative verification of the theories behind the anticipated absence of certain chemical classes or groups of Appendix X of 40 CFR 261 constituents such as pesticides, pharmaceutical, halogenated solvents, carbamate, organo-sulfur compounds, known gases, cyanides, etc.;
—Any other available quantitative or qualitative constituent information specific to that waste

Relevant information includes not only those document sections that indicate which constituents are present, but also cover pages that indicate the source of the document segments and signature pages to verify authenticity of government-approved documents (where appropriate). For the verification purposes, page numbers should also be clearly identified for each document. EPA is also soliciting information on additional readily available documentation that could be added to this list that would not impose an unreasonable records burden on both the generator and enforcement officials (for example, the Agency believes that requiring highlighted copies of copious amounts of monitoring data would be redundant and would significantly impede enforcement review). EPA believes that requiring copies of only relevant portions of these documents, highlighted to indicate the chemicals present, should minimize the burden associated with this documentation requirement significantly.

Regardless of which constituents a facility tests, the facility is responsible for ensuring that each constituent in the waste meets its applicable exit level.

The Agency believes that the tailored initial test described above will ensure accurate waste characterizations of the waste streams while focusing testing requirements to those constituents that are of concern. A facility could determine whether a constituent would be present. A facility would *not* be authorized to determine that the constituents in the waste meet the exemption levels based on knowledge of the waste or material. This approach both reduces unnecessary testing costs and allows for more frequent monitoring of those constituents that are of concern.

The Agency is soliciting comment on whether this proposed approach to an initial test is appropriate.

The Agency asks for comment on taking the opposite approach: requiring each claimant to test only for those constituents that the claimant determines ''could be present'' for that waste. This would be a systematic way for facilities to focus the list of hazardous constituents to those that are mostly to be present in the waste. EPA requests comment on requiring at a minimum testing of the following categories of constituents:
—Constituents set out in appendix VII to part 261 as the basis for listing the wastestream for which exemption is sought;
—Constituents listed in the table to 40 CFR 268.40 as regulated hazardous constituents for LDR treatment of the waste stream ;
—Constituents detected in any previous analysis of the same wastestream conducted by or on behalf of the claimant;
—Constituents introduced into the process which generates the wastestream; and
—Constituents which the claimant knows or has reason to believe are byproducts or side reactions to the process that generates the wastestream.

The Agency asks for comment on the completeness of the proposed mandatory testing criteria. In addition, the Agency requests comment on whether testing should be required for those constituents that do not meet any of the criteria of ''could be present.'' The Agency also requests comment on whether documentation should be required to demonstrate that those constituents that were not tested did not meet any of the ''could be present'' criteria.

EPA requests comment on another approach to determining which constituents need to be analyzed by a claimant. The approach would be that the claimant needs to provide data on all additional constituents listed in appendix X of 40 CFR part 261 of today's rulemaking for which a method used by the generator to detect other constituents which the claimant is required to test can easily determine concentrations. Thus, for example, if a waste was listed for a constituent for which GC/MS is an appropriate method used by the claimant, the claimant would also be required to ask the laboratory to provide information on all other constituents listed in appendix X of 40 CFR part 261 of today's proposed rulemaking for which the GC/MS is also an appropriate method.

EPA did not use this in its primary proposal because the Agency realized that implementation of this concept become more complex than it appears. For example, even when using GC/MS, there may be sample preparation techniques, dilutions, and similar issues that determine which constituents can be measured in the appropriate concentration ranges using the method.

However, there is something intuitively reasonable and attractive in asking claimant to gather and provide information that is easily obtainable and would provide additional confidence and certainty. EPA solicits comments on this idea and ways to implement it.

The Agency requests comment on whether there is some other way to focus the scope of testing requirements or if the only way to ensure accurate waste characterizations would be to require testing for all 386 constituents.

The FACA suggested EPA should define, for major waste streams, a set of constituents that it believes would fairly characterize those waste streams. The Agency believes such an approach may be desirable. However, the Agency notes that this could require it to expend significant resources. The Agency requests comments on the feasibility or need for this approach in the long term.

EPA recognizes that some generators may wish to assert claims for protection of confidential business information (CBI) for some to the information that supports an exit claim. Material that is classified as CBI may be reviewed by EPA, but may not be released to the public. States may have similar provisions under state law. EPA requests comments on two options for addressing CBI information.

First, EPA requests comment on the option of prohibiting any person from asserting a claim of exit under this rule if that person wishes to claim CBI protection for any data or information used to support the exit claim, including all information submitted to the implementing agency in the notification package and all information required to be maintained by the claimant on site and furnished to the agency on request. A generator who wished to rely on CBI data to support an exemption claim for a listed hazardous waste would need to file a delisting petition with EPA or a state authorized for delisting.

EPA believes such an approach may be necessary because the exits proposed today are self-implementing. The public would not have the assurance of knowing that EPA or a state agency had reviewed the claimant's data and determined that it showed that the claimant's waste posed low risks to human health and the environment. Members of the public may not feel that they are adequately protected by the fact that EPA and authorized states could obtain the CBI data and use it (with appropriate precautions against disclosure) in an enforcement action if warranted. They may feel that the number of claims will strain agency inspection and enforcement resources, making it important for them to be able to bring their own citizen enforcement actions under section 7002 of RCRA.

At the same time EPA is sensitive to potentially legitimate business needs to protect information supporting an exit claim. Some firms may not wish to release detailed information about the chemical composition of their process waste streams. EPA also recognizes that the federal delisting process is considerably slower and imposes more procedural burdens than the self-implementing exit scheme. EPA requests comment on the alternative of creating a limited prior approval process for exit claims involving CBI claims. EPA anticipates that rulemaking would not be required. However, states that wish to obtain authorization for today's exit program might not be required to adopt this feature because they could argue that failure to provide a review process for CBI claims would not make their programs less stringent than the federal program.

EPA also notes that CBI protection is not absolute. EPA has authority under RCRA to release CBI information to the public as necessary to support rulemaking proceedings. (In fact, EPA could try to support the first option above by arguing that it was exercising in this proceeding its authority to waive protection for all of the individual exit claims that ''implement'' the rule.) Also, a citizen that has sufficient evidence of a violation to file a complaint in court may be able to persuade the court to order a limited release of the data for use in the enforcement proceedings.

2. Notification Requirements

The Agency is proposing that the required notification to the implementing authority would include the following information:

—The name, address, and RCRA ID number of the person claiming the exemption;
—The applicable EPA Hazardous Waste Codes;
—A brief description of the process that generated the waste;
—An estimate of the average and maximum monthly and annual quantities of each waste claimed to be exempt;
—Documentation for any claim that a constituent is not present;
—The results of all analyses and estimates of constituent concentrations and all quantitation limits achieved;
—Documentation that any constituents on Table B to appendix X of 40 CFR part 261 have met the applicable treatment standards in § 268.48, unless the claimant is claiming the exemption under § 261.36(e);
—Evidence that the public notification requirements have been satisfied; and
—A certification signed by the person claiming the exemption or his authorized representative.

The Agency is taking comment on whether the following additional information should also be sent to the implementing authority:

—The name and address of the laboratory which performed the analysis;
—A copy of the sampling and analysis plan used for making the exemption determination;
—A description of any chain-of-custody procedures;
—Whether the identity of the disposal facility should be included in the notification package;
—Dates of sampling and analysis; and
—A description of the (temporal and) spatial locations of the demonstration samples.

Also, the Agency is taking comment on whether, if the disposal facility is different than the claimant's facility, the claimant should also include as part of the notification package documentation that the claimant informed the disposal facility of the exempt status of the waste.

A complete notification package would include all required information in the notification and all required certifications signed by the appropriate individual, as identified in the regulations. Failure to submit a notification package if the exemption is being claimed or submission of an incomplete notification package would be a violation of RCRA requirements and thus subject to penalties and injunctive relief under section 3008(a) of RCRA and possible criminal liability under section 3008(d) of RCRA. As a necessary prerequisite to claiming an exemption, the burden would be on the claimant to establish that a complete notification package was submitted to the implementing authority to assert in an enforcement action that the waste is exempt.

It should be noted that, regardless of whether the sampling and analysis plan must be included with the notification to the implementing agency, a current sampling and analysis plan must be developed and used to establish the waste's eligibility for exemption, and must be available upon request to the implementing authority at the time the notification package is submitted and at least for three years. The sampling and analysis plan must demonstrate that the samples to be taken and analyzed will be representative of any spatial and temporal variations in the subject waste.

Furthermore, it should be noted that submission of sampling and analysis plans with the notification to the implementing authority does not change the self-implementing nature of the exemption. Submission of such plans would not be for review or approval of exemption claims prior to the exemption becoming effective. The implementing agency would be under no obligation to undertake such review or approval prior to the exemption

becoming effective, and failure to undertake such prior review would not preclude a subsequent enforcement action should the exemption claim later be determined to be inaccurate or otherwise invalid.

As proposed, the certification required to accompany the notification must attest that the waste in question meets all relevant constituent concentration exit levels and that the information in the notification package is true, accurate, and complete. The Agency is taking comment on whether this certification is sufficient assurance that the claimant has made best efforts to accurately characterize the waste or if additional certification language or additional certifications (*e.g.*, from an analytical laboratory) are necessary.

The notification package would be required to be submitted by certified mail with return receipt requested, or other commercial carrier that provided written confirmation of delivery. No claim would be effective until the claimant received the return notification indicating that the package had been delivered.

Submission of the notification package to the implementing authority, however, is not equivalent to approval or verification of the exemption claim. Submission of a notification package would not preclude or in any way limit the implementing authority's ability to take a subsequent enforcement action should it determine that the initial requirements of exemption were never met or that the conditions for maintaining the exemption are not satisfied.

The Agency is taking comment on whether, instead of the exemption becoming effective upon confirmation of delivery of the notification package, there should be some brief waiting period prior to the exemption becoming effective.

Such a period (*e.g.*, 30 or 60 days) could be used by the implementing authority to review notification packages for completeness or for indicia of concerns that would lead to prioritized enforcement, although the exemption would still become automatic after the period regardless of whether any action was taken by the implementing authority. As an alternative, the period could be designed to provide the implementing authority an opportunity to determine that a claimant should not be able to avail itself of the exemption without some further review and to notify the claimant of its views.

Under either approach, governmental review would be discretionary and the lack of such review would not be an indication of governmental approval of the exemption claim. To ensure that there would be no confusion on this point, the certification could include a statement of recognition that expiration of the delay period without comment by the overseeing agency is not the equivalent of agency approval that the claim is accurate. The Agency has not chosen to propose a delayed implementation approach because it believes a short time frame, particularly combined with an automatic effective date, would not provide an opportunity for thorough prior review and would, at best, provide only marginal benefits as a screening device for potentially problematic claims. The Agency, however, requests comment on whether such a delay would be beneficial to monitoring claims and if there are procedural or other concerns relating to such a delay.

B. Implementation Conditions

After the exit claim has become effective, the claimant would have to continue to meet certain conditions to maintain the exemption. Failure to satisfy any of the conditions would void the exemption and subject the waste to applicable subtitle C requirements.

Under this proposal, wastes must continue to meet the generic exemption levels established for exit to remain non-hazardous. Separate and distinct from any requirement or condition that might be established under this rulemaking, all generators—including claimants of today's proposed exemption—would have a continuing obligation to identify whether they are generating a hazardous waste and to notify the appropriate governmental official if they are generating a hazardous waste. Section 3010; 40 CFR 261.11. If wastes claimed as exempt under today's proposed rule test above exit levels at any time, that waste and subsequently generated waste would have to be managed as hazardous waste—including compliance with all notification requirements—until testing demonstrated that the waste was below exit levels.[8]

[8]Compliance with HWIR exemption levels will be measured from the last available test data or from the latest representative samples taken from the waste in question. Testing which shows constituent concentration levels above exemption levels will not affect wastes previously generated under a valid claim of exemption based upon representative samples. Similarly, testing, which shows that a waste which tested above exit levels once again tested below all relevant exit levels will exempt all waste generated on or after the date the samples were taken. Waste which exceeded the exit levels would not be able to requalify for the exemption.

1. Records Maintained on Site

In addition to the information described in the Notification Section above, the Agency is also proposing that the following information concerning the initial testing and retesting be maintained in the files on site at the facility making the exemption claim for at least three years:

—All information required to be submitted to the implementing authority as part of the notification of the claim;
—The dates and times waste samples were obtained, and the dates the samples were analyzed;
—The names and qualifications of the person(s) who obtained the samples;
—A description of the (temporal and) spatial locations of the samples;
—The name and address of the laboratory facility at which analyses of the samples were performed;
—A description of the analytical methods used, including any clean-up and extraction methods;
—All quantitation limits achieved and all other quality control results for the analyses (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and a description of any deviations from published analytical methods or from the plan which occurred;
—All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.36(b)(2) and also provides for the availability of the documentation to the claimant upon request;
—If the generator claims a waste is exempt from part 268 requirements pursuant to § 261.36(e), documentation to substantiate such a claim.

The Agency requests comment on the proposed information maintenance requirements and comment on additional information that may be necessary.

In addition, claimants will be required to retain certain information concerning retesting of wastes as described below and set out in the text of proposed 40 CFR 261.36(d)(6)(ii).

2. Testing Conditions

Claimants would continue to periodically test their wastes as a condition of the exemption.[9] Failure to test and maintain documentation of the

[9] Wastes generated on a one-time basis would not be subject to this requirement.

testing in accordance with the requirements of proposed 40 CFR 261.36(d) would void the exemption. The Agency believes that required subsequent testing is necessary to maintain accurate waste characterizations. Subsequent testing would be an ongoing exemption condition and would be the minimum testing required to maintain an exemption. A tailored constituent list setting out minimum requirements for testing purposes should not be confused with the facility's ongoing requirement to maintain constituent concentrations below exit levels for *all* constituents on appendix X of 40 CFR part 261. Results from subsequent testing would be required to be maintained on-site.

The scope of subsequent testing would focus primarily on those constituents from appendix X of 40 CFR part 261 that are of concern based on the initial test. The list of constituents for which a claimant would be required to test would, at a minimum, include each constituent that was detected in the initial test within an order of magnitude below the exit level for that constituent, and any constituent listed in Table B of appendix X of 40 CFR part 261 that is also identified as a basis for listing the waste or appendix VII to part 261 or listed as a regulated hazardous constituent for the waste in the table to 40 CFR 268.40. The claimant would also be required to test for any other constituent which the claimant had reason to believe was newly present in the waste since the most recent previous test.

The Agency proposes that the frequency with which a facility would be required to perform subsequent testing would be determined based on the volume of waste which the facility is declaring exempt. Those facilities with large-volume waste streams would perform subsequent testing more often than those facilities with low- or medium- volume waste streams. The claimant would be responsible for determining the volume of annual exempt waste. The Agency asks for ideas and comments on whether guidance should be made available for claimants on how to measure annual volumes. Justification of annual volumes would be sent to the Director in the notification package. The Agency believes that accurate waste characterizations are important for waste volumes of all sizes; however, inaccurately characterized large-volume wastes have greater potential to harm the environment than do smaller-volume wastes. In today's rule, the Agency is proposing the following requirements for the first three years of subsequent testing:

—Wastes generated at the time of exemption is initially claimed in volumes greater than 10,000 tons/year would be tested four times a year for the first three years of the exemption.
—Wastes generated at the time of exemption is initially claimed in volumes greater than 1000 tons/year but less than 10,000 tons/year would be tested twice a year for the first three years of the exemption.
—Wastes generated at the time of exemption is initially claimed in volumes less than 1000 tons/year would be tested once a year for the first three years of the exemption.

EPA requests comment on whether it should allow the Agency proposes that if a waste maintains exempt status for three years, the frequency of subsequent testing would then be reduced to once a year, regardless of the volume produced. The Agency believes that three years of subsequent testing should provide a facility with adequate data to assess the potential for variability in the waste. The Agency requests comment on the frequency of subsequent testing.

The Agency requests comment on an approach that the FACA suggested. The approach consisted of a comprehensive test, similar to an initial test, that is required every 3 or 5 years of an exemption because of the strong reliance on the initial test's results in determining the scope of subsequent testing.

The Agency also requests comment on whether follow-up testing should be eliminated entirely after the first three year period. In addition, the Agency asks if a certification of compliance with all relevant exit levels could suffice in lieu of testing at the end of three years.

3. Testing Frequency and Process Change

Under today's proposal, the claimant has a continuing obligation to verify that the waste continues to meet the exemption criteria, including meeting the exemption constituent concentration levels. Process changes that may either increase the number of hazardous constituents in the exempted waste or increase the concentration of hazardous constituents already present, should put a claimant on notice that there may be changes in the waste that may affect its continued eligibility for exemption. The Agency, however, is not proposing to require new sampling and analysis whenever there is a process change that may affect the exempt status of the waste.

The Agency is taking comment on whether it is necessary to require as a condition of maintaining the exemption that wastes be re-tested after a process change and, if so, what the scope of such re-testing should be. The Agency would like to know if the testing frequency proposed or more frequent testing would provide a clearer indicator of waste changes of concern than triggering re-testing through a narrative description of a process change. Another alternative is to require the claimant to notify the implementing authority that a process change has occurred and to certify that the exemption criteria continue to be met if the claimant determines that the waste still maintains its exempt status. The Agency is taking comment on how process change should be defined in the event one of the alternatives is chosen. It should be noted that if waste for which an exemption has been claimed at any time tests above exemption levels, that waste and all subsequently generated waste is hazardous. The claimant could not assert a new exit claim until a new batch of waste tests below the exit levels. The exemption proposed today would not relieve generators of their responsibility under § 262.11, nor would any test data previously obtained prevent a claimant from failing to satisfy the exemption criteria should an inspector conduct waste sampling that establishes hazardous constituents at concentrations above exit levels.

C. Public Participation

As a self-implementing exemption effective upon receipt of the notification by the implementing authority, there is no decision prior to exit being made by the implementing authority regarding the waste. The opportunity for public participation in an exemption claim is the opportunity that exists at all times for the public to bring to the implementing authority's attention any circumstance that might aid that authority in its monitoring and enforcement efforts. The public, furthermore, would have the ability to bring a citizen suit for a claimant's failure to comply with any requirement of the exemption.

The Agency is proposing to require that the public be notified by the claimant that an exemption claim is being asserted. This notification would be accomplished by publication of a notice in a major newspaper, local to the claimant and of general circulation, that contains the information required by the regulations. Evidence that the notice has been submitted for publication must be part of the notification package submitted to the implementing facility.

The Agency is requesting comment on whether such a notice should be placed in a newspaper local to the claimant's facility or to the disposal facility or both, should those facilities be located in different areas not served by the same newspaper.

Requiring notification of facilities receiving exiting wastes has also been raised to the Agency in discussions. The Agency solicits public comment on the need for and possible approaches to requiring that waste generators that are exiting their listed waste, notify receiving facilities that wastes are HWIR exited wastes. Additional discussion of this issue appears in the docket under ''Receiving Facility Notification Process.''

As discussed above, the Agency is also taking comment on whether providing a ''delay'' in the effective date when the exemption attaches (*e.g.*, 30 or 60 days) would provide a significant and meaningful opportunity for public comment prior to the waste having exited the subtitle C system. Possible benefits of a waiting period before effectiveness of the exit could include greater opportunity for State review or citizen comment before waste is actually disposed outside of Subtitle C. Under such an approach, the waiting period would begin with receipt by the State of a complete certification package, and would run for the designated time (30 or 60 calendar days).

The Agency is taking comment on whether access to claim documentation through the appropriate implementing agency will be sufficient to provide public access to documentation. One alternative would be to require the claimant to provide access to the information. If that option is selected, the Agency requests comment on how, and for how long, the claimant should be required to provide access to the documentation, and on what kind of protection for CBI would be appropriate.

IX. Request for Comment on Options for Conditional Exemptions

The Agency has at different times considered contingent management approaches to disposal of hazardous wastes. Under such approaches, wastes that would be considered hazardous if managed in an uncontrolled manner, could be considered non-hazardous if managed in a sufficiently controlled manner. The following section discusses and requests public comment on several approaches to setting higher exit levels tied to meeting certain management requirements. These approaches would allow wastes with higher concentrations of hazardous constituents to be managed safely outside of Subtitle C.

Many Subtitle C requirements were written generically to address all hazardous wastes and, consequently, provide protection for those wastes that pose the greatest risks. Others are either explicitly or implicitly technology-based rather than risk-based. Some of these requirements are statutory and cannot easily be adjusted to take risk into account. Nevertheless, EPA generally believes that it would be desirable to tailor waste management requirements to more closely coincide with risks. The exit levels proposed today take an initial significant step in this process by allowing very low-risk hazardous wastes to be exempt from Subtitle C requirements, leaving them subject only to less prescriptive federal and state controls for nonhazardous wastes. They also take an initial step towards setting different exit levels for different situations by recognizing that wastewater and non-wastewaters are typically handled in different ways and pose different risks, hence today's notice proposes different exit levels for wastewaters and non-wastewaters.

Within the time constraints imposed by the court-ordered deadline for this proposal, EPA has begun exploring whether it would be possible to create additional exemptions to allow more flexible management of additional wastes now classified as hazardous without compromising protection of human health and the environment. These options are premised on the theory that a waste's risk is due not only to its chemical composition, but also the manner in which it is managed, which can greatly affect the amount of chemical constituents that ultimately reach a human or environmental receptor. The multipathway analysis prepared to support the exit levels shows that the concentration at which a hazardous constituent threatens human health or the environment varies significantly with the type of management that a waste receives—some forms of management appear to present greater risks than others. The following discussion presents the legal framework for management-based exemptions, and outlines in some detail the options which EPA finds to be most promising for rapid promulgation.

A. Legal Basis for Conditional Exemptions

EPA originally interpreted RCRA's definition of hazardous waste to focus on the inherent chemical composition of the waste and to assume that mismanagement would occur so that people or organisms would come into contact with the waste's constituents. See 45 FR 33113 (May 19, 1980). However, EPA even in the past tried to consider ''reasonable'' mismanagement scenarios, scenarios that where reasonably likely or plausible even if not proven to necessarily have occurred or be typical for a specific waste. However, after more than a decade of experience with waste management, EPA believes that it may no longer be accurate or necessary to assume that worst-case mismanagement will occur. In recent hazardous waste listing decisions, for example, EPA has identified some likely ''mismanagement'' scenarios that are reasonable for almost all wastewaters or non-wastewaters, and looked hard at available data to then determine if any of these are for some reason very unlikely for the specific wastes being considered, or if other scenarios are likely given available information about current waste management practices. As a further extension of that logic, EPA now believes it may be appropriate to find that, where mismanagement is not likely or has been adequately addressed by other programs, EPA need not classify a waste as hazardous and that there may be ways to recognize situations where the limitations on likely ''mismanagement'' are specific to a State, a type of waste, or a facility-specific condition on how a waste is managed.

EPA believes that it can interpret the definition of ''hazardous waste'' in RCRA section 1004(5) to authorize this approach to classifying wastes as hazardous. Section 1004(5)(B) defines as ''hazardous'' any waste which may present a substantial present or potential hazard ''when mismanaged''. EPA reads this provision to allow it to determine the circumstances under which a waste may present a hazard and to regulate the waste only when those conditions occur. Support for this reading can be found by contrasting section 1004(5)(B) with section 1004(5)(A), which defines certain inherently dangerous wastes as ''hazardous'' no matter how they are managed. The legislative history of Subtitle C of RCRA also appears to support this interpretation, stating that ''the basic thrust of this hazardous waste title is to identify what wastes are hazardous in what quantities, qualities and concentrations, *and the methods of disposal which may make such wastes hazardous.*'' H.Rep. No. 94–1491, 94th Cong., 2d Sess.6 (1976), reprinted in *A Legislative History of the Solid Waste Disposal Act, as Amended,* Congressional Research Service, Vol.1, 567 (1991) (emphasis added).

EPA also believes that section 3001 provides it with flexibility to consider

the need to regulate wastes as hazardous. Section 3001 requires that EPA, in determining whether to list or otherwise identify a waste as hazardous waste, decide whether a waste ''should'' be subject to the requirements of Subtitle C. Hence, section 3001 authorizes EPA to determine that Subtitle C regulation is not appropriate where a waste is not likely to be managed in such a way that it will threaten human health or the environment. Moreover, regulation of such waste under Subtitle C would not appear ''necessary to protect human health or the environment'' under RCRA sections 3002(a), 3003(a) and 3004(a). As noted elsewhere in this proposal, EPA interprets these provisions to give it broad flexibility in fashioning criteria to allow hazardous wastes to exit the Subtitle C regulatory system. EPA's existing regulatory standards for listing hazardous wastes also allow consideration of a waste's potential for mismanagement. See § 261.11(a)(3) (incorporating the language of RCRA section 1004(5)(B)) and § 261.11(c)(3)(vii) (requiring EPA to consider plausible types of mismanagement). Where mismanagement of a waste is implausible, the listing regulations do not require EPA to classify a waste as hazardous.

Two decisions by the U.S. Court of Appeals for the District of Columbia Circuit provide potential support for this approach to defining hazardous waste. In *Edison Electric Institute v. EPA, 2 F.3d 438,* (D.C. Cir. 1993) the Court remanded EPA's RCRA Toxicity Characteristic (''TC'') as applied to certain mineral processing wastes because the TC was based on modeling of disposal in a municipal solid waste landfill, yet EPA provided no evidence that such wastes were ever placed in municipal landfills or similar units. This suggests that the Court might approve a decision to exempt a waste from Subtitle C regulation if EPA were to find that mismanagement was unlikely to occur. In the same decision the Court upheld a temporary exemption from Subtitle C for petroleum-contaminated media because such materials are also subject to Underground Storage Tanks regulations under RCRA Subtitle I. The court considered the fact that the Subtitle I standards could prevent threats to human health and the environment to be an important factor supporting the exemption. *Id.* at 466. In *NRDC v. EPA,* 25 F.3d 1063 (D.C. Cir. 1994) the Court upheld EPA's finding that alternative management standards for used oil promulgated under section 3014 of RCRA reduced the risks of mismanagement and eliminated the need to list used oil destined for recycling. (The Court, however, did not consider arguments that taking management standards into account violated the statute because petitioners failed to raise that issue during the comment period.)

B. Improvements in Management of Non-Hazardous Waste and in Risk Assessment Methodology

EPA's early regulations defining hazardous waste reached broadly to ensure that wastes presenting hazards were quickly brought into the system. When EPA promulgated its first listings and characteristic rules in 1980, its knowledge of toxic constituents, constituent transport pathways, and waste management options was more limited than it is today.

In addition, significant changes and improvements in waste management have occurred since the early 1980's. Many states have established or strengthened industrial nonhazardous waste programs since that time. For example, currently 26 states require liners and 28 states require ground-water monitoring for at least some surface impoundments. Up to 45 states require ground-water monitoring and 38 states require liners for at least some landfills. It is important to recognize however, that within a state, applicable requirements may vary according to a number of factors, including unit type, waste source, and location. See ''State Requirements for Industrial Non-Hazardous Waste Management Facilities'' EPA 1994. At the same time, industries have gained experience in managing wastes and many have improved waste management practices under incentives such as public access pursuant to the Emergency Preparedness and Community Right to Know Act, and avoiding liabilities under Superfund, RCRA corrective action and state cleanup programs.

EPA's ability to predict the risks that a waste may pose has also improved significantly. EPA has collected much more data on a variety of waste management units and other factors that impact the ability of waste constituents to reach a receptor. Models such as the EPACMTP and the models used in the multipathway analysis provide more sophisticated means of assessing the risks of a range of waste management options. As a result of all these changes, EPA is now in a position to begin to implement a more carefully tailored risk-based approach to regulating hazardous wastes.

C. Overview of Options for Conditional Exemptions

The Agency has identified several different approaches to providing conditional exemptions that would allow more wastes to exit the Subtitle C system. These options fall into two broad categories: (1) Establishing national conditional exemptions based on unit type either with or without assuming additional management controls; and (2) granting conditional exemptions to qualified state programs that ensure additional management controls.

1. National Approach: EPA Would Establish National Exit Levels for Contingently Managed Waste

The contingent management program could be adopted by any state that wants to implement it, without consideration of state programs for non-hazardous waste. The contingent exit levels would differ according to the degree of management/disposal restrictions imposed as a condition of exit. The possible options would include progressively more restrictive requirements, and allow progressively higher exit levels as disposal options are further restricted. The options under this approach are:

a. Distinguish Between Disposal in Land Application Units and Other Units

The multipathway risk assessment methodology used for this rulemaking takes into account management scenarios (such as land treatment of a waste), or exposure pathways (such as wind transport from an uncovered pile or volatilization from an open tank), resulting in calculated exit levels based on the riskiest scenario. In some cases this exit level may be significantly lower than the next most risky exposure pathway. The riskiest exposure pathway may not be applicable to some management situations. On review of the risk analysis results, the Agency determined that disposal in a land application unit is frequently the highest risk disposal option in both the multipath and groundwater modeling.

As described in detail in Section X. below, the Agency has developed for proposal an approach to contingent management relying on the multipathway exposure analysis, risk level of 10–6 and HQ of 1, and using the base case uncontrolled management scenarios, but with land application units removed from the analysis. Exit concentrations would still be protective across a wide variety of conditions nationally, for all non-land application unit disposal. The Agency is proposing

one national exit level for each constituent based on the next riskiest pathway, on condition that wastes are not disposed in land application units.

This option was considered by the Agency to be the simplest approach to contingent management. It would be somewhat easier to enforce than other options described below, since there would still be only one conditional exit level for each constituent. Implementation mechanisms to assure that the wastes go only to allowable unit types are described below.

b. Unit-Specific Exit Levels for Each Disposal

Another approach to contingent management considered by the Agency would be to establish a set of exit levels for each waste management unit evaluated based on risks at unregulated units of that type. Units that would be evaluated, at HQ 1 and 1 E–6 risk, would be land application units, waste piles, landfills, surface impoundments and tanks. Base case assumptions would be used to describe the units. The Agency has not included specific exit levels for this approach here, but solicits comment on its potential benefits, and potentially greater complexity of implementation and compliance assurance.

Under option 2 the Agency would set separate exit levels for each type of waste management unit. Generators would be allowed to choose the type of non-subtitle C waste management unit in which to manage their waste, and would be required to meet the unit-specific exit levels for all constituents in order to manage the waste in that unit. Testing and implementation would be similar to the requirements for exit based on the most limiting pathway. However, the Agency believes this option would increase the complexity of tracking wastes that met the varying concentration exit levels tied to specific allowable units.

The Agency believes allowing use of exit levels tailored to waste management can be a practical and appropriate way to allow greater volumes of waste to exit Subtitle C without increasing risks to above the toxicity benchmarks described in Section IV.D, providing that characteristics of various waste unit types can be clearly defined (such as the difference between surface impoundments, tanks, and perhaps covered tanks for the management of wastewaters), and providing the Agency can design a viable implementation scheme that does not rely primarily on statements of proposed future disposal. Tracking and monitoring of actual waste management could be one way to assure disposal in the appropriate facilities. Limiting disposal to on-site facilities could also better assure proper disposal, although this would limit the usefulness of contingent management approaches. The Agency requests comment on additional implementation requirements that might be needed to assure the waste is managed in the designated unit type only.

EPA has not developed this as a general approach in this rulemaking because the risk modelling that was done, while more multifaceted and comprehensive than many past analyses, was not designed for this purpose. For efficiency in modelling, EPA did not always model each pathway for each specific unit. EPA sometimes only modelled an exposure pathway of concern (such as air emissions) from certain types of units that EPA thought might be the limiting scenario, and risk from organic constituents in a landfill were not modeled. Therefore the modelling work to date may not identify the most limiting pathway if each unit is judged individually. To fully develop exit levels for a full range of unit types, EPA believes it would have to do supplemental risk analysis to fill in the gaps in modeling for each of the waste management units, or at least evaluate whether the risk analysis done to date is sufficiently representative. Tables 21–39 in the November 1995 Supplement to the multipath analysis present the modeled risk values for each constituent disposed in each of the five options modeled, and for each pathway. These tables can aid commenters in understanding what a unit-specific exit value for any particular constituent could be.

c. Consideration of Additional Management Unit Design or Management Practices

A third option is that EPA would use a somewhat modified multipathway exposure model to evaluate whether adding additional specific design or operating controls for particular unit types, would allow less conservative exit levels. These conditional exit concentrations would be promulgated on a unit-type specific basis, and could be used only by units employing the specified additional controls that would reduce the risk level to 10–6. Such an approach could be self-implementing for a facility owner/operator, and would not necessarily be tied into a permitting authority.

While such an approach could take into account the effects of a combination of added controls on each unit type (such as size of the unit, ground-water monitoring, liners, caps, etc.) the Agency believes that there are a number of significant implications associated with this approach. It could be interpreted by industries and states as an indirect way to define a broader set of management standards for industrial non-hazardous waste management units. Also, if the approach were self-implementing, it could be extremely difficult to ascertain that a particular unit meets a complex set of controls and therefore to assure compliance with the conditional exit levels. The more complex a judgement required to determine compliance with the conditions (such as whether a liner that is hard to inspect during operation is properly installed and protected from tears), the more appropriate it is likely to be that such determinations be made in the context of a permitting authority or prior approval rather than as a condition on a self-implementing exemption.

As a variation on this approach, The Agency could take into account certain regional, local, or site-specific factors in establishing exit levels. These could include the effect of local rainfall, regional hydrogeology, or size of facility on exit values. These issues are described in greater detail in section 3 below.

Because of the complexity of implementation, the Agency would attempt to define very limited additional control(s) to limit exposures and reduce risks to 10–6 level. EPA particularly asks for comments on unit design attributes that are easily ascertainable in a spot inspection versus those that require more detailed engineering review, or review or monitoring of operations. For this option, as with options one and two, the Agency would have to conduct additional risk modelling work to adequately evaluate additional parameters on a unit specific basis.

One issue common to all of the options discussed above is the legal status of wastes subject to such conditioned exemptions when there is a violation of the conditions. The Agency requests comments on how to make them enforceable in a practical way that is fair to those involved. If the waste concentration/unit requirements are conditions of an exemption, any violation of a condition means that the waste generator, or other individual managing the waste, has violated the full range of RCRA requirements and has been illegally managing a ''hazardous waste'' as a ''nonhazardous'' waste. Because the conditional requirements are not clearly tied to other non-hazardous waste authorities,

there would not be a remedy for the violations outside of the hazardous waste program. An alternative approach is discussed in the following options allowing conditional exit levels in states with qualified industrial non-hazardous waste programs. As long as the state has clear enforcement authority under its non-hazardous waste management program, these conditions could be crafted so that a violation of the condition was not illegal disposal of hazardous waste involving multiple RCRA counts. Rather it would be enforced as a violation of the relevant State authorities. The Agency requests comment on the advantages and disadvantages of these approaches, as well as whether there might be other approaches to ensure adequate legal remedies for violations of the conditional exit requirements, when the contingencies are not based on qualified state industrial non-hazardous waste programs.

2. State Program Approach

As noted earlier in this section, many state industrial non-hazardous waste programs have improved significantly since the early days of Subtitle C. State programs may offer the advantages both of requiring management controls which ensure protection of human health and the environment and ongoing oversight on a facility specific basis through permitting, inspection and enforcement activities. While every state program may not be operating at the same level, the Agency believes that a number of state programs may offer reasonable, protective systems to serve as the basis for less stringent exit levels. Qualified state programs would be allowed to manage listed waste in their non-hazardous waste management program under certain conditions. These qualified state programs would ensure that risks were reduced to protect human health and the environment.

There are three key factors the Agency believes would need to be considered in establishing state-based contingent management programs. These are (1) establishing a risk-based cap on waste constituent concentrations that can be managed contingently; (2) the type of program review of a state program that EPA would perform to identify qualified state programs, and (3) the breadth of state program controls.

For the risk cap, the Agency has considered using either a 1 E–4 cancer risk and HQ 1, or 1 E–3 cancer risk and HQ 10 as options. The caps would be modeled based on management in unregulated disposal facilities, as in the base-case exit level modeling.

Regarding program review, the Agency would either conduct a qualitative review of the State program, examining it to ensure it addresses key considerations, or would require states to conduct quantitative risk assessment of planned management practices to demonstrate their safety down to 1 E–6 cancer risk and HQ 1 or an alternative risk target.

For the qualitative review, EPA would specify environmental and administrative performance goals and the state would have to submit a narrative description demonstrating how the particular combination of technical standards and administrative requirements in their program protects human health and the environment and meets those performance goals, for example:

- Ground-water protection: A state program must address adequately contamination of groundwater from a facility.
- Surface water protection: A state program must address adequately prevention of contamination of surface water which may occur through the run-off of pollutants from the disposal facility to surface waters.
- Address other environmental and performance goals such as controlling air exposures, siting, ensuring long-term integrity of the site, etc.
- Permitting and enforcement authorities and public participation: A state program has appropriate authorities and a system for prior approval of waste management facilities, and public participation either on a site-specific basis or for input to development of class permits.
- Adequate resources: A state program has adequate resources for administration of the program including permitting, inspections and enforcement.

Under a quantitative risk review approach, a state would have to document their permitting and enforcement authorities and public participation requirements, as well as the adequacy of their program resources. The state would also have to demonstrate to EPA how the particular combination of technical management controls or design standards in its industrial non-hazardous waste program would ensure meeting 10–6 risk levels. In order to do this, EPA would have to refine or expand the multipathway exposure model. EPA would then either make its multipath model available to states or work with them to demonstrate that unit-specific state program controls would meet the 10–6 risk level for a particular class of facilities receiving conditionally exited wastes. The Agency solicits public comment on whether states can propose alternative risk targets for use in state contingent management programs.

Regarding program breadth, the Agency believes either broad, state-wide programs, or more narrowly focused contingent management programs could be developed. Under a broad-based state program approach, the Agency would approve as qualified only those state subtitle D programs that adequately regulate all state non-hazardous waste management and wastes. Under this approach, states with programs deficient in certain aspects would be required to upgrade before participating in the contingent management program. However, the Agency recognizes that state subtitle D programs vary widely in the particular units and waste types that are covered, among other factors. Therefore, as an alternative approach, EPA might determine that a program qualifies for conditional exit only for particular units (i.e. for landfills only, or for landfills and surface impoundments, etc.). In other cases, a state program might focus narrowly on developing appropriate contingent management for particular waste streams generated by key industries in the state.

In considering how to use these key factors in developing contingent management regulations, the Agency identified three options in addition to the three options described above under the national programs. These will be identified in this discussion as options four, five and six.

Under option four, the Agency would use the 1 E–4 and HQ 1 risk cap on waste and would conduct a qualitative review of the state program using the criteria described above. This could be done either on a narrow program basis, or based on a program that qualifies broadly.

Under option five, the Agency would also use the 1 E–4 and HQ 1 risk cap for waste being contingently managed, but would require that states conduct risk modeling of proposed disposal to demonstrate that risks from the waste as disposed would be not greater than the 1E–6 and HQ1 risk targets of the base case. This approach could be taken either with the entire state program, or only certain waste management practices. In particular, site-specific factors, as described below, could be considered under this approach. These could include facility size, local rainfall, or local hydrogeology, among others. Location of the nearest drinking water well might also be considered by the state in evaluating risks, if allowed under state regulations and regulatory policies. In this case, the state would be

required to demonstrate to EPA, using the multipathway analysis or another risk assessment model, how they would ensure on a site-specific basis that facilities disposing of conditionally exited wastes meet a 10–6 risk level. Development of this approach might also require quite different risk models, since the multipathway model as it currently exists incorporates a number of simplifying assumptions to capture a broad range of possible conditions. The Agency would have to ensure that a model used for this analysis can incorporate complex site-specific variables, or develop a set of simplified models that could be applied by states. However, this approach would provide maximum flexibility to states and generators to tailor exit levels to particular waste and site characteristics.

Under option six, the Agency would allow wastes posing up to 1 E–3 cancer risk and HQ 10 (in an unregulated management setting), and allow either a qualitative or quantitative review of the state program, but allow participation only by state programs that are broadly qualified, i.e., that are qualified in all aspects of the program, for currently managed industrial non-hazardous waste. The Agency would be more comfortable with this approach because it would be more assured of safe management of the waste regardless of where in the state it is disposed.

The Agency also solicits public comment on whether more than one of the options discussed above should be developed at the same time. For example, the Agency might establish both the option 1 proposal described below, and establish a state-based contingent management program based on any of options four, five or six. By doing so, the Agency would establish option 1 as a minimum national standard, but this approach would allow that states to go further they choose to do so.

3. Establish Exit Levels That Consider Regional or Site-Specific Factors That Might Affect Constituent Fate and Transport′

In addition to facility design factors, there are other location-specific factors that may substantially affect the risks and the appropriate exit levels for waste management units. Examples of such factors include: Rainfall and hydrogeology at the site and the distance to off-site receptors. The average amount of precipitation falling on these waste management units may affect both the amount of leachate to groundwater and soil run off to off-site receptors. Thus, the Agency could determine geographic regions based upon climatic zones, could require precipitation data from the most appropriate certified rain gauge, or could require site specific precipitation information. However, in order to do this the Agency would need to verify that the other model inputs are appropriate for each of the regions or else develop new region-specific inputs. Therefore, the Agency solicits data and comment on technically appropriate ways to establish exit levels based on rainfall levels.

Other site-specific factors that may significantly affect the groundwater pathway are the hydraulic conductivity of the soil surrounding the waste management unit and the distance to the nearest drinking water wells. If the hydraulic conductivity of surrounding soil is relatively low—such as in soils dominated by clays—then the flow of any potentially contaminated leachate to ground water could be effectively retarded for long periods of time (though flow to surface waters or other pathways might change, perhaps increasing). Landfills located in soils with low hydraulic conductivities (for example, 10–6 cm/sec or lower) could provide an extra level of environmental protectiveness for ground water that could be considered in developing this approach. For example, the Agency might address this effect by developing exit levels corresponding to different classes of hydraulic conductivity. Alternatively, differences in hydraulic conductivity could be considered through a site-specific process. This approach would not be relying on engineered controls, but on natural attributes of the location. EPA solicits comments on whether such attributes can be readily determined or in what circumstances they can be readily determined and relied upon.

The Agency did some limited sensitivity analysis with respect to ground water risk modelling to look at the concept of developing different exit levels depending on broad hydrogeological regions. The results of that analysis are in the docket. The Agency requests comment as to the value of investing in this approach and practical considerations the Agency should weigh in deciding whether to pursue this approach.

Finally, where the nearest drinking water wells are at an unusually great distance from the waste management unit, corresponding exit level concentrations associated with groundwater exposures that took that distance into account could be significantly lower if the Agency's goal were solely the prevention of current exposure to groundwater contamination. However, many states have policies to not degrade groundwater and EPA believes it is quite difficult to predict future needs for uncontaminated groundwater. EPA believes that the groundwater modelling done for this rule reflects a balanced view by using the distribution of nearest wells. However, EPA expects it will receive comments suggesting that it should consider allowing facilities with no moderately nearby drinking water wells to take that into account. The Agency seeks comment on the implementation issues associated with taking these factors into account and the related policy judgement as to whether the goal of more site-specific assessment should be prevention of risk based on current ground water use, reasonably foreseeable use, or based on distances that would be more protective of the potential future use of ground water.

The Agency also seeks comment on other location-specific factors or combinations of factors that may be particularly important in mitigating the risks associated with waste disposal. The Agency also requests comment on alternative approaches for taking these location-specific factors into consideration in developing exit levels for waste management. One option for doing so would be to develop additional tables of exit levels (in addition to Option 2) for waste management units that reflect the effect of some of the most important location-specific factors (e.g., exit levels for areas with low annual rainfall, or indexed to landfill size). As an alternative option, the Agency could develop ''reduced form'' equations that specifically relate the exit level concentration to critical location-specific factors (such as annual rainfall). The Agency requests comment on the merits of these approaches and on alternative options that might be used to better accommodate the effect of location-specific factors on exit levels.

D. Land Disposal Restrictions for Contingent Management Options

Any conditional exemption would offer much more significant relief if it eliminated or reduced the need to comply with more stringent LDR treatment requirements. As explained above in Section VI of today's proposed rulemaking, however, under *Chemical Manufacturers Association* v. *EPA* (the ''Third Third'' decision) LDR treatment standards generally continue to apply even if a waste ceases to be classified as a hazardous waste. If an LDR treatment standard were lower (more stringent) than a contingent management exit level, the waste would still need to meet the LDR standard.

EPA has proposed two approaches to integrating HWIR exit levels and LDR treatment requirements for the base option. First, EPA is proposing that LDR treatment requirements will never apply to wastes that meet all applicable exit levels at the point of generation. Second, for wastes which meet exit levels subsequent to the point of generation and, consequently, remain subject to the LDR regime, EPA is proposing to allow some exit levels to serve as alternative risk-based treatment standards meeting the ''minimize threat'' standard under RCRA section 3004(m). EPA expects these proposals to reduce the burden of complying with LDR requirements.

As explained more fully in the detailed presentation of option 1 below, EPA is proposing both of these approaches for contingent management option 1 (relaxed exit values for wastes that are not placed in land application units). EPA's rationales are set out in that discussion.

EPA anticipates that it might also be willing to propose to use exit levels developed under option 2 (separate exit levels for each major type of waste management unit) to serve as risk-based ''minimize threat'' standards. If EPA filled the gaps in its current multipathway risk assessment, it would feel fairly confident that the multipathway analysis plus the groundwater analysis identified constituent concentrations that minimize threats to human health and the environment for each class of waste management units. The modeling for both analyses would assume each type of unit was located in a ''reasonable worst case'' physical setting and was subject to minimal management controls. EPA, however, would expect some members of the public to argue that unit-specific exit levels should not be considered ''minimize threat'' levels because risks to human health and the environment would not be minimized if exempted waste ended up in the wrong type of management unit. EPA might try to address such concerns by imposing conditions such as tracking or reporting systems on persons claiming the exemptions.

EPA would expect similar objections to the option of allowing wastes that meet option 2 levels to exit if their constituent concentrations met unit-specific exit levels at the point of generation. Members of the public might again be concerned about the possibility that wastes could be placed in a unit type requiring lower (more restrictive) exit levels. As suggested above, however, EPA could impose conditions to help ensure that exempted waste goes only to a unit where the exit levels in fact minimize threats.

Providing LDR relief for the remaining options for conditional exemptions would raise additional legal and practical issues. All of the remaining national and state-based options rely on design or operating controls (such as liners) to help prevent dangerous concentrations of hazardous constituents from reaching human or environmental receptors. EPA, for example, would be reluctant to take into account control measures that would be difficult for inspectors to verify during site visits.

It might be somewhat easier to take into account factors—such as annual rainfall, depth to groundwater, and subsurface soil and rock formations—that relate to a unit's physical setting. EPA has already proposed to interpret section 3004(m) to allow consideration of a unit's physical setting in making site-specific minimize threat findings. See the proposed LDR standards for contaminated soil, 58 Fed. Reg. 48123 and 48155 (Sept. 14, 1993). EPA requests comments on all of these issues related to the integration of conditional exemption options to the LDR standards.

E. Contingent Management of Mixed Waste

The Department of Energy (DOE) has also expressed interest in EPA's contingent management approaches to managing waste that is mixed radiologic and RCRA hazardous waste (''mixed waste''). Mixed waste may be managed by DOE-regulated facilities or commercial facilities regulated by the Nuclear Regulatory Commission (NRC). EPA expects that the general approach in today's proposed regulation would be applicable to mixed wastes as well as listed-only hazardous wastes. DOE has suggested that because mixed wastes subject to RCRA are also subject to AEA disposal requirements which control releases of and exposure to radioactive hazards, these AEA requirements may address releases of chemically hazardous constituents as well, and it would be reasonable to allow more mixed wastes to exit Subtitle C because of the AEA requirements. DOE believes these AEA requirements would also provide adequate protection of human health and the environment from chemically-hazardous constituents. DOE has submitted several studies to EPA in support of their views, and the Agency has placed those documents in the public docket for review. The Agency will also undertake a review of these data to better understand the additional increment of protection provided by AEA low-level waste site performance standards. With that review ongoing, the Agency is proposing, and requesting public comment on, adaption of option four above to DOE's special circumstances. The Agency requests comment on allowing mixed waste meeting conditional exit levels for chemical toxicity estimated at 10–4 cancer risk and HQ 1 (modeled at an uncontrolled site), to exit Subtitle C if managed in AEA disposal facilities.

DOE has also urged the Agency to consider establishing a categorical exclusion from RCRA requirements for mixed waste debris that is immobilized. One of several macro- or microencapsulation methods could be used to immobilize the debris, including use of portland or other cement products, or various polymer products. Under such an exclusion, all immobilized mixed debris could be managed outside of Subtitle C, but would still be required to be disposed in AEA disposal facilities. No testing of the debris would be required to identify toxic constituents or the levels at which they might be present. DOE has conducted a study of leaching rates for certain toxic constituents from stabilized debris and submitted it to the Agency for review in support of DOE's conclusion that immobilized debris can be managed safely outside of subtitle C if disposed in an AEA facility. Because the Agency has only recently received this study, it has been unable to adequately review and evaluate the data presented. The Agency solicits public comment on this approach, the DOE study, and solicits any other available data that are relevant to this topic.

Finally, DOE has developed data on vitrified waste, and requested that the Agency consider the environmental protection conferred by this treatment process. Again, the Agency has not had adequate time to review and evaluate the DOE data, but has placed it in the public docket and solicits public comment on the data and DOE's preferred approach to mixed waste management.

In soliciting comment on these exit procedures for mixed waste, the Agency recognizes that a number of states hosting DOE facilities have expressed concern over the proposal's effect on their states ability to adequately regulate mixed waste under states and federal law as intended by RCRA and the Federal Facilities Compliance Act. These states also believe that significant details of the DOE proposal are lacking and additional analysis would need to occur before the procedures can receive adequate comment. Therefore, the Agency intends, to the extent consistent

with the schedule negotiated in the consent decree for this rulemaking, to publish a supplemental proposal on HWIR mixed waste exit criteria after initial comments have been received. The supplemental proposal would further describe the regulatory options being considered and will solicit additional comment on more specific options.

X. Implementation of Conditional Exemption Option 1

A. Introduction

Using the concept of contingent management, EPA is proposing to create a second, alternative set of exit levels for nonwastewaters that are managed in landfills or monofills, but not land treatment units. Persons wishing to utilize this alternative exit scheme would not only have to meet the recalculated concentration limits for all constituents in their wastes, but also comply with conditions prohibiting land treatment. Compliance with notification and tracking requirements described in more detail below will also be necessary. The exit levels for this alternative are set out in appendix XI of 40 CFR part 261; the requirements and conditions are set out in proposed § 261.37. Nonwastewaters that do not meet the exit levels in appendix X to 40 CFR part 261 will be eligible for exit only if they meet the more relaxed levels in appendix XI of 40 CFR part 261 and comply with all relevant conditions.

EPA derived the levels for this alternative by deleting all of the modeling results for the land treatment scenario from its risk assessment data base, and selecting the lowest remaining exit value from the remaining modeling results for other types of waste management units. The same approach used to establish exit levels presented in Section V. of today's proposed rulemaking was used to establish exit levels under this option. That is, where complete risk data was not available, surrogates were used to extrapolated exit levels (see Section IV.H) and where analytical limitations existed, EQCs were used as exit levels (see Section IV.I). As a practical matter, this approach affects only the exit levels for nonwastewaters. As explained above in section IV, EPA created the original exit levels for nonwastewaters by grouping the modeling results for the unit types typically used to manage solid materials (ash monofills, piles, and land treatment units) and selecting the lowest value from all pathways modeled for these scenarios. EPA created the separate wastewater exit levels by grouping the results from units typically used to manage liquid wastes (tanks and surface impoundments). Consequently, the wastewater exit levels are not based on the modeling of land treatment units, and these levels are not affected by the decision to exclude results from the land treatment scenario.

The Agency is proposing that the contingent management exemption be self-implementing. Therefore, the claimant would have the burden of demonstrating that all of the provisions for the contingent management exemption described herein have been met. In an enforcement action, a waste for which a contingent management exemption is claimed would be considered a Subtitle C hazardous waste unless the claimant was able to produce evidence that all of the conditions of the exemption have been met.

B. When Contingent Management Exemptions Become Effective

The Agency is proposing two options for the point at which the contingent management exemption would become effective.

1. Option 1A—Placement of the Waste in a Qualifying Unit

Under the first option, the conditional exemption for ''contingent management'' nonwastewaters would not become effective until the waste had been placed in a qualifying unit. Prior to actual disposal, the nonwastewater would be managed as a hazardous waste according to all applicable RCRA provisions, including 40 CFR parts 262 (for generators) and 263 (for transporters) and part 268 (regarding treatment prior to land disposal). These requirements include compliance with the waste manifest provisions of 40 CFR part 262, subpart B, and the pre-transport provisions of 40 CFR part 262, subpart C, which contains, among other provisions, the provisions governing hazardous waste accumulation. Treatment and storage prior to disposal would remain subject to parts 264, 265, and 270.

The Agency believes this approach makes it easier to ensure consistent implementation and safe management of the waste. It also decreases the potential implementation concerns that may arise if some states adopt this rule as part of their authorized programs and others do not. For example, this approach would reconcile transportation concerns that could arise if waste, conditionally-exempt in one state, were transported through a state that had not adopted the contingent management exemption as part of its authorized program.

Under this option, the Agency is considering and requesting comment on the applicability of amending 40 CFR 264.1 and 265.1 to allow off-site disposal facilities to store candidate contingent management exempt wastes for up to 10 days without becoming a subtitle C treatment, storage, and disposal facility, prior to ultimate disposal in a monofill or landfill. The Agency requests comment on whether 10 days is a sufficient or appropriate length of time, and if not, what time period may be appropriate.

Under the above approach, contingent management exempt nonwastewaters being disposed of on-site also would not become exempt until placed in a disposal unit meeting the requirements established under this rule. However, since the current waste accumulation provisions of 40 CFR 262.34, allow a generator to store hazardous waste on-site in tanks, containers or containment buildings for 90 days without becoming a Subtitle C storage facility, EPA believes that this approach should not place undue burdens on a generator. EPA requests comment on whether § 262.34 will in fact enable generators of exempt nonwastewaters to store wastes on-site in unpermitted units for a reasonable period of time prior to land disposal. EPA acknowledges that nonwastewaters are typically not stored in tanks.

2. Option 1B—Effective Upon Meeting the Exit Levels

The second option that EPA is considering would allow a nonwastewater to become exempt from all hazardous waste requirements except part 268 as soon as it meets appendix XI of 40 CFR part 261 exit levels and the claimant has met all the requirements and conditions of the exemption, including certifying that the waste will be managed in a monofill or land disposal unit. The goal of this approach is to ensure nonwastewaters will not be managed in a land treatment unit, which was found to pose the greatest risk for many routes of exposure. Under this approach, storage, treatment and transportation of the nonwastewater could take place outside of Subtitle C control upon meeting the requirements and conditions for the exemption. If EPA were to adopt such an approach, it would impose conditions to ensure that the exempted nonwastewater reached the types of units for which the exemption was designed. Various options are suggested below in Section D.1.

Finally, EPA notes that the proposed approaches have different implications for LDR relief. These differences, which

principally concern the availability of LDR relief for nonwastewaters which meet the appendix XI of 40 CFR part 261 exit levels at their point of generation, are discussed in more detail in section H. below.

C. Requirements for Obtaining an Exemption

The following requirements would be applicable to both of the approaches discussed above. Requirements for meeting the contingent management exemption would include the sampling and testing requirements of § 261.37 (b)(1), the public notice requirements of § 261.37 (b)(3) and the notification to the implementing Agency requirements of § 261.37 (b)(4), similar to those respective requirements for the base exemption in §§ 261.36 (b) (1), (3) and (4). The Agency notes that these provisions would be directly enforceable Subtitle C requirements imposed prior to obtaining an exemption rather than conditions for maintaining the exemption.

1. Sampling and Testing Requirements for Contingent Management Exemptions

The Agency is proposing that the sampling and testing requirements for the contingent management exemption be the same as those proposed for the base exemption in Section 261.36 (b)(1). The Agency requests comment on whether the sampling and testing requirements for the base exemption would be appropriate for the contingent management exemption.

2. Requirements for Public Participation in Contingent Management Exemptions

To provide the public with access to information, the Agency is proposing to require compliance with the public notice requirements in proposed § 261.37(b)(3), similar to those in § 261.36(b)(3). The first time a claimant provides the Agency with notification of an exemption claim for contingent management wastes, he will be required to publish a notice of the claim in a major local newspaper general circulation. The notice must include the name and address of the facility, the description of the waste (as contained in the notification), a brief general description of the process producing the waste, an estimate of the quantities of waste claimed to be exempt, and information about the Agency where the claimant has sent the notification and supporting information. In addition, the public notice must include that the waste meets the contingent management exemption levels in appendix XI of 40 CFR part 261 and that the waste will be disposed of in a monofill or land disposal unit.

3. Notification Requirements for Contingent Management Exemptions

To qualify for a contingent management exemption, a claimant would need to submit to the authorized State Agency Director a formal notification of its claim that waste meets the contingent management exemption levels in Appendix XI of 40 CFR part 261 and will be managed in accordance with the management conditions. In addition to the requirements under § 261.36 (b)(4), the contingent management exemption notification to the implementing Agency must include an accompanying certification that the waste meets the contingent management exemption levels in appendix XI of 40 CFR part 261 and that the waste will be disposed of in a monofill or land disposal unit.

The Agency requests comment on whether these requirements, similar to § 261.36 (b)(1),(3) and (4), will provide adequate information to the implementing agency and the public on what exemption levels, i.e., appendix X to 40 CFR part 261 or appendix XI of 40 CFR part 261, are being claimed and on how the waste is being managed. These provisions would be requirements rather than conditions.

D. Implementation Conditions

As set out in § 261.37 (d) and explained in the base exemption implementation preamble (section VIII. B., Implementation Conditions) certain conditions have to be met to maintain the exemption after the claim has become effective. Under both option 1A and 1B, the following conditions would have to be met to maintain the contingent management option: Submitting changes in notification information to the Director within 10 days of the change, following the schedule for retesting, preparing and complying with a sampling and analysis plan for every retest, maintaining constituent concentrations in the nonwastewater at or below the exemption levels in appendix XI, meeting applicable treatment levels under § 268.40, and maintaining records on-site for three years. These conditions are very similar to those proposed for the base exit in Section VIII of today's proposed rulemaking. In addition to those conditions established for the base exemption, the claimant would also have to ensure that the waste was managed in a qualifying unit.

Claimants, under both options, always have the obligation to identify whether they are generating a hazardous waste and to notify the appropriate government official if they are generating a hazardous waste. (Section 3010; 40 CFR 261.11.) If any nonwastewater claimed as exempt under the contingent management proposal tested above the exit levels in appendix XI to 40 CFR part 261 at any time, that waste and any mixture or derived-from forms of that waste would have to be managed as hazardous waste, including compliance with all notification requirements, until testing demonstrated that the waste was below the exit levels.

1. Tracking Conditions

EPA is proposing to modify the manifest regulations to reflect the fact that wastes exiting under this exemption need not be disposed of in treatment, storage or disposal facilities that are subject to the requirements of § 264.71–264.72 or Section 265.71–264.72 requiring the facility that receives the waste to sign and return the manifest. EPA is not proposing to require the owners and operators of nonhazardous waste facilities that accept wastes exempted under this option to comply with these duties. As EPA concluded when it decided not to extend recordkeeping duties related to the LDR program to nonhazardous waste facilities accepting de-characterized hazardous wastes, it would probably be difficult to provide reasonable notice to all the members of this diverse universe, which has little or no other contact with the hazardous waste management regime, of these Subtitle C responsibilities.

EPA is proposing instead that the claimant of the exemption be responsible for ensuring that the manifest is returned and that it—or some other document—provides information showing that the facility designated on the manifest did in fact receive the waste and did place it in a landfill or monofill (and not a land treatment unit). Billing documents may already supply some of the needed information. Where they do not, EPA believes that claimants should generally be able to contract with the receiving facilities to obtain the necessary information. In some states, nonhazardous waste rules may also require disposers to furnish generators with some of the necessary information. EPA proposes to revise the manifest document as necessary to ensure that nonhazardous waste facilities can be designated as receiving facilities for listed wastes meeting all of the other requirements for obtaining an exemption under this option.

The alternative to this approach would be to require owners and operators of nonhazardous waste facilities to sign and return manifests as a condition of the exemption. Failure to satisfy this condition would void the exemption and return the waste to the hazardous waste management regime, even if it were in fact safely placed in an appropriate waste management unit. EPA requests comment on this alternative.

Under option 1A, where all Subtitle C regulations apply until placement of the nonwastewater in a monofill or landfill, EPA is proposing conditions that make the claimant responsible for obtaining a copy of the manifest to ensure the waste has reached its destination. The claimant would also have the burden of acquiring evidence from the receiving facility that the waste was placed in either a monofill or land disposal unit.

Under Option 1B, where the exemption becomes effective upon the waste meeting the appendix XI of 40 CFR part 261 exit levels, any tracking system established would be a condition that the claimant would have to meet to maintain the contingent management exemption. To ensure that listed wastes exempted under this option actually go to a landfill or monofill, EPA is proposing to require exemption claimants to comply with the requirements of part 262 (with the modification discussed above) relating to the uniform hazardous waste manifest.

Since this option allows wastes to go to facilities that are not subject to the duty to return the manifest under § 264.71–264.72 or § 265.71–264.72, EPA is proposing to require the claimant to ensure that the manifest is returned and that it—or some other document—provides information showing that the facility designated on the manifest did in fact receive the waste and did place it in a landfill or monofill (and not a land treatment unit). The duties would be identical to those proposed above for claimants under the first option. The rationale for imposing the duties on the claimant—and not the receiving facility—is also the same.

An alternative which EPA requests comment on is the concept of imposing conditions that require a uniform, national tracking document similar to the current uniform manifest to accompany the waste until it reaches its final destination. This document could inform transporters and other waste handlers that the waste is an exempt hazardous waste that must be managed in a monofill or land disposal facility and loses its exemption if it is managed in a land treatment unit. EPA could further require that the disposal facility certify that the nonwastewater was disposed in a monofill or land disposal unit and return the tracking document and certification to the original exemption claimant. EPA could also ensure that the implementing agency (EPA or an authorized state) received notice of any problems in waste disposal by imposing requirements similar to the current § 262.42 exception reporting provisions.

Another alternative would be to require, in lieu of a tracking document, a contractual agreement between the exemption claimant and the receiving facility specifying the type of waste the receiving facility will accept, the type of units it will use, and information on the volume and frequency of deliveries. EPA could require either the claimant or the receiving facility (or both) to maintain a copy of the agreement on-site and make it available to state or EPA inspectors. EPA also could require exemption claimants and transporters to create and keep similar contracts. EPA, however, requests comment on whether transporters would require claimants to provide information on the exempted waste's origin and the regulatory limits on its disposal options even without federal regulation.

EPA requests comment on whether any of these alternatives can adequately ensure that mismanagement will not occur so that these wastes managed under this option 1B approach would not need to be classified as hazardous.

2. Qualifying Unit

A ''qualifying unit'' for today's contingent management proposal is a landfill or monofill. For purposes of today's proposal, a landfill is defined in § 260.10 as being ''a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave or a corrective action management unit.'' The Agency is proposing a definition for monofill in § 260.10 as a landfill where waste of only one kind or type is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit. Also, for today's proposal, a land treatment facility is defined in § 260.10 as being ''a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.'' The Agency requests comment on whether other units could be considered ''qualifying units'' for contingent management exempt waste and whether additional modeling is needed to assess risks from management of nonwastewaters from other units.

The Agency modeled risks from waste piles in both its multipathway and groundwater analyses. It modeled only groundwater risks form landfills. As explained elsewhere in this preamble, EPA believes that the nongroundwater risks posed by piles generally are higher than the nongroundwater risks posed by landfills. EPA, however, is not proposing to allow wastes placed in piles to be exempt under the exit levels for contingent management option 1. Piles, as defined in Part 260, are temporary units. To ensure that exempted wastes removed form piles went only to landfills or monofills, EPA would have to impose additional tracking conditions. These could be difficult to craft and enforce effectively. EPA currently thinks that excluding piles from eligibility will provide much better assurance that exempted wastes will not be mismanaged.

EPA acknowledges that the exit levels for this option, which are based in many cases on the evaluation of waste piles, may, for some pathways, be more restrictive than levels for landfills. If EPA later completes a multipathway analysis of landfill units, it will be able to use the levels from that modeling in lieu of the modeling from piles to derive exit levels for this option.

The Agency requests comment on the proposal to exclude wastes placed in piles from being eligible for exemption under this option. The Agency also requests comment on the alternatives of allowing wastes to be exempt either permanently or temporarily (e.g., for one year) after they are placed in piles.

3. Claimant's Duty To Ensure Compliance With All Requirements and Conditions

Today's proposal requires that, in order to claim a contingent management exemption, the person submitting the claim must manage the waste for which the exemption is claimed in accordance with the requirements and conditions established by this rule. To satisfy this rule, the claimant must ensure that the waste is actually disposed of in a qualifying unit. The burden of satisfying all conditions for the exemption falls on the claimant as the person in the best position to determine eligibility of a waste for an exemption and to ensure informed waste management decisions. The claimant may enter into contractual

arrangements with receiving facilities to allocate responsibility for satisfaction of the conditions among themselves although such arrangements will not relieve the claimant of liability if the receiving facility manages the waste improperly. It should be noted, however, that facilities receiving contingent management exemption wastes could also become liable for violations of permitting, Subtitle C treatment, storage and disposal standards should they dispose of the nonwastewaters that do not qualify.

Under today's proposal, § 261.37(g), the burden of proof to establish conformance with the exemption criteria is on the claimant in the event of an enforcement action. One alternative for simplifying the claimant's burden of proving compliance with all conditions would be to set out in the rule certain documentation that, while not necessarily required of the claimant, presumptively would be sufficient evidence of satisfaction of the management condition. Of course, EPA could rebut this presumption regarding actual disposal through evidence that the claimant's documentation is deficient or inaccurate. For example, claimants might be able to develop rebuttable evidence of proper off-site disposal by keeping correspondence with the receiving facility, indicating that the waste went to a landfill or monofill, and by keeping a returned manifest which indicates that the waste reached that facility. The Agency is taking comment on whether establishing certain evidentiary standards would provide useful guidance to claimants on how to satisfy the management condition and provide helpful incentive for claimants to maintain proper documentation of their exemption claims.

Comment is also requested on whether any additional conditions or requirements, substantive or procedural, should be imposed on claimants to ensure that the contingent management exemption waste is actually managed in a qualifying unit.

E. Retesting and Recordkeeping Conditions for Contingent Management Exemptions

Claimants continuing to generate or otherwise manage waste for which they continue to claim a contingent management exemption would be required, under § 261.37(d)(2), to retest the waste with the same frequency and under the same conditions as is being proposed for the base exemptions, § 261.36(d)(2). If a claimant finds that the exempted waste no longer meets the constituent concentration levels on Appendix XI of 40 CFR part 261 for the contingent management exemption, or that the waste has not been placed in a landfill or monofill, the claimant must comply with all applicable requirements for generators of listed wastes (including disposal of waste at a Subtitle C facility) and the disposal facility would have to comply with all of the requirements for owner/operators of treatment, storage, and disposal facilities under 40 CFR parts 262–270. The generator and disposal facility's obligations would also include renotifying the Agency of hazardous waste management activity using EPA form 8700–12.

Under § 261.37(d)(6), claimants also would be required to maintain on-site, for at least three years after Agency receipt of the notification and certification, all documentation required under this rule including, but not limited to, the sampling and analysis plan and test data and the accompanying notification and certification. These requirements are similar to those proposed for the ''base'' exemption in § 261.36.

The Agency requests comment on alternative record retention periods for claimants such as 5 years, which corresponds to the applicable statute of limitations period at 28 U.S.C. 2462. An extended record retention period may assist claimants in substantiating their conformance with the contingent management exemption criteria. The documentation must be available for review by the Agency or an authorized State at the time of site inspection. The three-year claimant record retention period will be automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

F. Compliance Monitoring and Enforcement for Contingent Management Exemptions

Since contingent management exemptions are self-implementing, the Agency needs to rely on its enforcement authorities to ensure that the exemptions are being applied in an appropriate manner and that only those wastes that are truly nonhazardous are relieved from Subtitle C disposal requirements. Compliance monitoring and enforcement of the contingent management program would be carried out under existing authorities and conditions with which the regulated community should already be familiar.

Claimants must comply with all of the previously described conditions of the exemptions to qualify for the exemptions. All persons who manage waste for which an exemption has been claimed must manage the waste as required under Subtitle C during periods when any of those conditions are not met. Claimants that fail to comply with the applicable conditions of the contingent management exemption risk enforcement action for violations of Subtitle C requirements, including administrative, civil and criminal penalties.

1. Compliance Monitoring

The Agency is proposing that compliance monitoring of the contingent management exemption occur through EPA and State oversight, primarily through review of notifications and inspections.

The Agency has the authority, under section 3007 of RCRA, to require submission of information and to conduct inspections of facilities which EPA has reason to believe may be generating or managing a hazardous waste. EPA and States may do confirmatory sampling and analysis to determine whether a waste meets the exemption levels. Under this authority, the Agency would be able to inspect a non-Subtitle C facility receiving contingent management exemption waste.

Inspections of off-site laboratories may also be performed.

2. Enforcement

The contingent management exemption criteria proposed today would create an exit from the Subtitle C system only so long as the requirements and conditions established for the exemption are met. Failure to comply with any of the conditions for the exemption would mean that the wastes would not be exempt from Subtitle C, and the claimant could be subject to immediate enforcement action for violation of Subtitle C requirements.

The Agency has the authority under this regulation and RCRA Section 3007 to require submission of information on the management of exempted wastes in a situation where the Agency suspects the claimant has not satisfactorily determined whether a waste meets the appropriate exemption levels. Alternatively, the Agency may require improved analysis using an administrative or civil action under section 3013. Failure to manage the contingent management exemption waste in accordance with the conditions would void the exemption and the conditionally exempt waste would be subject to full Subtitle C regulation. The receiving facility, therefore, would become a Subtitle C treatment, storage, and/or disposal facility requiring a permit.

In an enforcement action, compliance with the terms and conditions of the exemption may be raised as an affirmative defense, but the burden will be on the defendant to establish eligibility for the exemption and compliance with the conditions necessary to maintain the exemption. See 50 FR 642 (Jan. 4, 1985) for a discussion of EPA's authority to place such burdens on defendants.

Claimants may not use the contingent management exemption as a means of avoiding enforcement actions. For example, a generator who is the subject of an Agency enforcement action cannot claim that the waste in question is exempted from Subtitle C under the contingent management exemption unless a valid exemption notification for that waste has been previously submitted to the Agency and the required documentation to support the claim exists at the facility and satisfies the requirements of the regulations. The contingent management exemption cannot be used in a retroactive fashion to avoid enforcement actions. Similarly, these exemptions cannot be used as a legal defense prior to the effective date of promulgation of this rule.

G. Exports of Wastes Eligible for Contingent Management Exemptions

Under option 1A of today's proposal, contingent management exemption wastes would remain hazardous until actually disposed of in a qualifying unit. The waste would thus remain subject to all applicable requirements of 40 CFR parts 262 and 263, including export requirements.

Under option 1B where the waste becomes exempt upon meeting the contingent management exit levels, comment is requested on whether these exempt wastes should still remain subject to the export requirements of 40 CFR part 262. Comment is requested on whether these export requirements are necessary to ensure that the contingent management exemption waste will be properly managed in the receiving country.

H. Land Disposal Restrictions

As discussed above in section VI, EPA is proposing two approaches to integrating LDR requirements with the exit levels for the base option. First, EPA is proposing that LDR treatment requirements will never apply to wastes that meet exit levels for the base option at the point of generation. Second, for wastes which remain subject to LDR requirements, EPA is proposing to allow exit levels based solely on the combined multipathway and groundwater analyses to serve as alternative risk-based LDR standards meeting the ''minimize threat'' standard in section 3004(m) of RCRA. EPA believes that both approaches are appropriate for contingent management option 1.

To eliminate the duty to comply with the LDR rules for wastes that meet the base option exit level at the point of generation, EPA is taking the position that such wastes are defined as hazardous waste pursuant to their listing descriptions for such a brief period of time that they effectively never become subject to Subtitle C requirements, and LDR requirements never apply. It is relatively easy to apply this theory to option 1B presented above in section B.2. that allows nonwastewaters to exit as soon as they have met the appropriate concentration limits and to remain exempt so long as they are managed in landfills or monofills. Such wastes need only meet the exit levels to obtain their exemption. If they meet them at the point of generation, they would appear just as entitled to LDR relief as wastes meeting the exit levels for the base option.

Under option 1A, however, nonwastewaters will not exit until they both meet the exit levels and are placed in a landfill or monofill. Such wastes would not be eligible for exit at the point of generation even if their constituent concentrations were low enough. Rather, they would be subject to Subtitle C regulation for a significant portion of their ''cradle-to-grave'' management cycle. It would be difficult to argue that these wastes had never really been regulated as hazardous wastes, and that LDR treatment requirements did not apply. Consequently, EPA is not proposing to allow nonwastewaters to become exempt from LDR requirements at the point of generation under this sub-option. EPA requests comment on alternative legal theories that would provide a better basis for arguing that nonwastewaters subject to this sub-option could be exempt for the LDR rules if they meet exit levels at the point of generation.

Both options 1A and 1B have identical exit levels based on removing the predictions for land treatment units and using the next-highest concentration as the exit level. EPA is proposing to allow the exit levels that are based solely on the multipathway/groundwater risk analyses to serve as minimize threat levels for both options 1A and 1B. These levels represent concentrations posing minimal low threats for nonwastewater placed in landfills, monofills and waste piles. They are based on the same risk assessment used for the assessment for the base option. They make the same ''reasonable worst case'' assumptions about the units' physical setting and the same minimal assumptions about control measures. Hence, EPA believes that these exit levels sufficiently reduce threats to human health and the environment to meet section 3004(m)'s ''minimize threat'' standard.

EPA acknowledges that option 1B, allowing wastes to exit Subtitle C before they are placed in the right kind of land disposal unit, presents an additional type of risk. Under option 1B, it may be more difficult for EPA to ensure that exited wastes will not be placed in land treatment units. (Under the alternative option, option 1A, Subtitle C manifest and tracking requirements would apply.) As explained above in section B., however, EPA will create conditions for option 1B to help ensure that exempted wastes are not disposed of in land treatment units. EPA believes that these conditions will sufficiently reduce the risk of inappropriate disposal that the exit levels will continue to minimize threats. EPA requests comment on this aspect of the proposal.

XI. Relationship to Other RCRA Regulatory Programs

Today's rule proposes specific conditions and exit criteria that would exempt listed hazardous wastes, including waste mixtures and derived-from wastes, from Subtitle C regulation. Below is a discussion of how this proposed rule would affect other relevant RCRA regulatory programs.

A. Hazardous Waste Determination

Under current RCRA regulations, any person who generates a solid waste must determine if that waste is a hazardous waste in accordance with the procedures outlined in 40 CFR 262.11. According to 262.11, generators must first determine if their waste is excluded from regulation under 40 CFR 261.4. Generators must then determine if the waste is listed in subpart D of part 261. If the waste was not listed, or for purposes of compliance with 40 CFR part 268, generators must then determine if the waste exhibits a characteristic defined in subpart C of part 261.

Today's proposed rule is an exemption for listed wastes meeting the exit criteria, and does not change the general requirements for generators making hazardous waste determinations under § 262.11 (see discussion of characteristic waste below).

B. Characteristic Hazardous Waste

Today's proposed rule establishes exemption criteria for hazardous

constituents in eligible listed wastes, waste mixtures, or derived-from wastes. If the waste satisfies the exemption criteria proposed today, the waste would not be considered listed hazardous waste. However, the generator must still determine whether the waste exhibits any characteristics of a hazardous waste as specified in 40 CFR 261.21 through 261.24 and continue to meet hazardous waste requirements if the waste does exhibit a characteristic.

C. Toxicity Characteristic Level for Lead

Toxicity characteristic constituents are among those evaluated for exit values in this proposal. In developing the risk assessment for all constituents, including the TC constituents, the Agency examined risks via groundwater and other pathways to humans, and also environmental receptors. In evaluating risks resulting from the groundwater pathway, the Agency used its newly developed CMTP model, and the MINTEQ metals speciation component. The CMTP model estimates groundwater transport using finite source assumptions, and accounting for hydrolysis and adsorption of chemicals to soils. The MINTEQ component estimates dissolution and speciation of metals in groundwater. Using these models, the Agency has developed and is proposing estimates of transport through groundwater specific to each constituent. These estimates are analogous to constituent-specific dilution and attenuation factors (DAFs). These constituent-specific DAFs were contemplated for several constituents proposed for regulation in the TC rulemaking, but not finalized, because the modeling work was not complete. TC levels were set using generic DAFs of 100.

In developing the constituent-specific DAFs, the Agency estimated that lead moves through groundwater much more slowly than predicted by the generic DAF of 100. While the modeling analyses supporting the TC rule and today's proposed rule are somewhat different from one another, the constituent-specific DAF for lead leaching from a landfill was estimated as 5000 rather than the 100 used in the TC rule. Higher leaching rates (giving lower DAF values) were estimated for some other disposal options evaluated in the updated modeling, such as land application and management in surface impoundments. This analysis raised the question of how the TC and today's proposed rules would relate to one another, and whether these results warranted consideration of a change to the TC level of 5 mg/l for lead (updated groundwater modeling of other TC constituents did not show the large disparity between the TC and exit level proposed in today's notice for lead).

In considering these issues, the Agency reviewed several factors. First, the human health risk evaluation for lead has changed since the TC rule was promulgated, resulting in the MCL (on which the TC is based) for lead being reduced from 50 ppb to 15 ppb. Using the new DAF from the landfill scenario plus the new drinking water standard could raise the TC level to 75 mg/l from the current 5 mg/l. However, when lead movement from a land treatment scenario was modeled, a DAF of approximately 770 resulted, and a TC level based on this and the new drinking water standard could be approximately 10 mg/l. Another relevant reference point for lead in the environment includes the current OSWER soil direct ingestion level for lead of 400 ppm (as a total concentration, not leachate).

The Agency considered several approaches to potentially proposing revisions to the TC level, including basing a new TC level on groundwater modeling only, basing it on the soil ingestion estimate, or basing it on the driving pathway value and exit level, which considers adverse ecologic effects.

After carefully considering the issue, the Agency concluded that the issue of lead toxicity and movement through the environment is very complex and changes to existing rules could have significant impacts on management of lead-bearing waste and public health. The agency believes regulation of lead-bearing wastes warrants careful consideration and full evaluation of and review of the policy issues associated with considering all potential exposure pathways and risk to human health and the environment. Questions include whether the TC level would be a leachate or totals value, and whether it would be based on groundwater only or other exposure routes and whether it would be human health based or based on ecological risk considerations. Such a comprehensive evaluation is not feasible in the context of the rulemaking proposed today, and so the agency has determined to defer any action on the lead TC level. The Agency recognizes that this is an issue of considerable interest to the public, and will consider review of management of lead-bearing waste at the soonest practical time. In the interim, the lead TC regulation and the exemption regulation proposed today (when finalized) would co-exist as independent regulations.

As described in Section IV.E.3, the Agency has developed groundwater modeling based on both 10,000 year and 1000 year time frames. Today's proposal is based on the 10,000 year modeling time horizon, and the Agency is soliciting public comment on the alternative of using 1000 years. One aspect of the 1000 year modeling results is that the groundwater-based exit levels for more constituents would be above current TC levels for those constituents. These constituents include, in addition to lead, chromium, cadmium, selenium, and mercury. The Agency seeks public comment on this aspect of using the 1000 year time horizon modeling for risk assessment in the HWIR rule.

D. Hazardous Waste Listings

The Agency evaluated the likelihood that untreated hazardous wastes would be able to meet the exemption criteria in an ''pure'' state (e.g., untreated and unmixed) and determined that it is unlikely that the constituent concentrations in many untreated hazardous wastes would be below today's proposed exemption levels or the applicable BDAT standards, particularly for nonwastewaters. Specifically, the Agency's hazardous waste characterization data indicate that the concentrations of toxicants of concern in untreated listed wastes are typically present at levels many times higher than health-based levels or BDAT values. Therefore, it is unlikely that the Agency's current criteria for listing wastes as hazardous will change as a result of the introduction of today's exit criteria into the RCRA regulations. However, EPA has been utilizing a more comprehensive risk analysis in the listing program, looking at multiple pathways for the movement of constituents through the environment, similar to the approach taken in today's proposal. Today's proposed approach may also provide the Agency with a means of assessing whether or not future listings might inadvertently bring into the RCRA system the types of low-concentration wastestreams that would subsequently be eligible for exit under today's proposal.

E. Delisting

The evaluation criteria used for delisting may vary from today's exemption criteria for various reasons. First, delisting is an interactive process that considerable oversight by EPA or authorized State agencies. In delisting, the overseeing agency evaluates the processes generating a specific wastestream in order to determine the constituents likely to be present, as well as the potential variability in the waste.

EPA (or the State) closely reviews sampling procedures, analytical test results, and the accompanying QA/QC data. This oversight increases the confidence in the quality and representativeness of the waste analysis.

Second, delisting is specific to one wastestream, which decreases uncertainties that arise in the more generic approach proposed today. For example, a delisting petition will typically provide the annual generation volume of the waste. Using a specific waste volume as an input to various models has allowed EPA to calculate exit levels that may be somewhat higher than the levels proposed in today's rule. EPA believes that it is reasonable to use higher exit levels for the smaller waste volumes in delisting petitions (see 56 FR 32993 (Reynolds Metals) for further description of volume impact).

The delisting process also allows more certainty in the plausible management scenarios that are modeled to generate exit levels. For example, the characteristics of the waste may dictate the likely disposal method (e.g., disposal in a landfill of de-watered process sludge). In some cases, special management standards may also be a factor (e.g., radioactive wastes are regulated under the Atomic Energy Act, therefore if such a hazardous waste were delisted, disposal options would be severely limited (see 60 FR 6054 (Hanford delisting)).

EPA also considers the applicability of available groundwater monitoring data from land-based waste management units that have received the petitioned waste. Such data are typically required under permitting regulations for hazardous waste facilities (see 40 CFR parts 264 and 265). If any contamination of groundwater appears to be due to constituents from the petitioned waste, EPA will consider this as a basis to deny the petition. The more generic waste identification rule proposed today does not incorporate this additional evaluation criterion.

EPA may also require special testing regimes to ensure waste consistently meets delisting criteria (e.g., see (cite Reynolds Metals, CSI, Hanford)). Because the overseeing agency reviews the petition in some detail, the testing frequency may be closely tied to the potential variability of the waste. A facility that accepts and treats waste from diverse sources would typically have frequent testing requirements (see 40 CFR part 261 appendix IX (Envirite)). In other cases, the testing requirements for some initial period will be extensive, but the subsequent testing may be reduced.

Delisting petitions for wastes that contain toxic constituents which exceed the exemption levels proposed today will continue to be accepted and reviewed by the Agency after promulgation of today's rule. With the exception of a potentially reduced petition review burden, the Agency does not anticipate any changes in the current review of delisting petitions as a result of the implementation of today's proposed exemption. EPA does request comment on which risk models should be used to evaluate future delisting petitions.

F. Requirements for Treatment, Storage, and Disposal Facilities and Interim Status Facilities

In order to implement the changes proposed today, owners or operators of RCRA permitted or interim status facilities may have to amend their waste analysis plans if required under 40 CFR 264.13 and 265.13. Such changes will most likely include the addition of the appropriate analysis methods and changes that may be required in the frequency of testing.

Permitted facilities, in unauthorized States, who elect to employ the exemption procedures and who subsequently prepare changes to their waste analysis plans should, following promulgation of this rule, submit a Class I permit modification to EPA. (EPA is aware that although most States have either become authorized for, or have adopted, the 3-class permit modification regulations, some states may still be operating under the older ''major/minor'' permit modification procedures. Under those procedures, changes to the waste analysis plan would be considered a major modification).

G. Closure

Under today's proposed rule, a hazardous waste management unit that receives wastes that are exempt under today's exit criteria would continue to be a regulated Subtitle C unit subject to the requirements of 40 CFR parts 264 or 265, including closure requirements, until the owner/operator completed clean closure of the unit or unless all of the waste in the unit were delisted. A unit receiving only waste that is exempt under today's proposal would no longer be receiving hazardous waste upon the effective date of the exemption; such a unit would normally become subject to Subtitle C closure requirements, which are triggered by the final receipt of hazardous waste by the unit. The facility owner or operator is required to complete closure activities within 180 days after receiving the final volume of hazardous waste. 40 CFR 264.113(b) and 265.113(b). However, RCRA closure requirements do allow certain waste management units to delay closure, while continuing to receive non-hazardous waste (such as waste exempt under today's proposed rule), provided certain conditions are met.

The RCRA delay-of-closure regulations, promulgated on August 14, 1989 (54 FR 33376), allow owners or operators to delay the closure of landfills, land treatment units, and surface impoundments in cases where the unit stops receiving hazardous waste but the owner or operator wishes to continue using the unit to manage only non-hazardous waste. These requirements are outlined in 40 CFR 264.113(d) and (e) and 265.113(d) and (e). Owners or operators wishing to delay closure must request a permit modification at least 120 days prior to final receipt of hazardous wastes, or, if the facility is in interim status, submit an amended part B application at least 180 days prior to the final receipt of hazardous wastes. The request for a permit modification or the amended part B application must include demonstrations that the unit has the existing design capacity to manage non-hazardous wastes, and that the non-hazardous wastes are not incompatible with any wastes in the unit. In addition, certain facility information including the waste analysis plan, groundwater monitoring plans, closure and post-closure plans, cost estimates, and financial assurance demonstrations must be updated as necessary to account for receipt of only non-hazardous waste. Sections 264.113(d) and 265.113(d). In addition, surface impoundments that do not meet the minimum technological requirements (MTRs) for liners and leachate collection of RCRA 3004(o) must comply with additional requirements in order to delay closure, including the removal of hazardous wastes to the extent practicable from the unit. Sections 264.113(e) and 265.113(e).

The delay of closure regulations apply only to landfills, land treatment units, and surface impoundments. In the case of other RCRA units such as tanks and waste piles, the Agency did not feel that the delay-of-closure regulations were necessary for these types of units in order to receive only non-hazardous wastes (54 FR 33383). The closure requirements in subpart G for these units include removal or decontamination of waste residues, containers, liners, bases and contaminated soils, equipment, and other containment system components; these closure requirements are not incompatible with the reuse of these

units for receipt of only non-hazardous waste. Once the unit has been emptied of all hazardous wastes and decontaminated, it could receive non-hazardous waste. However, the Agency also recognizes that some flexibility may be warranted in converting the use of a unit such as a tank from hazardous to non-hazardous waste management. EPA solicits comment on whether an owner or operator might demonstrate removal of hazardous waste residues from the tank by demonstrating that all waste in the tank is below exemption levels, without removing the waste from the tank. In cases where the owner or operator could not demonstrate that all wastes in the tank were below exemption levels, he or she would have to remove the hazardous waste in order to achieve closure of the unit. In some cases, the facility owner or operator may be able to demonstrate that a tank no longer managed hazardous waste (because the waste met today's proposed exemption criteria), but did not achieve clean closure because of soil and perhaps groundwater contamination. In this case, EPA solicits comment on whether the facility owner or operator should be required to remove the contamination to clean closure levels, or close the area as a landfill while using the tank to manage nonhazardous wastes, as long as this activity did not interfere with cleanup activities or control of the contaminated areas.

The Agency also believes that the availability of a delay-of-closure option provides much of the flexibility needed to allow for the uninterrupted management of exempt waste, while providing assurance that the protections afforded by the closure regulations for Subtitle C units (e.g., evaluation of soil and groundwater at closure) are not lost. This approach makes sense in light of the fact that today's proposed exemption is self-implementing, which the Agency feels is appropriate for waste identification purposes, but not necessarily so for determining whether a Subtitle C unit may become a Subtitle D unit without first undergoing closure.

H. HWIR-Media Rule/Subtitle C Corrective Action

The Agency is currently planning on proposing a rule (''HWIR Media'') addressing waste management issues relating to environmental media (e.g., soil, groundwater, and sediments). The goal of this rule is to allow more effective cleanups at contaminated sites. As currently drafted, the media proposal will supplement the regulatory system under RCRA for the management of RCRA hazardous contaminated media, applicable to sites that are undergoing cleanup overseen by EPA or authorized States. Such sites include cleanups at RCRA corrective action sites, State cleanups, and Superfund remedial actions. The media rule will propose a ''bright-line'' distinction between hazardous contaminated media (i.e., media containing hazardous waste that is therefore regulated as hazardous) subject to modified Subtitle C standards, and less contaminated media subject to more site-specific, flexible standards implemented by State agencies. This new system will supplement the current approach(es) to identifying RCRA applicability to the management of contaminated media. The rule will also propose streamlined permit requirements for cleanups. It will not specify cleanup standards.

Today's proposal applies to listed hazardous wastes (e.g. process wastes, sludges, discarded commercial chemical products, etc.), including mixtures of one or more listed wastes with other solid wastes, and residues derived from the treatment, storage, or disposal of one or more listed hazardous wastes. Media that contain listed hazardous wastes, mixtures, or derived-from wastes with constituent concentrations below today's proposed exemption levels will be eligible for exemption under the procedures proposed today. EPA or an authorized State may continue to assess contaminated media with concentrations higher or lower than the exit levels proposed today on a case-by-case basis by making site-specific determinations as to whether a media ''contains'' a RCRA hazardous waste.

I. Land Disposal Restriction Program

Today's rule contains several important areas of overlap with the RCRA Land Disposal Restrictions (LDR) program that are discussed elsewhere in today's rule. First, as described in more detail elsewhere in this notice, EPA is proposing that exit levels produced under the multipathway analysis for constituents with adequate analytical methods should ''cap'' existing technology-based LDR standards, where the exit levels are less stringent than the current LDR values. If a waste contains only constituent with ''capped'' LDR values, it should be able to satisfy LDR requirements and exit Subtitle C for all other purposes as soon as the waste achieved those levels.

Under today's proposal the uncapped LDR requirements for listed hazardous wastes continue to apply to a waste even after the waste becomes exempt from Subtitle C under the exemption criteria. Furthermore, for listed wastes containing certain constituents with analytical problems, compliance with the LDRs (either numerical levels, specified treatment, or both) is part of the criteria for exempting that waste under today's proposal. Specifically, for constituents where there are no adequate analytical methods for determining whether or not the exit levels have been met, a combination of meeting applicable LDR standards and a showing of non-detect estimated quantitation concentration is required to satisfy the exit criteria for these constituents. This is explained in more detail in Section IV.I of today's rule.

If, however, a listed waste is below the exit concentrations proposed today at the point where the waste is ''first'' generated, that is, the point where the waste first meets the listing description and is potentially subject to Subtitle C, then a hazardous waste is never really ''generated'' and the LDR requirements do not attach to the waste. The EPA does not expect many listed wastes to be at or below the exit criteria at the point of first generation, where waste characterization data indicate that this is where wastes contain higher concentrations of hazardous constituents. Nonetheless, where a particular process generates a waste that is perhaps inappropriately captured by a listing, or where pollution prevention efforts by the generator result in a waste of lower constituent concentrations, if the waste meets the exemption criteria at the moment it is first generated, the LDR requirements would not apply. In contrast, once a listed waste is generated and managed the LDR requirements attach, and remain even after the waste exits Subtitle C under today's exemption (unless, as stated, where the exit levels are considered equivalent to a minimize threat standard). This issue is discussed in more detail in Section VI in today's proposal.

It should be noted that the Agency is currently reviewing the definition of ''point-of-generation'' with respect to the application of the LDRs. Since November 1986 (51 FR 40620), EPA has required LDR determinations to be made at the point which hazardous wastes are generated. In the Phase III LDR rule (March 2, 1995, 60 FR 11702), EPA solicited comment on the issue of where the point of generation should be defined. EPA presented three options to narrowly redefine the point at which the land disposal prohibitions attach: (1) Similar wastestreams generated by similar processes, (2) wastestreams from a single process, and (3) ''battery limits.'' With Option 1 the point of generation would be defined at the point after which like wastestreams are generated from like processes and combined as a matter of routine

practice. Option 2 would consider the point of generation to occur when wastestreams from a single process are combined (e.g., residual wastestreams collected in a common unit such as a sump). In many cases, these wastestreams are similar in composition because they all come from a common unit process. The Option 3 ''battery limits,'' is similar to Option 2; however instead of limiting aggregation to that normally occurring within a single unit process, the facility would view an entire battery of processes (associated with making a single product or related group of products) as a single manufacturing step. In the Phase III LDR proposal, EPA identified listed hazardous wastes as situations where existing point of generation determinations may remain appropriate. This is because EPA has carefully reviewed the various waste streams and has defined the point of generation as part of the listing description. Therefore, it may be inappropriate to modify that description with a more generic ''point of prohibition'' rule. This is important because today's rule applies only to listed hazardous wastes.

Lastly, under today's proposal, mixtures containing listed hazardous waste and residues from the treatment, storage, or disposal of listed hazardous waste that contain some constituents with concentrations below exit levels and some constituents with concentrations above exit levels would continue to be managed as listed hazardous wastes. Today's notice does not allow for partial exemptions, because the Agency does not believe that a self-implemented exemption process is well suited to partial exemptions. It is not always clear what the origin of a hazardous constituent is, particularly for constituents that are formed as by-products of treatment or waste interactions. Further, the proposed exemption criteria are not waste-specific, and thus are not suited to waste-specific or partial exemptions. Thus, the determination that a waste that carries two listing numbers should no longer bear one of the listing numbers is not always a straight-forward decision. The Agency has designed the exemption process proposed today to remove as much subjective decision making from the process as possible.

However, while the Agency is not today proposing an alternative that would allow these wastes to use only the hazardous waste codes for those listed wastes that are the origin of the constituents above the exit levels, the Agency believes that there could be merit in the concept for a future proposed rulemaking should the implementation concerns stated above be overcome. Therefore, the Agency requests information on actual cases with waste characterization data where a waste bears more than one waste code which results in conflicting treatment standards under the land disposal restrictions rules. If the Agency finds that there is a serious compliance issue for multiple listing wastes, the Agency may reconsider this decision, as well as other potential solutions to any documented problems.

J. RCRA Air Emission Standards

Today's proposed rule, when promulgated, may have an impact on the effectiveness of two other RCRA rules developed by the Agency under HSWA authority. Section 3004(n) of HSWA directed the Agency to promulgate regulations controlling air emissions from hazardous waste TSDFs ''as necessary to protect human health and the environment.'' Subsequent Agency analysis demonstrated that air emissions from TSDFs do pose substantial risk in the absence of controls, and that controls were therefore required under the HSWA mandate. The Agency is fulfilling this mandate in phases; EPA completed the first phase when it promulgated RCRA air standards that control organic emissions vented from certain hazardous waste treatment processes, as well as from leaks in certain ancillary equipment used for hazardous waste management processes (55 FR 25454, June 21, 1990; 40 CFR part 264/265, subparts AA and BB). More recently, EPA completed the second phase when it promulgated RCRA air standards for tanks, surface impoundments, containers, and miscellaneous units operated at TSDFs (59 FR 62896, December 6, 1994; 40 CFR part 264/265, subpart CC). Together, these rules would reduce the risk from air emissions from the vast majority of these facilities to well within the risk range of other RCRA standards. After more thorough analysis, the Agency may issue a third phase of these regulations to address any residual risk. The emission reductions achieved by these rules would also significantly reduce the formation of ozone, which has adverse effects on human health and the environment.

Hazardous waste that satisfies the exemption criteria proposed today (including any constituent-specific exit concentrations for volatile organic chemicals, or VOCs), would be exempt from Subtitle C regulations, including regulations promulgated to date under RCRA 3004(n). In other words, once a waste is no longer regulated as hazardous, any unit in which the waste is managed (assuming no other hazardous wastes are being/have been managed in the unit) is not subject to Subtitle C regulations, including 40 CFR parts 264 and 265, subparts AA, BB, and CC. However, the Agency believes that it is important to ensure that the risks associated with air emissions both from hazardous wastes, and from wastes that would be eligible for exit under today's proposal, are adequately addressed. In the final rule establishing air emission controls for tanks, surface impoundments, containers, and miscellaneous units (the ''Subpart CC'' rule), the Agency established a threshold level of 100 ppmw (parts per million by weight) for total volatile organics in a waste, a concentration which if equaled or exceeded that would trigger the emission control requirements for these units. Because there are examples of exit levels proposed today for specific volatile organic constituents that exceed this 100 ppmw threshold, the Agency considered whether today's exit levels adequately addressed the air emission concerns of 3004(n) in allowing waste to exit Subtitle C. There are important differences in the underlying risk modeling between the two rules. However, the Agency believes that the constituent-specific risk evaluation done for this rulemaking results in proposed exit levels that for VOCs will not be less protective than the standards established to date under RCRA 3004(n). Despite these differences, the Agency requests comment on whether or not a total VOC concentration of 100 ppmw (parts per million weight), which is the concentration that triggers air emission controls under the Subpart CC rule, would be appropriate for use in the exit rule proposed today, and if so, how this level would be used.

K. Hazardous Debris

Hazardous debris that contains one or more listed hazardous wastes is eligible for exiting Subtitle C under today's proposed rule. The EPA notes, however, that certain exemptions already exist relating to hazardous debris. On August 18, 1992, the EPA published a final rule on the Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris (57 FR 37194). In that rule, EPA required that hazardous debris be treated prior to land disposal, using specified treatment technologies from the treatment categories of extraction, destruction, or immobilization. (See 40 CFR 268.45, Table 1.) EPA also added a conditional exemption at § 261.3(f) for non-characteristic hazardous debris (i.e.,

debris that is hazardous solely because it contains one or more listed hazardous wastes). Section 261.3(f)(1) exempts debris from Subtitle C regulation provided that the debris is treated using one of the extraction or destruction technologies specified in Table 1 of § 268.45. Alternatively, non-characteristic hazardous debris can be exempt under § 261.3(f)(2) if it is determined to be no longer hazardous by the Regional Administrator, after considering the extent of contamination of the debris, i.e., after a ''contained-in'' determination is made. However, non-characteristic hazardous debris contaminated with a listed waste, that is treated by a specified immobilization technology is *not* eligible for the conditional exemption in § 261.3(f)(1), and therefore remains subject to Subtitle C regulation after treatment.

In today's rule, EPA is not proposing to change the current exemption under § 261.3(f); therefore, non-characteristic hazardous debris that requires LDR treatment by extraction or destruction technologies will be exempt from Subtitle C regulation, once treated. As was explained more thoroughly in the final rule for hazardous debris, the Agency gave careful consideration to many factors before exempting certain treated debris, including whether each debris/contaminant type would be effectively treated by each BDAT technology to levels that would no longer pose a hazard to human health or the environment (57 FR 37240). However, hazardous debris that contains listed waste, and for which immobilization is the specified LDR treatment, may exit using today's proposed exit criteria. See also the discussion of a contingent management option above for a description of an alternative for encapsulated debris contaminated by radioactive ''mixed'' hazardous wastes. Finally, EPA is not proposing to change the contained-in exemption under § 261.3(f)(2) for hazardous debris; that is, the Regional Administrator may continue to determine on a case-by-case basis that hazardous debris no longer contains listed hazardous waste, and should therefore be exempt from RCRA Subtitle C.

L. Hazardous Wastes Used in a Manner Constituting Disposal

Section 266.20 (b) of the regulations states that hazardous wastes and hazardous waste-derived products that are legitimately recycled by being applied to or placed on the land are largely exempt from subtitle C regulation provided they satisfy three conditions: the recyclable materials must have undergone a chemical reaction so as not to be separable by physical means, the product must be produced for the general public's use, and land disposal restriction treatment standards for every hazardous waste in the hazardous waste-derived product must be satisfied. (The shorthand for this type of recycling is ''use in a manner constituting disposal''. See § 261.2(c)(1).) EPA developed § 266.20(b) largely as a stop-gap to provide some modicum of safety while EPA studied further whether various disposal-like uses of hazardous waste-derived products in fact were safe or warranted control. 50 FR 614, 628–29, 647 (Jan,. 4, 1985). Since then, the Agency has studied particular use constituting disposal practices and determined, or proposed, that such uses either be prohibited or allowed based on more individualized determinations of risk. See 53 FR 31138, 31164 (August 17, 1988) (allowing use of fertilizers derived from waste K 061 because of similarity to other zinc-containing fertilizers); 59 FR 43496, 43500 (August 24, 1994) (prohibiting anti-skid uses of K 061-derived sags); 59 FR 67256 (Dec. 29, 1994) (proposing to allow certain uses of K 061 if risk-based criteria are satisfied); 60 FR 11702, 11732 (March 2, 1995) (proposing to prohibit hazardous waste use as fill material).

EPA solicits comment today on the relationship of today's proposed exit levels and the general use constituting disposal provisions in § 266.20(b) stating that such uses can occur if land disposal restriction treatment standards are satisfied. These land disposal restriction standards are not fully protective in all cases: the standards are technology-based rather than risk-based, and, for metal hazardous constituents, only control leachable amounts of the metal. Yet in many situations, *total* metal levels, rather than leachable levels, will be the critical factor because of the possibilities of direct contact through inhalation of abraded or wind-dispersed contaminants, or surface runoff. These exposure pathways are critical for uses constituting disposal because the hazardous waste are not placed in a confined unit. 60 FR at 11733, 59 FR at 43499.

The exit levels proposed today, on the other hand, are risk-based (although some are capped by quantitation limits), are expressed as both total and leachable concentrations, and consider exposure pathways in some cases similar to those relevant in analyzing uses constituting disposal. The Agency solicits comment as to the appropriateness of applying these levels to hazardous wastes used in a manner constituting disposal (or at least to those uses where the hazardous waste-derived products are not comparable to non-hazardous waste based products that would be used in their place). One approach would be to replace the requirement to meet LDR treatment standards with a requirement to meet the exit levels proposed today. This approach should assure that exit levels for unconfined hazardous wastes (i.e. hazardous wastes used in a manner constituting disposal) are never less stringent than exit levels for hazardous wastes placed in confined units. EPA believes that the risk assessment it conducted for the exit levels considered scenarios sufficiently similar to use constituting disposal scenarios to ensure that the exit levels would be reasonably protective for uses (and more protective than LDR levels, in many cases, because of the analysis of impacts from total concentrations of constituents). EPA, however, requests comment on the reasonableness of this approach.

Another option would be to require persons wishing to use hazardous wastes in a manner constituting disposal to meet the lower of the LDR treatment standards and the exit levels. Because EPA is today proposing setting exit levels for both total and leachable concentrations, and because LDR standards are expressed as either total or leachable levels, however, EPA is not certain how to meaningfully compare relative stringency.

With respect to the current requirement in § 266.20(b) that persons wishing to use waste in a manner constituting disposal meet the treatment standards from the LDR program, EPA notes that compliance with LDR tracking and recordkeeping rules is not required. EPA proposes today to require compliance only with the exit levels where they substitute for LDR treatment levels, although it requests comment on the option of requiring persons using wastes in this manner also to file the exit notification package proposed today. EPA does not intend that such persons be required to comply with conditions that continue to apply after exit, such as periodic retesting.

Finally, EPA proposes to eliminate the requirement that wastes to be used in a manner constituting disposal undergo a chemical reaction so as to be inseparable by physical means. EPA does not believe it is necessary to retain this requirement since wastes will be evaluated for total constituent concentrations. (EPA, however, will retain this requirement for wastes with treatment standards expressed as a specified technology, rather than concentration levels.)

Were EPA to proceed on this course, the Agency would adjust the timing of any regulatory action so that it does not supersede the separate rulemaking the Agency is now conducting on certain uses of residues derived from K 061 recovery facilities. 59 FR 67256. Thus, the Agency does not intend to take final action affecting these uses until the analysis begun in that rulemaking is completed on the schedule established in that rulemaking.

With respect to the other pending proposal, involving a prohibition on placement of hazardous waste as fill material, the Agency requests comment on whether it should substitute permission to use waste that has met the proposed exit levels for the proposed prohibition. The risk assessment underlying today's proposal addressed the major pathways that would arise from use as fill, but may not have used input values that fully reflect the fill scenario for some important parameters. For example, unit depths may be greater for fill sites than for land application units. At the same time, use of hazardous waste as fill is a proven cause of human health and environmental harm, contributing significantly to a number of Superfund sites. See Docket F–95–PH3P–FFFFF (record for the pending proposal). In light of this, the Agency questions whether to substitute today's proposed exit approach for the proposed prohibition.

XII. CERCLA Impacts

All listed hazardous wastes are listed as hazardous substances under section 101(14)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. Under section 103(a) of CERCLA, notification must be made to the Federal government of a release of any CERCLA hazardous substance in an amount equal to or greater than the reportable quantity (RQ) assigned to that substance within a 24 hour period. (See 40 CFR part 302 for a list of CERCLA hazardous substances and their Rqs.) If a specific waste from a particular facility meets the exemption criterion in this rule, the waste is not a listed hazardous waste and therefore not a hazardous substance by virtue of its hazardous waste listing. Thus, notification under CERCLA of a release of the exempted waste may not be necessary. In this situation, CERCLA notification of releases of the waste would only be required if the waste or any of the constituents of the waste are CERCLA hazardous substances by virtue of Section 101(14) (A), (B), (D), (E), or (F) of CERCLA or 40 CFR 302.4(b), and are released in amounts greater than or equal to their Rqs. The Agency requests comment on this approach.

Exit levels also may be applicable to the CERCLA program where it has been documented that RCRA listed hazardous waste has been disposed of at the site. Section 121(d) of CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, requires that CERCLA actions comply with, or justify a waiver of, applicable or relevant and appropriate requirements (ARARs) under federal and state environmental laws. The options proposed in this rule would determine the legal applicability of federal RCRA managements requirements to remediation wastes generated at Superfund sites. They may also be considered in determining whether RCRA is relevant and appropriate in cases where it is not applicable.

At sites undergoing CERCLA remedial activities where no listed hazardous wastes have been identified, the Agency will generally use a site-specific risk assessment for all chemicals for which there are no ARARs. In some cases, these health-based cleanup levels will be higher than the exemption levels, based on a reasonably conservative exposure scenario which does not include leachate ingestion. In other cases, the CERCLA health-based clean-up levels will be lower than exemption levels when additive effects are considered or when specialized analytical techniques are required in order to lower quantitation limits. The CERCLA health-based clean-up levels may also be different than exemption levels based on the consideration of site-specific factors.

XIII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State and EPA could not issue permits for any facility in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement HSWA requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect of State Authorizations

Today's proposal, if finalized, will promulgate regulations that are not effective under HSWA in authorized States. Thus, the exemption will be applicable only in those States that do not have final authorization.

Authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's proposal for exit levels is considered to be less stringent than, or a reduction in the scope of, the existing Federal regulations because it would exempt certain wastes now subject to RCRA Subtitle C. Therefore, authorized States are not required to modify their programs to adopt regulations consistent with and equivalent to today's proposal.

Even though States are not required to adopt most options in today's proposal, EPA strongly encourages States to do so as quickly as possible. As already explained in this preamble, today's proposal will reduce over-regulation of dilute wastes and will provide an alternative to delisting. States are therefore urged to consider the adoption of today's proposal (when promulgated); EPA will expedite review of authorized State program revision applications.

C. Streamlining Issues

EPA is considering a new approach to state authorization for rules revising the

RCRA program. Under this new approach EPA would vary the requirements for state submissions and for EPA's review to reflect differences in the scope and complexity of various program revisions. This differential approach to authorization also would recognize the fact that many states now have more than a decade of experience in implementing large portions of the RCRA program and commensurate experience in obtaining authorization for program revisions. EPA believes that adjusting authorization requirements will strike an appropriate balance between recognizing state experience and ensuring environmental protection.

EPA recently proposed a greatly streamlined set of procedures for the least complex changes to the LDR program in the ''LDR Phase IV'' rulemaking. EPA, however, proposed to retain the current authorization process for other portions of the rule that presented more complex and novel regulations.

EPA is also developing a different approach to streamlining authorization for the ''HWIR media'' proposal scheduled for publication later in 1995. Although EPA expects some aspects of these state authorization procedures to be unique to the HWIR- media rulemaking, EPA will determine whether some of the concepts can be used to craft streamlined procedures for additional RCRA rules.

EPA was not able to develop a streamlined authorization process for this rule in time to include it in this proposal. EPA, however, intends to describe such a process in more detail in the preamble to the proposed HWIR-media rule. EPA anticipates that most elements of the basic waste exit scheme proposed in today's notice would be eligible for a greatly streamlined approach to authorization. For example, the new LDR standards based on ''minimize threat'' findings would be good candidates for streamlined authorization because states that are already authorized for significant portions of the LDR program are familiar with the type of rule changes needed, have adopted all or most of the underlying LDR program, and have experience in implementing and enforcing the rules. The exit levels, along with the self-implementing approach to exit determinations, are also likely to be eligible for a greatly streamlined approach. The scheme is very similar to the existing program for determining whether a waste exhibits any of the hazardous waste characteristics, particularly the 1980 EP Toxicity Characteristic and the expanded 1990 Toxicity Characteristic. Under both the characteristic rules and today's proposal, generators are responsible for determining whether or not a waste meets a numerical definition of ''hazard''. States must then enforce by reviewing records of determinations and/or conducting their own analysis of wastes determined not to be hazardous. Consequently, States which have been authorized for the base program already have experience in adopting and enforcing rules which resemble the exit scheme proposed today. EPA, however, notes that adopting the exit scheme proposed in today's notice will place additional demands on state inspection and enforcement resources. EPA will give careful consideration to balancing the need to ensure that a state has sufficient resources to implement an exit program with the goal of streamlining the authorization process.

Today's scheme does differ from the original characteristics and the 1990 Toxicity Characteristic by including some requirements which must be enforced as conditions of exit. These requirements, however, are requirements for testing, notification and recordkeeping that are relatively easy to meet and relatively easy to detect if violated. Accordingly, EPA does not at this time anticipate that these conditions would require it to retain the current authorization process.

EPA currently finds it unlikely that it will propose a greatly streamlined authorization process for any of the contingent management options presented for discussion in today's proposal. These options will raise novel legal, implementation and enforcement issues. A more conventional approach to the review of state authorities and capabilities may be warranted. If EPA proposes any of these options in the future, it will consider the possibility of adapting the approach to authorization that it is currently developing for the HWIR-media proposal.

XIV. Regulatory Requirements

A. Analytical Requirements

1. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether this regulatory action is ''significant.'' A determination of significance will subject this action to full OMB review and compliance under Executive Order 12866 requirements. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more, 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;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the terms of the Executive Order.

The proposed rule is expected to have an annual effect on the economy greater than $100 million. Furthermore, although voluntary, the adoption of this action may burden state or tribal governments with increased regulatory review requirements. Today's action may also raise novel legal or policy issues as they relate to the President's priorities for environmental protection within a regulatory system facing resource limitations. The Agency, therefore, has determined that today's proposed rule is a ''significant regulatory action.'' As a result, this rulemaking action, and supporting analyses, are subject to full OMB review under the requirements of the Executive Order. The Agency has prepared an *Assessment of The Potential Costs and Benefits of The Hazardous Waste Identification Rule for Industrial Process Wastes, as Proposed*, in support of today's action. A summary of this Assessment and findings is presented in section D below.

2. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis. This analysis shall consider the effect of the rule on small entities (i.e.: Small business, small organizations, and small governmental jurisdictions).

Under the Agency's revised Guidelines for Implementing the Regulatory Flexibility Act, dated May 4, 1992, the Agency committed to considering regulatory alternatives in rulemakings when there were any economic impacts estimated on any small entities. Previous guidance required alternatives to be examined only when significant economic effects were estimated for a substantial number of small entities. The Agency has

prepared a Regulatory Flexibility Analysis in support of today's action. A summary of this analysis and findings is presented in section E below.

3. Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' directs each Federal Agency to ''make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations * * *''

The Executive Order requires that where environmental justice concerns or the potential for concerns are identified, appropriate analysis of the issue(s) be evaluated. To the extent practicable, the ecological, human health (taking into account subsistence patterns and sensitive populations) and socio-economic impacts of the proposed decision-document in minority and low-income communities should also be evaluated.

The Agency has examined Environmental Justice concerns relevant to today's action. A summary of this analysis and findings is presented in section F below.

4. 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 (ICR) document has been prepared by EPA (ICR No. 1766.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460 or by calling (202) 260–2740.

This information collection is required to provide documentation of solid waste exemptions from Subtitle C requirements, and will allow for certification and verification as the program evolves. Exemptions under today's action require no formal preapproval. As such, information collection, maintenance and reporting issues are especially important due to the self-implementing nature of this action. Successful implementation of today's proposal will depend upon the documentation, certification, and verification provided by the information collection.

The general authority for this proposal is sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6922, 6924, and 6926. The specific authority for the collection of information is 40 CFR 261.36, *Exemption for Listed Hazardous Wastes Containing Low Concentrations of Hazardous Constituents.*

The Agency has prepared a full Information Collection request (ICR) in support of today's action. A summary of the methodology and findings from this document is presented in section G below.

B. Background

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) to address problems associated with annual nationwide generation of large quantities of municipal and industrial solid waste. This Act was significantly amended in 1984 by the Hazardous and Solid Waste Amendments (HSWA). Under RCRA, the Agency regulates non-hazardous solid waste through the Subtitle D program, and hazardous solid waste under the Subtitle C program. Subtitle C regulations differ from Subtitle D in two important areas. First, Subtitle C regulations are developed and promulgated by EPA, while Subtitle D requirements have been largely delegated to the states. Second, non-hazardous wastes regulated under Subtitle D are generally subject to standards that are considerably less stringent and less costly than those under Subtitle C. All wastes addressed under this action are currently managed under Subtitle C regulations.

RCRA is divided into four programs: Underground storage, medical waste, nonhazardous solid waste, and hazardous solid waste. Under RCRA 3001(a), Congress has required EPA to identify those wastes that should be classified as hazardous. In accordance with this provision, the Agency has designated wastes as hazardous in two ways: ''characteristic,'' or ''listed.'' Hazardous waste is considered characteristic if it has any of the properties or characteristics that would present a potential hazard if managed improperly. The Agency has identified four characteristics which, if exhibited, lead to hazardous classification. These are: Ignitability, corrosivity, reactivity, and toxicity. Under the toxicity characteristic, specific health-based concentration standards have been developed for approximately forty (40) constituents. Wastes exhibiting any of these characteristics are subject to Subtitle C regulation. Hazardous wastes are identified as listed based on an extensive listing procedure. This procedure may identify a waste as hazardous under three broad categories: if it exhibits one of the characteristics identified above but has not been classified as characteristically hazardous, if it is determined to be acutely toxic or hazardous, or if the waste meets the statutory definition of a hazardous waste.

The Agency, however, was concerned that generators and managers of hazardous waste might avoid regulatory requirements in two major ways: (1) By mixing listed hazardous waste with non-hazardous solid waste, and, (2) by minimal processing and treatment of hazardous waste. These activities could result in a waste or residual material that was no longer legally defined as hazardous under Subtitle C. In many cases, the Agency believed these materials could continue to pose unacceptable hazards to human health and the environment. The Agency promulgated mixture and derived-from rules in May of 1980, in response to these potential loopholes.

C. Need for Regulation

The mixture and derived-from rules created what was perceived as being federal over-regulation, where listed hazardous waste continued to remain under Subtitle C jurisdiction regardless of constituent concentration or presence in the waste, either before or after treatment. This problem was exacerbated with the passage of HSWA in 1984. HSWA set Land Disposal Restrictions (LDR) requiring best demonstrated available technology (BDAT) treatment for all listed hazardous wastes prior to disposal. In cases where a specific listed wastestream contained relatively innocuous constituents, or very low concentrations, BDAT treatment requirements were felt to be overly protective, and unnecessarily expensive.

By requiring Subtitle C management for some low risk wastes, the current RCRA regulatory system may inhibit the efficient allocation of limited societal resources. From a social perspective, too many resources devoted to managing low risk wastes may reduce resource availability for managing higher risk wastes. Resource availability for general productivity investments and innovative technologies are also reduced. The Agency's delisting program has not provided an efficient solution to this problem. The delisting process has proven to be overly time

and resource intensive for both industry and EPA.

The Agency believes that a simpler exemption process is necessary to reduce the over-regulation of low risk hazardous waste while, at the same time, reducing the time and resource burden on industry and government. This revised exemption process would also reduce the burden on the delisting program which will continue under current regulations. To meet these goals, the Agency is proposing the current action that would establish a single set of exit levels for constituents found in listed hazardous waste. This action would cover wastes as-generated, derived-from wastes, including BDAT treatment residuals, mixtures with solid wastes, and environmental media that contain hazardous wastes.

D. Assessment of Potential Costs and Benefits

1. Introduction and Summary

The U.S. Environmental Protection Agency (EPA) has prepared an *Assessment of The Potential Costs and Benefits (Assessment)* to accompany today's proposed rulemaking action. This action will establish concentration-based exemption criteria for certain hazardous wastes, creating a mechanism to exclude from Subtitle C regulation those listed industrial process wastes that the Agency believes are clearly not of Federal regulatory concern. Today's proposed rule addresses low hazard wastes, mixtures, treatment residuals, and media that contain hazardous wastes.

The Agency anticipates that the proposed rule will provide cost savings to selected generators and managers of low hazard wastes. Under the preferred option, annual nationwide treatment and disposal cost savings for exempted wastes may be as high as $75 million. Annual cost savings for a single facility may be as high as $5.03 million. Potential cost reductions beyond treatment and disposal savings may be associated with waste minimization incentives, avoided treatment costs for wastes remaining within Subtitle C, and administrative cost savings.

Exemption of eligible wastes from Subtitle C management requirements is projected to have negligible effects on human health and the environment. The proposed exemption levels are based on detailed analysis of numerous possible routes of exposure. These exemption levels are designed to be protective of both human health and ecological systems when exempted wastes are managed under Subtitle D, including state regulated waste disposal systems.

The Agency has also evaluated other impacts of the proposed rule. These include: Environmental justice, unfunded mandates, regulatory takings, and waste minimization incentives. Environmental justice concerns associated with today's proposed action may be in the form of economic benefits and/or human health effects. Today's proposal implements no enforceable requirements on states. Federal unfunded mandates, therefore, are not relevant to today's proposed rulemaking. Regulatory takings under today's proposed rulemaking will not approach land or productive value impacts discussed in past House and Senate Bills presented on this issue. This rulemaking provides opportunities for generators to implement waste minimization procedures to gain additional savings.

The complete document, *Assessment of The Potential Costs and Benefits of The Hazardous Waste Identification Rule for Industrial Process Wastes, as Proposed (Assessment),* is available in the docket established for this proposed rule. This document details the data, methodology, findings, regulatory issues, and analytical limitations associated this *Assessment*. The rapid evolution of this action resulted in continuous technical modifications throughout the development of this proposal. An Addendum to the *Assessment* document that details final quantity and cost savings estimates is included in the docket materials. Findings presented in this preamble present final estimates.

A summary of the *Assessment* methodology and findings is presented below. The analysis conducted for this Notice of Proposed Rulemaking is to be considered preliminary. The Agency welcomes review and comment of this document and urges the submission of data in support of any comment or response.

2. Regulatory Options

The Agency's Assessment, conducted in support of today's action, addresses the costs, benefits, and other potential impacts of the preferred option. The Assessment also examines various other regulatory options based on exit levels that are both more and less stringent. Findings presented in this preamble discuss the preferred option and one primary alternative. A full discussion of findings associated with various alternative regulatory options is presented in the Assessment and Addendum.

a. Preferred (Proposed) Option

Under the preferred option, exit criteria are established for approximately 400 constituents, allowing hazardous wastes (including waste mixed with or derived-from listed wastes) to exit Subtitle C if the concentration of all constituents is less than or equal to the exemption criteria. The exit levels apply to all listed wastes, regardless of origin.

Exit levels for most constituents are based on risks posed to human health and the environment. The Agency's goal is to ensure, through Federal or State management requirements, that humans are not exposed to carcinogens in concentrations that will increase the statistical risk of cancer by more that one-in-one-million (1×10^{-6}). For non-carcinogens, the Agency's goal is to ensure that humans are not exposed to concentrations where the hazard quotient exceeds one (1). The Agency feels that, above this level, selected populations may experience carcinogenic effects at a 10^{-6} risk level and non-carcinogenic effects at a hazard quotient greater than one (1).

To determine the concentrations at which exempt wastes would not pose human health risks in excess of these target levels, EPA conducted a ''Multipathway'' Analysis that included ecological exposure pathways. In addition, EPA considered the effects of direct exposure to contaminants in groundwater. The analyses consider several types of waste management units. For non-wastewaters these unit types include landfills, land application units, waste piles, and ash monofills. For wastewaters management units included tanks and surface impoundments.

The concentrations from all other pathways were compared to the groundwater concentrations in determining the exit level. The more stringent of the multipathway or groundwater numbers was chosen as the exit level. Exit levels for some constituents are based on surrogates, or Exemption Quantitation Criteria (EQCs). MCLs were not used in the development of exit levels analyzed for this option. The Agency believes that levels established under this process will ensure protection of human health and the environment. These exit levels are presented in the regulatory language for this proposed rulemaking.

b. Other Options

In developing the preferred option, the Agency compared the proposed rule to several alternative regulatory options. These are discussed in the full

document, *Assessment of The Potential Costs and Benefits of The Hazardous Waste Identification Rule for Industrial Process Wastes, as Proposed.* Additional options are discussed in the supporting Addendum to the Assessment document. These options consider alternative waste management requirements, target risk levels, dilution and attenuation factors (DAFs), and exposure pathways. This Preamble discusses one primary alternative to the preferred option. This alternative is the same as the preferred option but drops land application units from consideration as a management source. Exempt nonwastewater wastestreams could not be land applied. There would be no change for wastewaters.

3. Implementation Requirements

Implementation requirements include the steps that generators (or waste managers) must take to achieve exemption of their wastes, regardless of the exit levels selected. These requirements include waste sampling and analysis, and related recordkeeping and reporting. Under the proposed rule, the facility must first perform a comprehensive analysis of the waste, testing for all constituents identified in appendix X to 40 CFR part 261. Reduced initial testing may be possible only if a facility is able to document that such constituents are not present in the waste. The generator must then prepare a notification/certification package and submit it to the EPA Regional Administrator or authorized state agency. The generator must repeat a comprehensive analysis periodically according to the schedule established in the proposed rule, along with more frequent tailored scans that focus on the constituents of concern. Related documentation must be maintained on-site and be available for review.

The Agency has estimated annual sampling, analysis, recordkeeping, and reporting costs (collectively referred to as ''implementation costs'') that may be required under this rule. These estimates range from approximately $21,000 for a less complex, solvent wastestream with testing every 12 months, to $169,000 for a complex high quantity F039 wastestream with testing every three months.

4. Analysis and Findings

Under the proposed rule, listed wastes from industrial processes may be eligible for exemption from Subtitle C hazardous waste requirements if they contain low concentrations of contaminants. This exemption may allow generators and waste managers to avoid some or all costs associated with Subtitle C requirements. The most significant cost savings relate to waste treatment and disposal; this rule will allow generators to avoid the costs of treatment required for compliance with the Land Disposal Restrictions as well as the costs of disposing wastes in highly protective Subtitle C facilities.

In addition to assessing these cost savings, the Assessment addresses a number of other potential effects of the regulations. It analyzes the relative effects of the regulatory options on human health and the environment and considers issues related to ensuring environmental justice, eliminating federal mandates, encouraging waste minimization, and providing flexibility for small businesses.

a. Eligible Waste

The universe of annual listed waste generation, both wastewaters and nonwastewaters, potentially affected by today's proposed rulemaking is estimated to total 303.6 million tons. The universe of potentially affected wastes includes approximately 25,300 wastestreams from 10,700 facilities. Wastewaters account for the vast majority of total waste quantity (99 percent).

To determine whether these wastes are likely to be eligible for exemption, EPA developed the Process Waste Model. This model uses data on the characteristics of individual listed waste-streams first collected in 1986 for EPA's *National Survey of Hazardous Waste Generators,* which has since been updated, refined, and in some cases, corrected. The model first compares the reported concentrations of constituents in each wastestream to the proposed rule exit levels to determine whether the waste is likely to be eligible for exemption without further treatment. If the waste is not eligible as-reported, the model then considers whether it may be eligible after treatment. In this comparison, the concentration standards established under EPA's Land Disposal Restrictions (which are based on the use of the best demonstrated and available technology) are used as a proxy for the lowest concentrations achievable by treatment. If the waste is not eligible for exemption as-reported or after treatment, EPA assesses whether waste minimization or pollution prevention methods could be used to cost-effectively achieve the exit levels. This model does not address contaminated media.

The analysis indicates that:

- Under the preferred option, total nonwastewater quantity exempted, including BDAT treatment residuals and sludge from wastewater, is estimated at 0.40 million tons. Total wastewater (liquid) quantity exempted is approximately 64 million tons.
- Under the primary alternative option (no land application), approximately 65 million tons of wastewaters, and 0.60 million tons of nonwastewaters, including BDAT treatment residuals and sludge from wastewaters, may be eligible for exemption.

b. Cost Savings

The proposed rule will allow waste generators and managers to avoid costs associated with Subtitle C requirements. Specifically, this exemption will allow them to avoid treatment costs and/or costs of disposing wastes in Subtitle C facilities. Wastes which meet exit levels at the point of generation may accrue treatment cost savings because the wastes will not require any treatment that would have been needed to comply with the Subtitle C Land Disposal Restrictions prior to disposal. All exempt wastes are likely to accrue disposal cost savings because the costs of disposing wastes in non-Subtitle C facilities are generally lower than the cost of more protective Subtitle C facilities.

The analysis indicates that:

- Under the preferred option, the high-end estimate of annual treatment and disposal cost savings is approximately $75 million.

—A large portion of these savings are attributable to avoided treatment costs.

- Under the primary alternative, the high-end estimate of cost savings is $99 million.

The above estimates for quantities exempted and cost savings assume zero implementation costs. The incorporation of implementation costs into the analytical model will have a significant impact on facilities and wastestreams affected, while having only a marginal impact on total quantities exempted.

c. Affected Wastestreams and Facilities

Under the preferred option (unconditional exemption), as high as 41 percent (10,300) of the potentially affected wastestreams may be eligible for exemption. These eligible wastestreams are generated by 56 percent (6000) of the facilities producing listed waste. Total wastestreams and facilities potentially eligible for exemption under the primary alternative option (no land application) are estimated at 12,200 (48 percent), and 7,000 (65 percent), respectively.

The majority of the wastestreams eligible for exemption under the preferred option are very small in quantity. The median annual generation size of an eligible wastewater wastestream is 20 tons. The median for eligible nonwastewaters is 2.0 tons. For small wastestreams, the costs accrued due to the exemption are likely to be counterbalanced by the costs associated with gaining the exemption.

While a relatively large number of wastestreams and facilities meet the eligibility criteria for exemption, many may not gain exemption because the costs of exemption may outweigh the estimated cost savings from exemption. For example, if implementation costs average $35,000 annually per wastestream, the estimate of facilities generating an exempted wastestream may be overstated by as much as 90 percent. However, small generators may choose to aggregate their wastes to avoid this problem.

d. Relative Impacts on Human Health and the Environment

Today's proposed rule will allow low concentration hazardous wastes to exit RCRA Subtitle C regulation and be disposed of in Subtitle D nonhazardous waste units. The Agency believes that today's proposed rule will have little effect on human health for the following reasons:

- The acceptable daily exposure levels used to set the exit levels are based on maximum risk levels for carcinogens of 10^{-6} and on acceptable daily doses for non-carcinogens at which no adverse effects are likely to occur.
- The waste management units modeled in the *Multipathway Analysis* provide high potential release rates for the various groups of constituents being considered in the analysis based on their physical and chemical properties.
- The pathways included in the *Multipathway Analysis* are generally considered to be the most critical.
- The *Multipathway Analysis* includes populations that are likely to be exposed more than the average adult due to proximity to a contaminant source, behavior patterns, activities, and body size.
- High-end values were used for selected parameters in the *Multipathway Analysis* to calculate acceptable waste concentrations.
- Exit levels represent acceptable constituent concentration levels for Subtitle D waste management based on all of the potential combinations of management units, and receptors in the Multipathway Analysis.
- Exit levels for several constituents are below the acceptable waste concentrations for human health due to the inclusion of ecological receptors.

Ecological risks were also evaluated for selected key constituents. The inclusion of such risk in solid waste regulation at a national level is an important step, and is preferable to establishing exit criteria based only on human health risks.

5. Other Regulatory Issues

a. Environmental Justice

Economic benefits may occur to selected communities as affected local facilities reinvest cost savings derived from reduced treatment and/or disposal costs. Human health effects are expected to be negligible due to the stringency of the exit levels. Included in these exit levels are pathways of particular concern for selected low income populations such as subsistence fishing and farming.

b. Other Issues

Today's proposal is expected to have no impact in the area of Unfunded Federal Mandates or Regulatory Takings. Waste minimization procedures are likely to be stimulated under this proposal.

6. Implications and Conclusions

The analysis indicates that approximately 11 percent of the quantity of all nonwastewaters containing listed codes, and 21 percent of all such wastewaters may be eligible for exemption under the proposed rule. This exempt quantity is dominated by a small number of very large wastestreams, and includes a large number of very small wastestreams. For some small wastestreams, exemption may not be cost effective unless generators aggregate their wastes or otherwise work cooperatively to minimize the costs of gaining the exemptions.

Today's proposal could also provide incentives for industry to implement process changes and increased recycling in an effort to gain additional savings. Preliminary estimates indicate that savings from these activities, when combined with treatment and disposal savings from the preferred option, are likely to result in total annual cost savings greater than $100 million. However, limitations of our analysis suggest that the cost savings estimates from such activities are highly uncertain. Additional savings related to administrative requirements and reduced treatment for hazardous wastes may also accrue. These potential additional cost savings are discussed in greater detail in the *Assessment* document.

The Agency believes that today's proposal will result in a net benefit to society. Wastes gaining exemption under the preferred option will not pose unacceptable incremental risks to human health and the environment because the exit levels are based on extensive analysis of possible human and ecological risks associated with exempt wastes.

EPA's analysis of the impact of today's proposal on industry groups indicates that a limited number of industries are likely to benefit from exemption. Under the preferred option (unconditional exemption), three industries account for 51 percent of eligible nonwastewater and wastewater sludge quantity and 53 percent of total treatment and disposal cost savings. These industries are: Chemicals and allied products (SIC 28); fabricated metals (SIC 34); and primary metals (SIC 33).

The Agency also compared benefits gained from exemption to key industry data such as national pollution abatement expenditures and considered facility level impacts of the proposal. To evaluate the relative magnitude of cost savings that would accrue under the proposed rule, EPA compared cost savings estimates to total pollution abatement expenditures and the total value of industry shipments. Total treatment and disposal cost savings under the preferred option account for approximately 3.5 percent of annual operating costs for hazardous waste pollution abatement activities, and less than 0.002 percent of the total value of industry shipments. The facility-level impacts of the proposal vary greatly.

E. Regulatory Flexibility Analysis.

The Regulatory Flexibility Act requires analysis of the impact of regulations on small entities. Because today's proposal is deregulatory, it is not expected to have adverse impacts on small businesses. In general, generators of large quantity wastestreams posing low hazards will benefit substantially from the regulations. The impacts on small quantity generators is less certain and depends on the degree to which they aggregate their wastes and work cooperatively to cost-effectively gain exemption.

F. Environmental Justice

It is the Agency's policy that environmental justice be considered as an integral part in the development of all policies, guidance and regulations. Further, Executive Order 12898, ''Federal Actions to Address

Environmental Justice in Minority Populations and Low-Income Populations'', directs each Federal Agency to ''make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations * * *''

The Executive Order requires that where environmental justice concerns or the potential for concerns are identified, appropriate analysis of the issue(s) be evaluated. To the extent practicable, the ecological, human health (taking into account subsistence patterns and sensitive populations) and socio-economic impacts of the proposed decision-document in minority and low-income communities should also be evaluated. Examples include how a policy on future land use would impact minority or low-income communities versus non-minority, affluent communities, or how subsistence farming or fishing patterns relate to risk-assessment policies.

For the purposes of today's proposed rulemaking, the Agency has taken an approach for proposal consistent with Executive Order 12898. As currently drafted, the multipathway analysis which was used to develop the exit levels takes into account subsistence farmers and subsistence fishers; however, subsistence fishers were evaluated using a recreational fisher database (one does not exist for subsistence fishers). Sensitive populations are accounted for in the RfDs, RfCs, and slope factors and ecological receptors were also evaluated.

G. Paperwork Reduction Act

As stated earlier, the level of implementation costs (i.e. sampling, analysis, recordkeeping, and reporting) will have a significant impact on the number of wastestreams and facilities affected by this proposal. Assuming annual implementation costs of $35,000 per wastestream, as many as 269 facilities, generating up to 285 different wastestreams may seek exemptions, and therefore be affected by the recordkeeping and reporting requirements. The actual number of facilities and wastestreams affected will depend upon the level of implementation costs. The higher the implementation cost to the facility, the fewer the number of facilities expected to participate in the HWIR program.

The estimated hour burden ranges from 382 hours to 573 hours per wastestream in the first year, and from 31 hours to 146 hours per wastestream in years two and three. The variation in burden estimates results from different assumptions in (1) the complexity of the waste (and therefore of the test methods required), and (2) the frequency of reporting. The estimated total hour burden over the first three years ranges from 206,900 to 293,465 hours, averaging 68,967 to 97,821 hours per year.

The estimated total start-up cost of recordkeeping and reporting in the first year ranges from $55,000 to $235,000 per wastestream. The annual cost in the second and third years is estimated to be $9,000 to $209,000 per wastestream (of which $8,000 to $203,000 is the cost of shipping samples to a laboratory and paying to have them tested). In years four and five the high-end cost drops to $53,000. The estimated annual recordkeeping and reporting cost per wastestream, annualized at seven percent over five years, is $21,000 to $170,000. The total recordkeeping and reporting cost burden over the first three years is $28,000,000 to $32,000,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This 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 be able to respond to a collection of information; search 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. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 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, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 21, 1995, a comment to OMB is best assured of having its full effect if OMB receives it by January 22, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR 261 and 268

Identification and listing of hazardous waste. Land disposal restrictions.

Dated: November 13, 1995.

Carol Browner,

Administrator.

XV. References

U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory; ''Performance Testing of Method 1312—QA Support for RCRA Testing.'' EPA/600/4–89/022, June 1989.

Research Triangle Institute; ''Interlaboratory Comparison of Methods 1310, 1311, and 1312 for Lead in Soil''. U.S. EPA Contract 68–01–7075, November 1988.

U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response; OSWER Directive No. 9285.7; ''Human Health Evaluation Manual, Part B: Development of Risk-based Preliminary Remediation Goals;'' from Henry Longest II, Director, Office of Emergency and Remedial Response; and Bruce Diamond, Director, Office of Waste Programs Enforcement; to Regional Waste Management Division Directors; December 13, 1991.

U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response; OSWER Directive No. 9850.4; ''Interim Final Guidance for Soil Ingestion Rates;'' from J. Winston Porter, OSWER Assistant Administrator; to Regional Administrators (I-X); January 27, 1989.

U.S. Environmental Protection Agency, Office of Research and Development, Office of Health and Environmental Assessment; ''Exposure Factors Handbook;'' EPA/600/8–89/043, March 1990.

U.S. Environmental Protection Agency, Office of Solid Waste: EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP), Background Document, 1995a.

U.S. Environmental Protection Agency, Office of Solid Waste: EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP), User's Guide, 1995b.

U.S. Environmental Protection Agency, Office of Solid Waste: Finite Source Methodology for Non-Degrading and Degrading Chemicals with Transformation Products, 1995c.

U.S. Environmental Protection Agency, Office of Solid Waste: Background

Document for EPACMTP: Fate and Transport Modeling of Metals, 1995d.
U.S. Environmental Protection Agency, Office of Research Development. Finite Source Methodology for Wastes Containing Metals, 1992.
U.S. Environmental Protection Agency, Office of Research Development MINTEQA2/PRODEFA2, A Geochemical Assessment Model for Environmental Systems: Version 3.0 User's Manual. EPA/600/3–91/021, March 1991.
U.S. Environmental Protection Agency, Office of Research Development. Environmental Fate Constants for Chemicals Under Consideration for EPA's Hazardous Waste Identification Projects, compiled by Heinz Kollig, 1993.

Appendix A

TABLE A–1.—HUMAN EXPOSURE PATHWAYS

Exposure medium	Route of exposure	Type of fate and transport	Pathway [a]
Groundwater	Ingestion	Groundwater	**1** WMU ‰ groundwater ‰ humans *Ingestion of contaminated groundwater as a drinking water source.*
Air	Inhalation	Direct air	**2a (on site or off site)** WMU ‰ air ‰ humans *Inhalation of volatiles*
Air	Inhalation	Direct air	**2b (on site or off site)** WMU ‰ air ‰ humans *Inhalation of suspended particulates*
Soil	Ingestion	Direct soil	**3 (on site)** WMU ‰ humans *Ingestion of contaminated soil*
Soil	Ingestion	Overland	**3 (off site)** WMU ‰ overland ‰ humans *Ingestion of contaminated soil*
Soil	Ingestion	Air deposition	**4** WMU ‰ air ‰ deposition to soil ‰ humans *Ingestion of contaminated soil*
Soil	Dermal	Direct soil	**5 (on site)** WMU ‰ humans *Dermal contact with contaminated soil*
Soil	Dermal	Overland	**5 (off site)** WMU ‰ overland ‰ humans *Dermal contact with contaminated soil*
Soil	Dermal	Air deposition	**6** WMU ‰ air ‰ deposition to surface soil ‰ humans *Dermal contact with contaminated soil*
Plant (veg/root)	Ingestion	Air deposition	**8** WMU ‰ air ‰ deposition to soil/gard crops ‰ garen crops ‰ humans *Consumption of contaminated crops grown in home gardens*
Plant (veg)	Ingestion	Air diffusion	**8a** WMU ‰ air ‰ garden crops ‰ humans *Consumption of contaminated crops grown in home gardens*
Plant (veg/root)	Ingestion	Direct soil	**9 (on site)** WMU ‰ garden crops ‰ humans *Consumption of contaminated crops grown in home gardens*
Plant (veg/root)	Ingestion	Overland	**9 (off site)** WMU ‰ overland ‰ garden crops ‰ humans *Consumption of contaminated crops grown in home gardens*
Animal (beef/milk)	Ingestion	Air deposition	**10** WMU ‰ air ‰ deposition to soil/feed crops ‰ cattle ‰ humans *Consumption of animal products with elevated levels of toxicant caused by eating contaminated feed crops and soil*
Animal (beef/milk)	Ingestion	Air diffusion	**10a** WMU ‰ air ‰ feed crops ‰ cattle ‰ humans *Consumption of animal products with elevated levels of toxicant caused by eating contaminated feed crops*
Animal (beef/milk)	Ingestion	Direct soil	**11 (on site)** WMU ‰ feed crops ‰ cattle ‰ humans *Consumption of animal products with elevated levels of toxicant caused by eating contaminated feed crops and soil*
Animal (bedf/milk)	Ingestion	Overland	**11 (off site)** WMU ‰ overland ‰ feed crops/soil ‰ cattle ‰ humans *Consumption of animal products with elevated levels of toxicant caused by eating contaminated feed crops and soil*
Groundwater	Dermal (bathing)	Groundwater	**14** WMU ‰ groundwater ‰ humans *Ingestion of contaminated surface water as a drinking water source*
Surface water	Ingestion	Air diffusion	**17** WMU ‰ groundwater ‰ humans *Dermal bathing contact with contaminated groundwater*

TABLE A–1.—HUMAN EXPOSURE PATHWAYS—Continued

Exposure medium	Route of exposure	Type of fate and transport	Pathway [a]
Surface water	Ingestion	Overland	**19** WMU ‰ overland flow ‰ surface water ‰ humans *Ingestion of contaminated surface water as a drinking water source*
Surface water	Ingestion	Air deposition	**20** WMU ‰ air ‰ deposition to soil ‰ overland flow ‰ surface water ‰ humans *Ingestion of contaminated surface water as a drinking water source*
Fish	Ingestion	Air diffusion	21 WMU ‰ air ‰ surface water ‰ fish ‰ humans Consumption f fish contaminated by toxicants in surface water
Fish	Ingestion	Overland	23 WMU ‰ overland ‰ surface water ‰ fish ‰ humans Consumption f fish contaminated by toxicants in surface water
Fish	Ingestion	Air deposition	24 WMU ‰ air ‰ deposition to surface soil ‰ overland flow ‰ surface water ‰ fish ‰ humans Consumption f fish contaminated by toxicants in surface water
Animal (beef/milk) ..	Ingestion	Air diffusion	**33** WMU ‰ air ‰ suface water ‰ cattle ‰ humans *Consumption of animal products with elevated levels of toxicant caused by drinking contaminated surface water*
Animal (beef/milk) ..	Ingestion	Overland	**35** WMU ‰ overland flwo ‰ surface water ‰ cattle ‰ humans *Consumption of animal products with elevated levels of toxicant caused by drinking contaminated surface water*
Animal (beef/milk) ..	Ingestion	Air deposition	**36** WMU ‰ air ‰ deposition to soil ‰ overland flow ‰ surface water ‰ cattle ‰ humans *Consumption of animal products with elevated levels of toxicant caused by drinking contaminated surface water*
Surface water	Dermal (bathing)	Air diffusion	**37** WMU ‰ air ‰ surface water ‰ humans *Dermal bathing contact with contaminated surface water*
Surface water	Dermal (bathing)	Air deposition	**38** WMU ‰ air deposition to soil ‰ overland flow ‰ surface water ‰ humans *Dermal bathing contact with contaminated surface water*
Surface water	Dermal (bathing)	Overland	**42** WMU ‰ overland flow ‰ surface water ‰ humans *Dermal bathing contact with contaminated surface water*

Overland = Soil erosion; Overland flow = Both runoff and sold erosion; or, for surface impoundments, a spill directly to surface water. Veg = Aboveground fruits and vegetables. Root = Belowground (or root) vegetables.

[a] Some pathway numbers are missing, reflecting pathways that have been eliminated from the analysis or combined with other pathways.

TABLE A–2.—ECOLOGICAL EXPOSURE PATHWAYS

	Exposure medium	Route of exposure	Type of fate and transport	Pathways [a]
Terr I	Soil	Ingestion	Direct soil	3 (on site) WMU ‰ mammals, birds, soil fauna *Ingestion of contaminated soil*
	Soil	Direct contact	Direct soil	5 (on site) WMU ‰ plants, soil fauna *Direct contact with contaminated soil*
	Plant	Ingestion	Direct soil	9 (on site) WMU ‰ vegetation ‰ mammals, birds *Consumption of contaminated vegetation (e.g., forage grasses)*
	Soil fauna	Ingestion	Direct soil	11a (on site) WMU ‰ soil fauna ‰ mammals, birds *Consumption of soil fauna (e.g., earthworms, insects) with elevated levels of toxicant*
	Animals	Ingestion	Direct soil	11b (on site) WMU ‰ soil fauna/vegetation ‰ animals ‰ predatory mammals, birds *Consumption of animals with elevated levels of toxicant*
Terr II	Soil	Ingestion	Overland	3 (off site) WMU ‰ overland ‰ mammals, birds, soil fauna *Ingestion of contaminated soil*

TABLE A–2.—ECOLOGICAL EXPOSURE PATHWAYS—Continued

	Exposure medium	Route of exposure	Type of fate and transport	Pathways [a]
	Soil	Direct contact	Overland	5 (off site) WMU ‰ overland ‰ plants, soil fauna *Direct contact with contaminated soil*
	Plant	Ingestion	Overland	9 (off site) WMU ‰ overland ‰ vegetation ‰ mammals, birds *Consumption of contaminated vegetation (e.g., forage grasses)*
	Soil fauna	Ingestion	Overland	11c (off site) WMU ‰ overland ‰ soil fauna ‰ mammals, birds *Consumption of soil fauna (e.g., earthworms, insects) with elevated levels of toxicant*
	Animals	Ingestion	Overland	11d (off site) WMU ‰ soil fauna/vegetation ‰ animals ‰ predatory mammals, birds *Consumption of animals with elevated levels of toxicant*
Terr III	Soil	Ingestion	Air deposition	4 WMU ‰ air ‰ deposition to soil ‰ mammals, birds, soil fauna *Ingestion of contaminated soil*
	Soil	Direct contact	Air deposition	6 WMU ‰ air ‰ deposition to surface soil ‰ plants, soil fauna *Direct contact with contaminated soil*
Terr IV	Plant	Ingestion	Air deposition	8 WMU ‰ air ‰ deposition to soil ‰ vegetation ‰ mammals, birds *Consumption of contaminated vegetation (e.g., forage grasses)*
Terr V	Plant	Ingestion	Air diffusion	8 WMU ‰ air ‰ vegetation ‰ mammals, birds *Consumption of contaminated vegetation (e.g., forage grasses)*
Aq I	Surface water	Ingestion	Air diffusion	17 WMU ‰ air ‰ surface water ‰ mammals, birds *Ingestion of contaminated surface water as a drinking water source*
	Fish	Ingestion	Air diffusion	21 WMU ‰ air ‰ surface water ‰ fish ‰ mammals, birds, fish *Consumption of fish contaminated by toxicants in surface water*
	Surface water	Direct contact	Air diffusion	37 WMU ‰ air ‰ surface water ‰ fish, daphnids, benthos *Direct contact with contaminated surface water, sediments*
Aq II	Surface water	Ingestion	Air deposition	37 WMU ‰ air ‰ deposition to soil ‰ overland flow ‰ surface water ‰ mammals, birds *Ingestion of contaminated surface water as a drinking water source*
	Fish	Ingestion	Air deposition	24 WMU ‰ air ‰ deposition to surface soil ‰ overland flow ‰ surface water ‰ fish ‰ mammals, birds, fish *Consumption of fish contaminated by toxicants in surface water*
	Surface water	Direct contact	Air deposition	38 WMU ‰ air ‰ deposition to soil ‰ overland flow ‰ surface water ‰ fish, daphnids, benthos *Direct contact with contaminated surface water, sediments*
Aq III	Surface water	Ingestion	Overland	19 WMU ‰ overland flow ‰ surface water ‰ mammals, birds *Ingestion of contaminated surface water as a drinking water source*
	Fish	Ingestion	Overland	23 WMU ‰ overland flow ‰ surface water ‰ fish ‰ mammals, birds, fish *Consumption of fish contaminated by toxicants in surface water*
	Surface water	Direct contact	Overland	42 WMU ‰ overland flow ‰ surface water ‰ fish, daphnids, benthos *Direct contact with contaminated surface water, sediments*

Overland=Soil erosion. Overland flow=Both runoff and soil erosion; or, for surface impoundments, a spill directly to surface water.

[a] Some pathway numbers are missing, reflecting pathways that have been eliminated from the analysis.

TABLE A–3.—SUMMARY OF HUMAN RECEPTORS FOR EXPOSURES PATHWAYS

Pathway	Receptor						
	Adult	Child	Subs. farmer	Home gardener	Subs. fisher	Fish consumer	Worker
1: Groundwater-ingestion	√[a]						
2a: Direct air-inhalation of violates (on site)	√[a]						√
2a: Direct air-inhalation of volatiles (off site)	√						
2b: Direct air-inhalation of particles (on site)	√[a]						√
2b: Direct air-inhalation of particles (off site)	√						
3: Direct soil-soil ingestion (on site)	√[a]	√[a]					
3: Overland-soil ingestion (off site)	√	√					
4: Air deposition-soil ingestion	√	√					
5: Direct soil-dermal (soil) (on site)	√[a]	√[a]					√
5: Direct Soil-dermal (off site)	√	√					
6: Air deposition-dermal (soil)	√	√					
8: Air deposition-veg/root ingestion			√	√	√		
8a: Air diffusion-veg/root ingestion			√	√			
9: Direct soil-veg/root ingestion (on site)			√[a]	√[a]			
9: Overland-veg/root ingestion (on site)			√	√			
10: Air deposition-beef/milk ingestion			√				
10a: Air diffusion-beef/milk ingestion			√				
11: Direct soil-bee/milk ingestion (on site)			√[a]				
11: Overland-beef/milk ingestion (off site)			√				
14: Groundwater-dermal (bathing)	√	√					
17: Air diffusion-drinking water ingestion	√						
19: Overland-drinking water ingestion	√						
20: Air deposition-drinking water ingestion	√						
21: Air diffusion-fish ingestion	√				√	√	
23: Overland-fish ingestion	√				√	√	
24: Air deposition-fish ingestion	√				√	√	
33: Air diffusion (SW)-beef/milk ingestion			√				
35: Overland (SW)-beef/milk ingestion			√				
36: Air deposition (OF/SW)-beef/milk ingestion			√				
37: Air diffusion (SW)-dermal (bathing)	√	√					
38: Air deposition (OF/SW)-dermal (bathing	√	√					
42: Overland (SW)-dermal (bathing)	√	√					

[a] On-site pathways for receptors other than workers are modeled only for the land application unit after closure.

TABLE A–4.—SUMMARY OF ECOLOGICAL RECEPTORS BY EXPOSURE PATHWAYS

Pathway	Receptor						
	Mammals	Birds	Plants	Soil fauna	Fish	Daphnids	Benthos
3: Direct soil-soil ingestion (on site)	√[a]	√[a]		√			
3: Direct soil-soil ingestion (off site)	√	√		√			
4: Air deposition-soil ingestion	√	√		√			
5: Direct soil-dermal soil (on site)			√	√			
5: Direct soil-dermal soil (off site)			√	√			
6: Air deposition-dermal soil			√	√			
8: Air deposition-veg/root ingestion	√	√					
8a: Air diffusion-veg ingestion	√	√					
9: Direct soil-veg/root ingestion (on site)	√	√					
9: Overland-veg/root ingestion (off site)	√	√					
11a: Direct soil-soil fauna ingestion (on site)	√	√					
11b: Direct soil-animals ingestion (on site)	√	√					
11c: Overland-soil fauna ingestion (off site)	√	√					
11d: Overland-animals ingestion (off site)	√	√					
17: Air diffusion-drinking water ingestion	√	√					
18: Groundwater (SW)-drinking water ingestion	√	√					
19: Overland-drinking water ingestion	√	√					
20: Air deposition-drinking water ingestion	√	√					
21: Air diffusion-fish ingestion	√	√			√		
22: Groundwater (SW)-fish ingestion	√	√			√		
23: Overland-fish ingestion	√	√			√		
24: Air deposition-fish ingestion	√	√			√		
37: Air diffusion (SW)-direct contact					√	√	√
38: Air deposition (OF/SW)-direct contact					√	√	√
40: Groundwater (SW)-direct contact					√	√	√

TABLE A–4.—SUMMARY OF ECOLOGICAL RECEPTORS BY EXPOSURE PATHWAYS—Continued

Pathway	Receptor						
	Mammals	Birds	Plants	Soil fauna	Fish	Daphnids	Benthos
42: Overland (SW)-direct contact	.....	.....	.....	.....	√	√	√

[a] On-site pathways are modeled only for the land application unit after closure.

TABLE A–5.—PATHWAYS MODELED FOR EACH WASTE MANAGEMENT UNIT

Pathway	Waste management unit					
	Ash monofill	Land appl. unit	Wastepile	Surface impound.	Tank	Water use
1: Groundwater-ingestion	.....	√	√	√	.....	.....
2a: Direct air-inhalation volatiles	.....	√	√	√	√	.....
2b: Direct air-inhalation particles	√	√	√	.....	.....	.....
3: Direct soil-soil ingestion	.....	√	√	.....	.....	.....
4: Air deposition-soil ingestion	√	√	√	.....	.....	.....
5: Direct soil-dermal (soil)	.....	√	√	.....	.....	.....
6: Air deposition-dermal (soil)	√	√	√	.....	.....	.....
8: Air deposition-veg/root ingestion	√	√	√	.....	.....	.....
8a: Air diffusion-veg/root ingestion	.....	√	√	√	√	.....
9: Direct soil or overland-veg/root ingestion	.....	√	√	.....	.....	.....
10: Air deposition-beef/milk ingestion	√	√	√	.....	.....	.....
10a: Air diffusion-beef/milk ingestion	.....	√	√	√	√	.....
11: Direct soil or overland-beef/milk ingestion	.....	√	√	.....	.....	.....
14: Groundwater-dermal (bathing)	.....	.....	.....	.....	.....	√
17: Air diffusion-drinking water ingestion	.....	√	√	√	√	.....
19: Overland-drinking water ingestion	.....	√	√	√	.....	.....
20: Air deposition-drinking water ingestion	√	√	√	.....	.....	.....
21: Air diffusion-fish ingestion	.....	√	√	√	√	.....
23: Overland-fish ingestion	.....	√	√	√	.....	.....
24: Air deposition-fish ingestion	√	√	√	.....	.....	.....
33: Air diffusion (SW)-beef/milk ingestion	.....	√	√	√	√	.....
35: Overland (SW)-beef/milk ingestion	.....	√	√	√	.....	.....
36: Air deposition (OF/SW)-beef/milk ingestion	√	√	√	.....	.....	.....
37: Air diffusion (SW)-dermal (bathing)	.....	√	√	√	√	.....
38: Air deposition (OF/SW)-dermal (bathing)	√	√	√	.....	.....	.....
42: Overland (SW)-dermal (bathing)	.....	√	√	√	.....	.....

OF=Overland flow. SW=Surface water.

Appendix B

TABLE B–1.—COMPARISON OF GROUNDWATER MODELING RESULTS FOR 1000 VS. 10,000 YEARS TIME HORIZON (HQ=1 AND RISK=10–6)

[Threshold Chemical Concentrations for 1000 and 10,000 years Groundwater Modeling]

No.	CAS No.	Name of Chemical	1000 yrs time horizon		10,000 yrs time horizon	
			Nonwastewater* leach mg/l	Wastewater** leach mg/l	Nonwastewater* leach mg/l	Wastewater** leach mg/l
1	83329	Acenaphthene	6.30E+00	3.60E+02	4.90E+00	3.10E+01
2	67641	Acetone (2-propanone)	6.00E+00	1.56E+01	6.00E+00	1.56E+01
3	75058	Acetonitrile (methyl cyanide)	3.00E−01	7.80E−01	3.00E−01	7.80E−01
4	98862	Acetophenone	6.40E+00	1.68E+01	6.40E+00	1.68E+01
5	107028	Acrolein	1.00E+06	1.00E+06	1.00E+06	1.00E+06
6	79061	Acrylamide #	3.80E−05	2.80E−04	3.80E−05	2.60E−04
7	107131	Acrylonitrile #	3.40E−04	1.10E−03	3.40E−04	1.10E−03
8	309002	Aldrin #	6.70E−04	6.50E−02	3.70E−06	4.70E−03
9	107051	Allyl Chloride	.....	.....	.....	.....
10	62533	Aniline #	1.70E−02	5.30E−02	1.70E−02	5.30E−02
176	7440360	Antimony	4.57E+01	1.18E+02	5.30E−02	1.36E−01
177	7440382	Arsenic #	3.08E−02	7.92E−02	1.48E−04	3.84E−04
178	7440393	Barium	1.67E+01	4.29E+01	1.55E+01	3.32E+01
12	71432	Benzene #	5.40E−03	1.80E−02	5.40E−03	1.77E−02
13	92875	Benzidine #	6.80E−07	2.24E−06	6.80E−07	2.24E−06
14	50328	Benzo[a]pyrene #	5.50E−04	5.50E−02	7.00E−06	3.60E−03
15	205992	Benzo[b]fluoranthene #	1.10E−02	4.90E−01	6.60E−05	1.60E−02
16	100516	Benzyl alcohol	1.50E+01	4.00E+01	1.50E+01	3.90E+01
17	100447	Benzyl chloride #	1.00E+06	1.00E+06	1.00E+06	1.00E+06
11	56553	Benz[a]anthracene #	1.10E−04	1.10E−02	4.30E−06	7.20E−04
179	7440417	Beryllium #	1.06E−03	2.72E−03	3.20E−04	8.27E−04
18	111444	Bis(2-chloroethyl)ether #	3.68E−04	1.92E−02	3.60E−04	6.48E−04
19	4E+07	Bis(2-chloroisopropyl)ether #	1.90E−03	7.90E−03	1.90E−03	7.00E−03
20	117817	Bis(2-ethylhexyl)phthalate #	1.80E+00	1.80E+02	1.10E−03	1.20E+01
21	75274	Bromodichloromethane #	2.52E−03	1.05E−02	2.52E−03	8.54E−03
22	74839	Bromomethane	2.87E+03	5.63E+04	2.87E+03	4.13E+04
23	71363	Butanol	6.00E+00	1.56E+01	6.00E+00	1.56E+01
24	85687	Butyl benzyl phthalate	1.10E+02	1.10E+04	6.40E+01	4.40E+02
25	88857	Butyl-4,6-dinitrophenol,2-sec-	6.40E−02	1.92E−01	6.40E−02	1.92E−01
180	7440439	Cadmium	1.18E+01	3.05E+01	1.10E−01	2.40E−01
26	75150	Carbon disulfide	6.40E+00	2.08E+01	6.40E+00	1.84E+01
27	56235	Carbon tetrachloride #	1.61E−03	1.40E−02	1.61E−03	1.40E−02
28	57749	Chlordane #	1.50E−02	1.50E+00	1.60E−04	1.00E−01
29	126998	Chloro-1,3-butadiene 2-(Chloroprene)	.....	.....	.....	.....
30	106478	Chloroaniline p-	1.60E−01	4.20E−01	1.60E−01	4.20E−01
31	108907	Chlorobenzene	1.33E+00	4.83E+00	1.33E+00	4.76E+00
32	510156	Chlorobenzilate #	7.50E−03	1.02E+00	5.70E−03	5.40E−02
33	124481	Chlorodibromomethane #	1.80E−03	6.90E−03	1.80E−03	6.60E−03
34	67663	Chloroform #	1.70E−02	5.80E−02	1.70E−02	5.70E−02
35	74873	Chloromethane	.....	.....	.....	.....
36	95578	Chlorophenol 2-	3.20E−01	9.00E−01	3.20E−01	9.00E−01
181	16065381	Chromium (+3)	1.32E+05	3.40E+05	2.37E+04	6.12E+04
182	7440473	Chromium (+6)	1.88E+01	4.85E+01	4.76E−01	1.24E+00
37	218019	Chrysene	2.70E−02	2.90E+00	1.20E−03	1.00E−01
183	7440508	Copper	1.32E+05	3.40E+05	1.08E+03	2.79E+03
38	108394	Cresol m-	3.20E+00	8.80E+00	3.20E+00	8.40E+00
39	95487	Cresol o-	3.20E+00	8.80E+00	3.20E+00	8.40E+00
40	106445	Cresol p-	3.20E−01	8.80E−01	3.20E−01	8.40E−01
41	98828	Cumene	2.50E+00	1.50E+01	2.50E+00	1.50E+01
42	72548	DDD #	2.80E+03	1.00E+06	2.80E+03	9.10E+05

TABLE B–1.—COMPARISON OF GROUNDWATER MODELING RESULTS FOR 1000 VS. 10,000 YEARS TIME HORIZON (HQ=1 AND RISK=10–6)—Continued

[Threshold Chemical Concentrations for 1000 and 10,000 years Groundwater Modeling]

No.	CAS No.	Name of Chemical	1000 yrs time horizon		10,000 yrs time horizon	
			Nonwastewater* leach mg/l	Wastewater** leach mg/l	Nonwastewater* leach mg/l	Wastewater** leach mg/l
43	72559	DDE #	3.30E−02	3.30E+00	1.70E−04	2.30E−01
44	50293	DDT, p,p′- #	8.40E+03	1.00E+06	5.40E−03	2.04E+01
47	2303164	Diallate #	4.60E−01	2.80E+03	4.60E−01	9.00E+01
48	53703	Dibenz[a,h]- anthracene #	2.50E−04	2.50E−02	6.30E−07	1.80E−03
49	96128	Dibromo-3-chloropropane1,2- #	1.14E−04	7.20E−04	1.14E−04	6.60E−04
50	95501	Dichlorobenzene1,2-	6.10E+00	3.00E+01	6.10E+00	3.00E+01
51	106467	Dichlorobenzene1,4- #	1.16E−02	6.80E−02	1.08E−02	5.60E−02
52	91941	Dichloro- benzidine3,3 #	7.80E−04	5.40E−03	7.20E−04	4.20E−03
53	75718	Dichlorodifluoromethane	1.19E+01	3.57E+01	1.19E+01	3.57E+01
54	75343	Dichloroethane 1,1- #	1.71E−03	9.90E−03	6.00E−05	1.60E−04
55	107062	Dichloroethane1,2- #	1.62E−03	9.00E−03	6.00E−05	1.60E−04
56	166592	Dichloroethylene cis-1,2	6.40E−01	1.72E+00	6.40E−01	1.68E+00
57	156605	Dichloroethylene trans-1,2	1.12E+00	2.94E+00	1.12E+00	2.94E+00
58	75354	Dichloroethylene1,1-(Vinylidene chloride:) #	1.80E−04	5.90E−04	1.80E−04	5.90E−04
59	120832	Dichlorophenol 2,4-	1.80E−01	6.30E−01	1.80E−01	6.20E−01
60	94757	Dichlorophenoxyacetic acid, 2,4-	6.00E−01	1.56E+00	6.00E−01	1.56E+00
61	78875	Dichloropropane 1,2- #	2.30E−03	2.60E−02	2.30E−03	2.30E−02
62	1E+07	Dichloropropene trans-1,3- #	1.15E+03	9.00E+04	1.15E+03	9.00E+04
63	542756	Dichloropropene 1,3-(mixture of isomers) #	8.50E−04	2.80E−03	8.50E−04	2.80E−03
64	1E+07	Dichloropropene cis-1,3- #	1.15E+03	9.00E+04	1.15E+03	9.00E+04
65	60571	Dieldrin #	5.40E−01	2.90E+04	5.40E−01	6.80E+02
66	84662	Diethyl phthalate	6.00E+01	4.50E+02	5.40E+01	1.86E+02
67	56531	Diethylstilbestrol #	1.20E−07	9.20E−06	6.50E−08	4.30E−07
68	60515	Dimethoate	7.70E−01	2.94E+01	7.70E−01	2.94E+01
69	119904	Dimethoxybenzidine 3,3′- #	1.20E−02	3.36E−02	1.02E−02	3.36E−02
70	131113	Dimethyl phthalate	1.04E+03	1.1.12E+04	3.00E+01	7.80E+01
72	119937	Dimethylbenzidine 3,3′- #	1.89E−05	8.10E−05	1.80E−05	7.02E−05
71	57976	Dimethylbenz[a]anthracene 7,12-	1.20E−03	1.40E−01	2.80E−06	1.30E−02
73	105679	Dimethylphenol 2,4-	1.19E+00	3.78E+00	1.19E+00	3.78E+00
45	84742	Di-n-butyl phthalate	5.70E+01	6.30E+03	2.50E+01	2.30E+02
74	99650	Dinitrobenzene 1,3-	6.40E−03	1.68E−02	6.40E−03	1.68E—02
75	51285	Dinitrophenol 2,4-	1.05E−01	2.73E−01	1.05E−01	2.73E−01
76	121142	Dinitrotoluene 2,4-	1.12E−01	3.01E−01	1.12E−01	2.94E−01
77	606202	Dinitrotoluene 2,6-	6.40E−02	1.68E−01	6.40E−02	1.68E−01
46	117840	Di-n-octyl phthalate	3.10E+02	5.20E+04	1.00E−01	1.30E+03
78	123911	Dioxane 1,4- #	1.36E−02	4.24E−02	1.36E−02	4.24E−02
79	122394	Diphenylamine	2.60E+00	1.50E+01	2.60E+00	1.50E+01
80	298044	Disulfoton	1.30E+01	5.80E+02	1.30E+01	4.60E+02
81	115297	Endosulfan(Endosulfan I and II, mixture)	1.00E+00	1.26E+01	9.40E−01	6.00E+00
82	72208	Endrin	3.20E+01	2.70E+05	3.20E+00	6.60E+03
83	106898	Epichlorohydrin #	5.40E+03	4.14E+05	5.40E+03	4.14E+05
84	110805	Ethoxyethanol 2-	1.50E+01	3.90E+01	1.50E+01	3.90E+01
85	141786	Ethyl acetate	1.14E+02	6.00E+02	1.14E+02	3.90E+02
86	60297	Ethyl ether	1.05E+01	2.73E+01	1.05E+01	2.73E+01
87	97632	Ethyl methacrylate	6.60E+00	6.90E+01	6.60E+00	2.40E+01
88	62500	Ethyl methanesulfonate #	1.17E+04	9.30E+05	1.17E+04	9.30E+05
89	100414	Ethylbenzene	8.10E+00	3.90E+01	8.10E+00	3.90E+01
90	106934	Ethylene dibromide (1,2-Dibromoethane) #	1.50E−05	4.20E−04	1.50E−05	3.60E−04
91	96457	Ethylene thiourea #	1.70E−04	5.30E−04	1.70E−04	5.30E−04
92	206440	Fluoranthene	7.50E+00	7.80E+02	1.70E+00	2.70E+01

93	86737	Fluorene	5.00E+00	3.90E+02	3.40E+00	2.20E+01
94	50000	Formaldehyde	1.05E+01	2.73E+01	1.05E+01	2.73E+01
95	61486	Formic acid	1.05E+02	2.73E+02	1.05E+02	2.73E+02
96	110009	Furan	6.00E−02	1.60E−01	6.00E−02	1.56E−01
97	319857	HCH beta- #	2.10E−04	1.30E−03	2.10E−04	1.30E−03
99	319846	HCH alpha- #	1.10E−01	2.10E+01	1.10E−01	2.10E+01
98	58899	HCH (Lindane) gamma- #	6.93E+01	1.19E+02	6.93E−01	1.19E+02
100	76448	Heptachlor #	1.00E+06	1.00E+06	1.00E−06	1.00E+06
101	1024573	Heptachlor epoxide #	4.50E+01	3.15E+04	4.50E−01	7.83E+02
102	87683	Hexachloro-1,3-butadene #	2.30E+02	2.10E+00	6.90E−03	8.10E+02
103	118741	Hexachlorobenzene #	3.50E+03	3.50E+01	1.10E−04	2.23E+02
104	77474	Hexachlorocyclopentadiene	1.00E+06	1.00E+06	1.00E−06	1.00E+06
105	67721	Hexachloroethane #	4.02E−02	110E+00	3.30E−02	2.16E−01
106	70304	Hexachlorophene	1.40E−02	1.50E+00	1.40E−03	5.20E−01
107	193395	Indeno[1,2,3-cd]pyrene	4.60E−03	5.00E−01	2.40E−05	1.70E−02
108	78831	Isobutyl alcohol	1.50E+01	3.90E+01	1.50E+01	3.90E+01
109	78591	Isophorone #	1.62E−01	5.49E−01	1.62E−01	5.31E−01
110	143500	Kepone #	5.80E−05	4.80E−03	3.20E−05	2.20E−04
184	7439921	Lead	1.32E+05	3.40E+05	1.16E+01	3.00E+01
185	7439976	Mercury	1.81E+01	4.67E+01	1.38E−01	2.96E−01
111	126987	Methacrylonitrile	6.00E−03	1.64E−02	6.00E−03	1.56E−02
112	67561	Methanol	3.00E+01	7.80E+01	3.00E+01	7.80E+01
113	72435	Methoxychlor	1.00E+06	1.00E+06	1.00E+06	1.00E+06
114	78933	Methyl ethyl ketone	3.00E+01	7.80E+01	3.00E+01	7.80E+01
115	108101	Methyl isobutyl ketone	3.00E+00	8.00E+00	3.00E+00	7.80E+00
116	80626	Methyl methacrylate	8.10E+00	8.40E+01	8.10E+00	2.82E+01
117	298000	Methyl parathion	2.34E+01	9.90E+02	2.34E+01	7.80E+01
118	56495	Methylcholanthrene 3- #	1.70E−03	1.70E−01	1.40E−06	1.20E−02
119	74953	Methylene bromide	6.80E−01	2.32E+00	1.90E−01	2.32E+00
120	75092	Methylene Chloride #	6.80E−01	2.36E+00	1.50E−02	3.90E−02
186	7439987	Molybdenum	.....	.....	.....	.....
129	91203	Naphthalene	2.70E+00	1.40E+01	2.70E+00	1.40E+01
187	7440020	Nickel	9.95E+00	2.56E+01	4.89E+00	1.05E+01
130	98953	Nitrobenzene	3.20E−02	8.40E−02	3.20E−02	8.40E−02
131	79469	Nitropropane 2-	.....	.....	.....	.....
123	55185	N–Nitrosodiethylamine #	1.02E−06	3.18E−06	1.02E−06	3.18E−06
124	62759	N–Nitrosodimethylamine #	3.40E−06	1.06E−05	3.40E−06	1.06E−05
121	924163	N–Nitroso-di-n-butylamine #	3.60E−05	1.32E−04	3.60E−05	1.22E−04
122	621647	N–Nitroso-di-n-propylamine #	1.70E−05	5.40E−05	1.70E−05	5.30E−05
125	86306	N–Nitrosodiphenylamine #	4.80E–02	2.60E−01	4.60E−02	2.00E−01
126	1E+07	N–Nitrosomethylethylamine #	6.80E−06	2.16E−05	6.80E−06	2.12E−05
127	100754	N–Nitrosopiperidine #	3.40E−06	1.06E−05	3.40E−06	1.06E−05
128	930552	N–Nitrosopyrrolidine #	6.80E−05	2.12E−04	6.80E−05	2.12E−04
132	152169	Octamethyl pyrophosphoramide	1.05E−01	2.80E−01	1.05E−01	2.73E−01
133	56382	Parathion (ethyl)	1.16E+04	5.60E+05	1.16E+04	4.40E+05
134	608935	Pentachlorobenzene	1.44E+01	1.56E+03	5.70E−01	5.10E+00
135	82688	Pentachloronitrobenzene (PCNB) #	2.37E−02	2.19E+00	5.40E−03	8.10E−02
136	87865	Pentachlorophenol #	4.20E−04	2.50E−03	4.10E−04	2.00E−03
137	108952	Phenol	3.20E+01	8.40E+01	3.20E+01	8.40E−01
138	62384	Phenyl mercuric acetate	4.50E−03	1.17E−02	4.50E−03	1.17E−02
139	108452	Phenylenediamine, 1,3-	3.00E−01	7.80E−01	3.00E−01	7.80E−01
140	298022	Phorate	1.00E+06	1.00E+06	1.00E+06	1.00E+06
141	1336363	Polychlorinated biphenyls (Aroclors) #	9.10E−04	8.80E−02	4.80E−06	6.10E−03
142	2E+07	Pronamide	5.70E+00	2.19E+01	5.70E+00	2.13E+01
143	129000	Pyrene	1.40E+01	1.50E+03	1.70E+00	5.40E+01
144	110861	Pyridine	6.00E−02	1.56E−01	6.00E−02	1.56E−01
145	94597	Safrole #	9.50E−04	3.80E−03	9.50E−04	3.50E−03
188	7782492	Selenium	1.38E+00	3.57E+00	3.57E−01	9.27E−01
189	7440224	Silver	1.32E+00	3.40E+00	8.90E−02	1.91E−01

TABLE B–1.—COMPARISON OF GROUNDWATER MODELING RESULTS FOR 1000 VS. 10,000 YEARS TIME HORIZON (HQ=1 AND RISK=10–6)—Continued

[Threshold Chemical Concentrations for 1000 and 10,000 years Groundwater Modeling]

No.	CAS No.	Name of Chemical	1000 yrs time horizon		10,000 yrs time horizon	
			Nonwastewater* leach mg/l	Wastewater** leach mg/l	Nonwastewater* leach mg/l	Wastewater** leach mg/l
146	57249	Strychnine and salts	1.60E−02	4.50E−02	1.60E−02	4.50E−02
147	100425	Styrene	1.54E+01	6.51E+01	1.54E+01	6.37E+01
148	1746016	TCDDioxin 2,3,7,8, #	2.70E−08	2.70E−06	1.80E−10	1.90E−07
149	95943	Tetrachlorobenzene 1,2,4,5- #	6.00E−02	5.70E+00	3.20E−02	2.30E−01150
	630206	Tetrachloroethane 1,1,1,2- #	7.80E−03	7.50E−02	7.80E−03	7.50E−02
151	79345	Tetrachloroethane 1,1,2,2- #	9.60E−03	2.92E−01	8.00E−03	2.40E−02
152	127184	Tetrachloroethylene	6.80E−01	2.08E+00	6.80E−01	2.04E+00
153	58902	Tetrachlorophenol 2,3,4,6-	5.80E−01	1.90E+00	5.80E−01	1.90E+00
154	3689245	Tetraethyl dithiopyrophosphate	1.00E+06	1.00E+06	1.00E+06	1.00+06
190	7440280	Thallium	3.96E+02	1.02E+03	1.92E−02	5.00E−02
155	108883	Toluene	1.26E+01	4.20E+01	1.26E+01	4.13E+01
156	95807	Toluenediamine 2,4- #	5.10E−05	1.59E−04	5.10E−05	1.59E−04
158	95534	Toluidine o- #	6.80E−04	2.24E−03	6.80E−04	2.24E−03
157	106490	Toluidine p- #	6.80E−04	2.24E−03	2.24E−03	2.24E−03
159	8001352	Toxaphene (chlorinated camphenes) #	1.10E−01	6.70E+02	1.10E−01	2.20E+01
160	75252	Tribromomethane #	1.80E−02	6.80E−02	1.80E−02	6.40E−02
161	76131	Trichloro-1,2,2-trifluoro- ethane 1,1,2-	2.40E+03	1.40E04	2.40E+03	1.10E+04
162	120821	Trichlorobenzene 1,2,4-	2.10E+00	1.70E+02	1.30E+00	9.30E+00
163	71556	Trichloroethane 1,1,1-	5.00E+00	1.20E+02	4.60E+00	1.20E+02
164	79005	Trichloroethane 1,1,2- #	1.80E−03	7.40E−03	1.80E−03	7.00E−03
165	79016	Trichloroethylene (1,1,2-Trichloroethylene) #	1.44E−02	5.28E−02	1.28E−02	3.84E−02
166	75694	Trichlorofluoromethane	1.60E+01	4.90+01	1.60E+01	4.80E+01
168	95954	Trichlorophenol 2,4,5-	4.20E+00	2.00E+01	4.20E+00	4.40E+01
167	88062	Trichlorophenol 2,4,6- #	1.52E−02	5.76E−02	1.52E−02	5.36E−02
170	93765	Trichlorophenoxyacetic acid 2,4,5-	6.40E−01	1.68E+00	6.40E−01	1.68E+00
169	93721	Trichlorophenoxypropionic acid	4.80E−00	1.32E+00	4.80E−01	1.26E+00
171	96184	Trichloropropane 1,2,3-	3.40E−01	2.20E+00	3.40E−01	1.10E+00
172	99354	Trinitrobenzene (1,3,5-Trinitrobenzene) sym-	3.00E−03	8.00E−03	3.00E−03	7.80E−03
173	126727	Tris (2,3-dibromoprophyl) phosphate B19 #	9.90E−05	2.52E−03	9.90E−05	2.52E−03
191	7440622	Vanadium	8.82E+00	2.27E+01	3.71E+00	9.58E+00
174	75014	Vinyl chloride #	6.80E−05	2.16E−04	6.00E−05	1.56E−04
175	1330297	Xylenes (total)	1.47E+02	9.10E+02	1.47E+02	8.60E+02
192	7440666	Zinc	1.08E+02	2.79E+02	3.84E+01	9.90E+01

For Trichloroethane 1,1,1 the MCL, 0.20 mg/L was used in conic. calculation.

*Represents the lowest results from either landfills, waste piles, or land application units waste management scenarios.

**Represents results from surface impoundments.

Carcinogen.

Appendix C

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water modeled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled leach level	Extrapo-lated leach level	NWW EQC	Ground-water modeled each level	Extrapo-lated each level	WW EQC
83–32–9	Acenaphthene	49.5	31.2		0.0018	9480		0.0742	4.9		0.0018
208–96–8	Acenaphthylene			0.00285	0.02		3.9	0.7		0.0000661	0.02
67–64–1	Acetone	232000	15.6		0.2	17400		0.027	6		0.2
75–05–8	Acetonitrile	6.58	0.78		0.015	923		0.014	0.3		0.015
98–86–2	Acetophenone	5960	16.8		0.00158	1210		0.03	6.4		0.00158
75–36–5	Acetyl chloride			0.023			30.85			0.015	
591–08–2	Acetyl-2-thiourea,1-			0.11775	1		1.66	70		6.4	1
53–96–3	Acetylaminofluorene, 2-			0.02762	0.02		3.28	1		0.00884	0.02
107–02–8	Acrolein	0.00248			0.013	2.63		0.075			0.013
79–06–1	Acrylamide	3.67	0.00026		0.01	0.00436		0.1	0.000038		0.01
107–13–1	Acrylonitrile	0.00428	0.0011		0.008	0.961		0.7	0.00034		0.008
1402–68–2	Aflatoxins			14.7			6900			10.5	
116–06–3	Aldicarb			0.0069415	0.05		0.194	1		0.48	0.05
309–00–2	Aldrin	5.640E–07	0.00469		0.000034	0.000444		0.0006	3.670E–06		0.000034
107–18–6	Allyl alcohol			39			36700			15	
107–05–1	Allyl chloride	0.0742			0.002	258		0.002			0.002
92–67–1	Aminobiphenyl, 4-			0.02762	0.02		3.28	1		0.00884	0.02
2763–96–4	Aminomethyl-3-isoxazolol, 5-			0.159			19.955			0.105	
504–24–5	Aminopyridine, 4-			0.02762			3.28			0.00884	
61–82–5	Amitrole			0.0069415			0.194			0.48	
62–53–3	Aniline	0.444	0.053		0.00023	4.21		0.0132	0.017		0.00023
120–12–7	Anthracene			0.00285	0.007		3.9	0.5		0.0000661	0.007
7440–36–0	Antimony	8210	0.136		0.0008	8.72		2	0.053		0.0008
140–57–8	Aramite			14.7	0.02		6900	1		10.5	0.02
7440–38–2	Arsenic	40.5	0.000384		0.0005	0.17		0.3031	0.000148		0.0005
2465–27–2	Auramine			0.159			19.955			0.105	
115–02–6	Azaserine			0.159			19.955			0.105	
7440–39–3	Barium		33.2		0.001	2080		0.2	15.5		0.001
71–43–2	Benzene	0.0209	0.0177		0.00004	109		0.0001	0.0054		0.00004
92–87–5	Benzidine	0.00015	2.240E–06		0.0025	0.0000298		0.042	6.800E–07		0.0025
106–51–4	Benzoquinone, p-			14.7	0.01		6900	0.7		10.5	0.01
98–07–7	Benzotrichloride			0.081			142	0.004		0.0317	
50–32–8	Benzo(a)pyrene	0.00231	0.00364		0.000023	0.227		0.0621	7.040E–06		0.000023
205–99–2	Benzo(b)fluoranthene	0.000805	0.0164		0.000018	3.7		0.0699	0.0000661		0.000018
205–82–3	Benzo(j)fluoranthene			0.00285	0.0002		3.9	0.01		0.0000661	0.0002
207–08–9	Benzo(k)fluoranthene			0.00285	0.0002		3.9	0.7		0.0000661	0.0002
191–24–2	Benzo[g,h,i,]perylene			0.00285	0.0008		3.9	0.7		0.0000661	0.0008
100–51–6	Benzyl alcohol	22500	39		0.00074	2740		0.034	15		0.00074
100–44–7	Benzyl chloride	1.13	3.9		5.000E–06	37.5		0.00276	15		5.000E–06
56–55–3	Benz(a)anthracene	0.0138	0.000717		0.000013	0.1		0.0826	4.300E–06		0.000013
225–51–4	Benz[c]acridine			0.00285	0.0005		3.9	0.03		0.0000661	0.0005
7440–41–7	Beryllium	10.1	0.000827		0.00003	0.0591		0.1	0.00032		0.0003
39638–32–9	Bis (2-chloroisopropyl) ether	0.569	0.007		0.00145	0.944		0.0586	0.0019		0.00145
111–44–4	Bis(2-chlorethyl)ether	0.00141	0.000648		0.0003	0.115		0.0651	0.00036		0.0003
117–81–7	Bis(2-ethylhexyl)phthalate	0.00044	12.4		0.00027	225		0.143	0.00112		0.00027
542–88–1	Bis(chloromethyl)either			0.023			30.85			0.015	
598–31–2	Bromoacetone			0.023	0.005		30.85	0.03		0.015	0.005
75–27–4	Bromodichloromethane	33.3	0.00854		0.00008	19		0.0012	0.00252		0.00008
75–25–2	Bromoform (Tribromomethane).	0.178	0.064		0.0002	173		0.02	0.018		0.0002
101–55–3	Bromophenyl phenyl ether, 4-			0.023	0.01		30.85	0.7		0.015	0.01
357–57–3	Brucine			0.159	20		19.955			0.105	20
71–36–3	Butanol	38600	15.6		0.014	18200		0.23	6		0.014
88–85–7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb).	15.4	0.192		0.00029	772		0.042	0.064		0.00029
85–68–7	Butylbenzylphthalate	235	437		0.000042	87		0.049	64		0.000042
7440–43–9	Cadmium	1600	0.24		0.00005	14.1		0.2	0.11		0.00005
86–74–8	Carbazole			0.159			19.955			0.105	
75–15–0	Carbon disulfide	0.738	18.4		0.00121	330		0.0002	6.4		0.00121
353–50–4	Carbon oxyfluoride			0.023			30.85			0.015	
56–23–5	Carbon tetrachloride	0.0115	0.014		0.00021	8.54		0.02	0.00161		0.00021
75–87–6	Chloral			0.081			142			0.0317	
305–03–3	Chlorambucil			0.081			142			0.0317	
57–74–9	Chlordane	0.000014	0.0998		0.00004	0.00976		0.0015	0.000163		0.00004
494–03–1	Chlomaphazin			0.081			142			0.0317	
126–99–8	Chloro-1, 3-butadiene, 2-(Chloroprene).	0.515			0.002	288		0.00099			0.002
107–20–0	Chloroacetaldehyde			0.023			30.85			0.015	
106–47–8	Chloroaniline, p-	517	0.42		0.00066	142		0.0592	0.16		0.00066
108–90–7	Chlorobenzene	1.5	4.76		0.00004	2470		0.0002	1.33		0.00004
510–15–6	Chlorobenzilate	0.0731	0.054		0.00504	6.82		0.069	0.0057		0.00504
124–48–1	Chlorodibromomethane	16.3	0.0066		0.00007	27.5		0.00085	0.0018		0.00007
75–00–3	Chloroethane (ethyl chloride)			0.023	0.005		30.85	0.005		0.015	0.005
110–75–8	Chloroethyl vinyl ether, 2-			0.081			142	0.005		0.0317	
67–66–3	Chloroform	0.00759	0.057		0.00003	6.74		0.002	0.017		0.00003

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water modeled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled leach level	Extrapo-lated leach level	NWW EQC	Ground-water modeled each level	Extrapo-lated each level	WW EQC
59–50–7	Chloro-m-cresol, p-			0.081	0.02		142	1		0.0317	0.02
107–30–2	Chloromethyl methyl ether			0.023			30.85	0.005		0.015	
91–58–7	Chloronaphthalene, 2-			0.081	0.01		142	0.7		0.0317	0.01
95–57–8	Chlorophenol, 2-	134	0.9		0.00058	104		0.0758	0.32		0.00058
7005–72–3	Clorophenyl phenyl ether, 4-			0.023	0.01		30.85	0.7		0.015	0.01
5344–82–1	Chlorophenyl thiourea, 1-o-			0.023			30.85			0.015	
542–76–7	Chloropropionitrile, 3-			0.081	0.1		142	0.5		0.0317	0.1
7440–47–3	Chromium	1300	1.24		0.002	9.76		0.003	0.476		0.002
218–01–9	Chrysene	1.32	0.1		0.00015	34.6		0.084	0.00119		0.00015
6358–53–8	Citrus red No. 2			14.7			6900			10.5	
7440–48–4	Cobalt			1.24	0.5		8.72	5		0.4165	0.5
7440–50–8	Copper	674	2790		0.0007	5.91		0.5	1080		0.0007
108–39–4	Cresol, m-	615	8.4		0.00046	21500		0.035	3.2		0.00046
95–48–7	Cresol, o-	656	8.4		0.00055	27400		0.027	3.2		0.00055
106–44–5	Cresol, p-	63.5	0.84		0.00046	2550		0.035	0.32		0.00046
4170–30–3	Crotonaldehyde			7.8	0.06		1210	4		6.2	0.06
57–12–5	Cyanide			0.159	0.2		19.955	0.2		0.105	0.2
14901–08–7	Cycasin			14.7			6900			10.5	
108–94–1	Cyclohexanone			7.8	10		1210	10		6.2	10
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2-.			0.0252	0.1		2.991	7		0.0083	0.1
50–18–0	Cyclophosphamide			0.159			19.955			0.105	
20830–81–3	Daunomycin			14.7			6900			10.5	
72–54–8	DDD	0.000126	913000		0.00005	0.00648		0.0012	2800		0.00005
53–19–0	DDD (o,p[1])			0.0069415			0.194			0.48	
72–55–9	DDE	9.110E–06	0.228		0.000058	0.000936		0.0006	0.0000623		0.000058
3424–82–6	DDE (o,p[1])			0.0069415			0.194			0.48	
50–29–3	DDT	0.0000181	20.4		0.000081	0.00315		0.0006	0.0054		0.000081
789–02–6	DDT (o.p[1])			0.0069415			0.194			0.48	
2303–16–4	Diallate	0.26	90.1		0.00063	1.26		0.023	0.46		0.00063
132–64–9	Dibenzofuran			8.4	0.01		27400	0.7		3.2	0.01
192–65–4	Dibenzo[a,e]pyrene			0.00285	0.0002		3.9	0.01		0.0000661	0.001
189–64–0	Dibenzo[a,h]pyrene			0.00285	0.0002		3.9	0.01		0.0000661	0.0002
189–55–9	Dibenzo[a,i]pyrene			0.00285	0.0002		3.9	0.01		0.0000661	0.0002
194–59–2	Dibenzo[c,g]carbazole, 7H-			0.00285	0.01		3.9	0.7		0.0000661	0.01
226–36–8	Dibenz(a,h)acridine			0.00285	0.0002		3.9	0.01		0.0000661	0.0002
53–70–3	Dibenz(a,h)anthracene	8.440E–06	0.00176		0.00003	0.000155		0.084	6.340E–07		0.00003
224–42–0	Dibenz[a,j]acridine			0.00285	0.001		3.9	0.7		0.0000661	0.001
96–12–8	Dibromo-3-chloropropane, 1,2-.	0.0723	0.00066		0.00026	0.663		0.0003	0.000114		0.00026
764–41–0	Dichloro-2-butene, 1,4-			0.023	0.005		30.85	0.005		0.015	0.005
110–57–6	Dichloro-2-butene, trans-1,4-			0.023	0.005		30.85	0.005		0.015	0.005
96–23–1	Dichloro-2-propanol, 1,3-			0.081	0.01		142	0.05		0.0317	0.01
95–50–1	Dichlorobenzene, 1,2-	15.4	29.5		0.00003	50000		0.0002	6.1		0.00003
541–73–1	Dichlorobenzene, 1,3-			0.023	0.005		30.85	0.7		0.015	0.005
106–46–7	Dichlorobenzene, 1,4-	3.01	0.056		0.00004	63.9		0.0001	0.0108		0.00004
91–94–1	Dichlorobenzidine, 3,3[1]-	0.0037	0.0042		0.0024	0.0524		0.116	0.00072		0.0024
75–71–8	Dichlorodifluoromethane	14.7	35.7		0.0001	8070		0.0052	11.9		0.0001
75–34–3	Dichloroethane, 1,1-	37.4	0.00016		0.00004	24.2		0.0002	0.00006		0.00004
107–06–2	Dichloroethane, 1,2-	0.00698	0.00016		0.00006	6.1		0.0001	0.00006		0.00006
75–35–4	Dichloroethylene, 1,1-	0.00345	0.00059		0.00012	2.55		0.0014	0.00018		0.00012
156–59–2	Dichloroethylene, cis-1,2-	30000	1.68		0.00012	5400		0.02	0.64		0.00012
156–60–5	Dichloroethylene, trans-1,2-	44200	2.94		0.00006	13800		0.0006	1.12		0.00006
111–91–1	Dichloromethoxy ethane			0.023	0.01		30.85	0.7		0.015	0.01
98–87–3	Dichloromethylbenzene (benzal chloride).			0.023	0.005		30.85	0.3		0.015	0.005
120–83–2	Dichlorophenol, 2,4-	6.94	0.62		0.00041	769		0.0788	0.18		0.00041
87–65–0	Dichlorophenol, 2,6-			0.023	0.01		30.85	0.7		0.015	0.01
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D).	58.5	1.56		0.00029	3140		0.00011	0.6		0.00029
78–87–5	Dichloropropane, 1,2-	0.303	0.023		0.00004	16.9		0.0001	0.0023		0.00004
542–75–6	Dichloropropene, 1,3-	0.00476	0.0028		0.0009	32.4		0.0003	0.00085		0.0009
10061–01–5	Dichloropropene, cis-1,3-	0.00485	90000		0.00069	2.64		0.0003	1150		0.00069
10061–02–6	Dichloropropene, trans-1,3-	0.0049	90000		0.00094	2.67		0.0003	1150		0.00094
60–57–1	Dieldrin	0.000059	682		0.000044	0.00176		0.0006	0.54		0.000044
1464–53–5	Diepoxybutane, 1,2,3,4-(2,2[1]-bioxirane).			14.7	0.005		6900	0.005		10.5	0.005
84–66–2	Diethyl phthalate	3560	186		0.00025	4490		0.022	54		0.00025
311–45–5	Diethyl-p-nitrophenyl phosphate.			0.159			19.955			0.105	
56–53–1	Diethylstibestrol	7.720E–07	4.290E–07		0.0078	2.470E–11		1	6.500E–08		0.0078
94–58–6	Dihydrosafrole			14.7	0.05		6900	3		10.5	0.05
60–51–5	Dimethoate	38.1	29.4		0.00029	1.6		0.0691	0.77		0.00029
131–11–3	Dimethyl phthalate	200000	78		0.00064	3		0.013	30		0.00064
77–78–1	Dimethyl sulfate			0.11775			1.66			6.4	

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water modeled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled leach level	Extrapo-lated leach level	NWW EQC	Ground-water modeled each level	Extrapo-lated each level	WW EQC
60–11–7	Dimethylaminoazobenzene, p-.			0.02762	0.01		3.28	0.7		0.00884	0.01
119–93–7	Dimethylbenzidine, 3,3[1]-	0.000625	0.0000702		0.0033	0.00062		0.7	0.000018		0.0033
57–97–6	Dimethylbenz(a)anthracene, 7,12-.	3.820E–06	0.00464		0.00037	0.00263		0.039	2.760E–06		0.00037
79–44–7	Dimethylcarbamoyl chloride			0.081			142			0.0317	
122–09–8	Dimethylphenethylamine, alpha, alpha-.			0.159	0.05		19.955	3		0.105	0.05
105–67–9	Dimethylphenol, 2,4-	151	3.78		0.00047	11300		0.052	1.19		0.00047
119–90–4	Dimethyoxybenzidine, 3,3[1]-	1.78	0.0336		0.0077	0.236		7	0.0102		0.0077
84–74–2	Di-n-butyl phthalate	883	227		0.00033	90000		0.249	25.2		0.00033
99–65–0	Dinitrobenzene, l,3–	1.28	0.0168		0.00011	5.54		0.25	0.0064		0.00011
100–25–4	Dinitrobenzene, l,4–			0.0252	0.04		2.991	3		0.0083	0.04
534–52–1	Dinitro-o-cresol, 4,6–			0.0252	0.05		2.991	3		0.0083	0.05
51–28–5	Dinitrophenol, 2,4–	50.2	0.273		0.00042	56.1		0.03	0.105		0.00042
121–14–2	Dinitrotoluene, 2,4–	10.7	0.294		0.00002	213		0.26	0.112		0.00002
606–20–2	Dinitrotoluene, 2,6–	12.9	0.168		0.00031	86.3		0.25	0.064		0.00031
117–84–0	Di-n-octyl phthalate	0.002	1260		0.000042	4480		0.139	0.1		0.000042
123–91–1	Dioxane, 1,4–	558	0.0424		0.012	13.2		0.0005	0.0136		0.012
122–39–4	Diphenylamine	29	14.7		0.00151	11800		0.041	2.6		0.00151
122–66–7	Diphenylhydrazine, 1,2–			0.159	0.01		19.955	0.7		0.105	0.01
298–04–4	Disulfoton	0.0131	458		0.00007	42.6		0.0035	13		0.00007
541–53–7	Dithiobiuret			0.11775			1.66			6.4	
115–29–7	Endosulfan	6.62	6		0.00004	73.1		0.0005	0.94		0.00004
959–98–8	Endosulfan I			0.0069415	0.0003		0.194	0.009		0.48	0.0003
332–13–65–9.	Endosulfan II			0.0069415	0.0004		0.194	0.003		0.48	0.0004
1031–07–8	Endosulfan sulfate			0.0069415	0.0004		0.194	0.04		0.48	0.0004
145–73–3	Endothall			0.0069415	0.1		0.194			0.48	0.1
72–20–8	Endrin	0.0729	6550		0.00039	026		0.0036	32		0.00039
7421–93–4	Endrin aldehyde			0.0069415	0.0005		0.194	0.02		0.48	0.0005
53494–70–5	Endrin ketone			0.0069415	0.0005		0.194	0.03		0.48	0.0005
106–89–8	Epichlorohydrin	0.335	414000		0.06519	44		0.0714	5400		0.06519
51–43–4	Epinephrine			0.159			19.955			0.105	
110–80–5	Ethoxyethanol, 2–	14.7	39		1.16	6900		2.03	15		1.16
141–78–6	Ethyl acetate		390		0.009	272000		0.18	114		0.0009
51–79–6	Ethyl carbamate			14.7	0.05		6900	3		10.5	0.05
107–12–0	Ethyl cyanide (propionitrile)			0.159	0.1		19.955	0.1		0.105	0.1
60–29–7	Ethyl ether		27.3		0.00153	41200		0.00319	10.5		0.00153
97–63–2	Ethyl methacrylate	25500	24		0.00345	3420		0.0011	6.6		0.00345
62–50–0	Ethyl methanesulfonate	0.0055	930000		0.00106	00133		0.018	11700		0.00106
100–41–4	Ethylbenzene	74.5	39		0.00006	550000		0.0002	8.1		0.00006
106–93–4	Ethylene Dibromide	0.000928	0.00036		0.00006	0.00745		0.0001	0.000015		0.00006
75–21–8	Ethylene oxide			14.7	0.001		6900	0.07		10.5	0.001
96–45–7	Ethylene thiourea	17.7	0.00053			0.51			0.00017		
151–56–4	Ethyleneimine (aziridine)			0.159			19.955			0.105	
52–56–4	Famphur			0.0069415	0.02		0.194	1		0.48	0.02
640–19–7	Fluoracetamide, 2–			0.023			30.85			0.015	
62–74–8	Flouracetic acid, sodium salt			0.0069415			0.194			0.48	
206–44–0	Fluoranthene	1580	27.5		0.00021	5970		0.084	1.74		0.00021
86–73–7	Fluorene	1310	22.4		0.00021	89800		0.08	3.4		0.00021
16984–48–8	Fluoride			0	0.05		0			0	0.05
50–00–0	Formaldehyde	0.0158	27.3		0.0232	48.8		4	10.5		0.0232
64–18–6	Formic Acid		273		0.2	301000		10	105		0.2
765–34–4	Glycidylaldehyde		7.8			1210			6.2		
319–86–8	HCH, delta-			0.0069415	0.0002		0.194	0.0006		0.48	0.0002
76–44–8	Heptachlor	0.0000237			0.00004	7.79		0.0008			0.00004
1024–57–3	Heptachlor epoxide	0.000528	783		0.000032	0.0264		0.0006	0.45		0.000032
87–68–3	Hexachloro-1,3-butadiene	0.00788	0.0806		0.0001	36.4		0.046	0.00691		0.0001
118–74–1	Hexachlorobenzene	0.000424	0.0226		0.00161	0.0116		0.0723	0.000113		0.00161
319–84–6	Hexachlorocyclohexane, alpha-(alpha-BHC).	0.000142	21		0.000035	0.0333		0.0008	0.11		0.000035
319–85–7	Hexachlorocyclohexane, beta-(beta-BHC).	0.000445	0.0013		0.000023	0.12		0.0006	0.00021		0.000023
58–89–9	Hexachlorocyclohexane, gamma-(Lindane).	0.000783	119		0.000025	0.102		0.002	0.693		0.000025
77–47–4	Hexachlorocyclopentadiene	0.00521			0.00018	1450		0.092			0.00018
67–72–1	Hexachloroethane	0.049	0.212		1.600E–06	80.6		0.0206	0.033		1.600E–06
70–30–4	Hexachlorophene	5.150E–06	0.0521		0.207	0.0000241		1.87	0.00136		0.207
1888–71–7	Hexachloropropene			0.081	0.01		142	0.7		0.0317	0.01
757–58–4	Hexaethyl tetraphosphate			14.7			6900			10.5	
591–78–6	Hexanone, 2-			7.8	0.005		1210	0.005		6.2	0.005
302–01–2	Hydrazine			0.159			19.955	0.3		0.105	
193–39–5	Indeno (1,2,3-cd) pyrene	0.00285	0.0165		0.000043	3.9		0.0748	0.0000241		0.000043

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water modeled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled leach level	Extrapo-lated leach level	NWW EQC	Ground-water modeled each level	Extrapo-lated each level	WW EQC
74–88–4	Iodomethane			0.023	0.005		30.85	0.005		0.015	0.005
78–83–1	Isobutyl alcohol	180000	39		0.011	55200		0.0035	15		0.011
465–73–6	Isodrin			0.0069415	0.02		0.194	1		0.48	0.02
78–59–1	Isophorone	78.6	0.531		0.01	743		0.0719	0.162		0.01
120–58–1	Isosafrole			14.7	0.01		6900	0.7		10.5	0.01
143–50–0	Kepone	0.0000264	0.00022		0.016	0.000277		0.097	0.000032		0.016
303–43–4	Lasiocarpine			0.159			19.955			0.105	
7439–92–1	Lead	907000	30		0.01	568		2	11.6		0.01
108–31–6	Maleic anhydride			14.7			6900	0.07		10.5	
123–33–1	Maleic hydrazide			0.159	0.05		19.955	3		0.105	0.05
109–77–3	Malononitrile			0.159	0.1		19.955	0.5		0.105	0.1
148–82–3	Melphalan			14.7			6900			10.5	
7439–97–6	Mercury	125	0.296		0.00009	0.598		0.1	0.138		0.00009
126–98–7	Methacrylonitrile	0.0708	0.0156		0.009	8.91		0.0005	0.006		0.009
74–93–1	Methanethiol			0.11775			1.66			6.4	
67–56–1	Methanol		78		0.021	138000		0.46	30		0.021
91–80–5	Methapyrilene			0.159	0.1		19.955	7		0.105	0.1
16752–77–5	Methomyl			0.0069415	0.05		0.194	3		0.48	0.05
72–43–5	Methoxychlor	6.73			0.000086	19.4		0.0057			0.000086
74–83–9	Methyl bromide (Bromomethane).	0.37	3.12		0.00011	504		0.02	0.92		0.00011
74–87–3	Methyl chloride (Chloromethane).	0.0959			0.00013	90.8		0.02			0.00013
78–93–3	Methyl ethyle ketone	141	78		0.01	112000		0.00834	30		0.01
1338–23–4	Mehtyl ethyl ketone peroxide			7.8			1210			6.2	
60–34–4	Mehty hydrazine			0.159			19.955			0.105	
108–10–1	Methyl isobutyl ketone	10.3	7.8		0.00083	17000		0.00315	3		0.00083
80–62–6	Methyl methacrylate	69900	28.2		0.005	39500		0.0027	8.1		0.005
66–27–3	Methyl methanesulfonate			0.11775	0.01		1.66	0.7		6.4	0.01
91–57–6	Methyl naphthalene, 2-			0.00285	0.01		3.9	0.7		0.0000661	0.01
298–00–0	Methyl paratyhion	0.662	78		0.01	1.43		0.0691	23.4		0.01
75–55–8	Methylaziridine, 2-			0.159			19.955			0.105	
56–49–5	Methylcholanthrene, 3-	9.880E–06	0.0117		0.01	0.000128		0.046	1.410E–06		0.01
74–95–3	Methylene bromide	11700	2.32		0.00024	8400		0.0001	0.19		0.00024
75–09–2	Methylene chloride	0.376	0.039		0.00026	306		0.02	0.015		0.00026
101–14–4	Methylenebis, 4,4′-(2-chloroaniline).			0.02762			3.28			0.00884	
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG).			0.159			19.955			0.105	
56–04–2	Methylthiouracil			0.11775			1.66			6.4	
50–07–7	Mitomycin C			14.7			6900			10.5	
7439–98–7	Molybdenum	121000	1.83		0.001	114		0.3	1.83		0.001
91–20–3	Naphthalene	385	14		0.0018	120000		0.0665	2.7		0.0018
130–15–4	Naphthoquinone, 1,4-			14.7	0.01		6900	0.7		10.5	0.01
86–88–4	Naphthyl-2-thiourea, 1-			0.11775			1.66			6.4	
134–32–7	Naphthylamine, 1-			0.159	0.01		19.955	0.7		0.105	0.01
91–59–8	Naphthylamine, 2-			0.159	0.01		19.955	0.7		0.105	0.01
7440–02–0	Nickel	5040	10.5		0.005	106		1	4.89		0.005
54–11–5	Nicotine and salts			0.159	0.02		19.955	1		0.105	0.02
88–74–4	Nitroaniline, 2-			0.02762	0.05		3.28	3		0.00884	0.05
99–09–2	Nitroaniline, 3-			0.02762	0.05		3.28	3		0.00884	0.05
100–01–6	Nitroaniline, 4-			0.02762	0.02		3.28	1		0.00884	0.02
99–95–3	Nitrobenzene	0.345	0.084		0.0064	44.8		0.0544	0.032		0.0064
55–86–7	Nitrogen mustard			0.159			19.955			0.105	
51–75–2	Nitrogen mustard hydro-chloride salt.			0.159			19.955			0.105	
126–85–2	Nitrogen mustard N-Oxide			0.159			19.955			0.105	
302–70–5	Nitrogen mustard N-Oxide, HCl salt.			0.159			19.955			0.105	
55–63–0	Nitroglycerine			0.159			19.955			0.105	
99–55–8	Nitro-o-toluidine, 5-			0.02762	0.01		3.28	0.7		0.00884	0.01
88–75–5	Nitrophenol, 2-			0.0252	0.01		2.991	0.7		0.0083	0.01
100–02–7	Nitrophenol, 4-			0.0252	0.05		2.991	3		0.0083	0.05
79–46–9	Nitropropane, 2-	0.00019			0.00577	0.128		0.0022			0.00577
56–57–5	Nitroquinoline-1-oxide, 4-			0.159	0.04		19.955	3		0.105	0.04
55–18–5	Nitrosodiethylamine	0.0000406	3.180E–06		0.002	0.00064		1	1.020E–06		0.002
62–75–9	Nitrosodimethylamine	0.000268	0.0000106		0.0006	0.00245		0.074	3.400E–06		0.0006
924–16–3	Nitrosodi-n-butylamine	0.000279	0.000122		0.06	0.094		0.03	0.000036		0.06
10595–95–6	Nitrosomethylethylamine	0.129	0.0000212		0.028	0.00244		0.016	6.800E–06		0.028
1116–54–7	M-Nitrosodiethanolamine			0.0000371	0.01		0.012875	0.7		0.0000119	0.01
621–64–7	N-Nitrosodi-n-propylamine	0.0644	0.000053		0.026	0.0233		0.0144	0.000017		0.026
86–30–6	N-Nitrosodiphenylamine	7.54	0.2		0.05	1270		0.0846	0.046		0.05
4549–40–0	N-Nitrosomethyl vinyl amine			0.0000371			0.012875			0.0000119	
59–89–2	N-Nitrosomorpholine			0.159	0.05		19.955	3		0.105	0.05
759–73–9	N-Nitroso-N-ethylurea			0.159			19.955			0.105	
684–93–5	N-Nitroso-N-methylurea			0.159	0.01		19.955	0.7		0.105	0.01

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water modeled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled leach level	Extrapo-lated leach level	NWW EQC	Ground-water modeled each level	Extrapo-lated each level	WW EQC
615–53–2	N-Nitroso-N-methylurethane			0.159			19.955			0.105	
16543–55–8	N-Nitrosonomicotine			0.159			19.955			0.105	
100–75–4	N-Nitrosopiperidine	0.0106	0.0000106		0.00135	0.00247		0.033	3.400E–06		0.00135
930–55–2	N-Nitrosopyrrolidine	0.101	0.000212		0.0047	0.0534		0.042	0.000068		0.0047
13256–22–9	N-Nitrososarcosine			0.159			19.955			0.105	
103–85–5	N-Phenylthiourea			0.11775			1.66			6.4	
1615–80–1	N,N-Diethylhydrazine			0.159			19.955			0.105	
152–16–9	Octamethyl- pyro-phosphoramide.	7310	0.273		0.0053	31		0.146	0.105		0.0053
20816–12–0	Osmium tetroxide			1.24	3		8.72	200		0.4165	3
297–97–2	O,O-Diethyl O-pyrazinyl phosphorothioate.			0.11775	0.02		1.66	1		6.4	0.02
126–68–1	O,O,O-Triethyl phosphorothioate.			0.11775	0.05		1.66	3		6.4	0.05
123–63–7	Paraldehyde			7.8	1		1210	70		6.2	1
56–38–2	Parathion	2.63	440000		0.0005	0.128		0.025	11600		0.0005
608–93–5	Pentachlorobenzene	7.86	5.15		0.000038	205		0.02	0.0543		0.000038
76–01–7	Pentachloroethane			0.023	0.005		30.85	0.01		0.015	0.005
82–68–8	Pentachloronitrobenzene (PCNB).	13.9	0.081		0.02	11.4		0.052	0.0054		0.02
87–86–5	Pentachlorophenol	0.301	0.00204		0.00008	2.92		0.1222	0.00041		0.00008
62–44–2	Phenacetin			14.7	0.02		6900	1		10.5	0.02
85–01–8	Phenanthrene			0.00285	0.006		3.9	0.7		0.0000661	0.006
108–95–2	Phenol	19300	84		0.00028	163000		0.2185	32		0.00028
62–38–4	Phenyl mercuric acetate	0.506	0.0117			0.00932			0.0045		
25265–76–3	Phenylenediamines (N.O.S.)			0.159	0.01		19.955	0.7		0.105	0.01
108–45–2	Phenylenediamine, m-	5440	0.78		0.0174	784		0.7	0.3		0.0174
106–50–3	Phenylenediamine, p-			0.159	0.01		19.955	0.7		0.105	0.01
298–02–2	Phorate	0.106			0.00004	157		0.002			0.00004
298–06–6	Phosphorodithioic acid, o-o-diethyl ester.			0.11775			1.66			6.4	
3288–58–2	Phosphorodithioic acid, o-o-diethyl-s-methyl.			0.11775			1.66			6.4	
2953–29–9	Phosphorodithioic acid, trimethyl ester.			0.11775			1.66			6.4	
85–44–9	Phthalic anhydride			132			2352.5	7		27.6	
109–06–8	Picoline, 2-			0.159	0.001		19.955	0.07		0.105	0.001
1336–36–3	Polychlorinated biphenyls	0.000286	0.00614		0.0005	0.00596		0.04	4.810E–06		0.0005
23950–58–5	Pronamide	80.3	21.3		0.00145	438		0.097	5.7		0.00145
1120–71–4	Propane sultone, 1,3-			0.11775			1.66			6.4	
107–10–8	Propylamine, n-			0.159	0.005		19.955	0.005		0.105	0.005
51–52–5	Propylthiouracil			0.11775	0.1		1.66	7		6.4	0.1
107–19–7	Propyn-1-ol, 2-			39	0.01		36700	0.05		15	0.01
129–00–0	Pyrene	3040	54.1		0.00027	15800		0.0726	1.69		0.00027
110–86–1	Pyridine	0.522	0.156		0.011	814		0.2	0.06		0.011
50–55–5	Reserpine			0.159	0.05		19.955	3		0.105	0.05
108–46–3	Resorcinol			0.0069415	0.1		0.194	7		0.48	0.1
81–07–2	Saccharin and salts			0.159			19.955			0.105	
94–59–7	Safrole	0.0829	0.0035		0.0021	10.5		0.015	0.00095		0.0021
7782–49–2	Selenium	822	0.927		0.0006	1.94		5	0.357		0.0006
7440–22–4	Silver	199			0.0005	0.134		0.3			0.0005
18883–66–4	Streptozotocin			14.7			6900			10.5	
57–24–9	Strychnine	3.34	0.045		0.0084	0.0041		3	0.016		0.0084
100–42–5	Styrene	75.7	63.7		0.00004	629000		0.004	15.4		0.00004
18496–25–8	Sulfide			0	2		0	2		0	2
1746–01–6	TCDD, 2,3,7,8-	1.050E–09	1.880E–07		1.000E–08	7.980E–06		1.000E–06	1.780E–10		1.000E–08
95–94–3	Tetrachlorobenzene, 1,2,4,5-	14.8	0.234		0.00141	168		0.034	0.0317		0.00141
630–20–6	Tetrachloroethane, 1,1,1,2-	0.0241	0.075		0.00005	133		0.0001	0.0078		0.00005
79–34–5	Tetrachloroethane, 1,1,2,2-	0.0037	0.024		0.0002	29.3		0.0002	0.0077		0.0002
127–18–4	Tetrachloroethylene	15600	2.04		0.00014	13300		0.0007	0.68		0.00014
58–90–2	Tetrachlorophenol, 2,3,4,6-	2720	1.89		0.00062	6150		0.04	0.58		0.00062
107–49–3	Tetraethyl pyrophosphate			14.7			6900	3		10.5	
3689–24–5	Tetraethyldithiopyrophosphate.	0.23			0.000058	2.81		0.0039			0.000058
7440–28–0	Thallium (I)	646	0.05		0.0007	5.12		3	0.0192		0.0007
62–55–5	Thioacetamide			0.159	1		19.955			0.105	1
39196–18–4	Thiofanox			0.11775	0.05		1.66	3		6.4	0.05
108–98–5	Thiophenol			0.11775	0.02		1.66	1		6.4	0.02
79–19–6	Thiosemicarbazide			0.11775			1.66			6.4	
62–56–6	Thiourea			0.11775			1.66			6.4	
137–26–8	Thiram			0.0069415	0.05		0.194	3		0.48	0.05
7440–31–5	Tin			1.24	8		8.72	500		0.4165	8
108–88–3	Toluene	29.8	41.3		0.00011	176000		0.0002	12.6		0.00011
584–84–9	Toluene diisocyanate			0.159			19,955	7		0.105	
95–80–7	Toluenediamine, 2,4-	0.211	0.000159		0.0134	0.0101		1	0.000051		0.0134
823–40–5	Toluenediamine, 2,6-			0.159	0.02		19.955	1		0.105	0.02

TABLE C–1.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING TOXICITY BENCHMARKS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled leach level	Extrapolated leach level	NWW EQC	Groundwater modeled each level	Extrapolated each level	WW EQC
496–72–0	Toluenediamine, 3,4-			0.159	0.02		19.955	1		0.105	0.02
636–21–5	Toluidine hydrochloride, o-			0.159	0.01		19.955	0.7		0.105	0.01
95–53–4	Toluidine, o-	0.441	0.00224		0.0121	2.35		0.029	0.00068		0.0121
106–49–0	Toluidine, p-	0.703	0.00224		0.0168	0.128		0.043	0.00068		0.0168
8001–35–2	Toxaphene	0.000364	21.5		0.00127	0.000176		0.0295	0.11		0.00127
76–13–1	Trichloro-1,2,2-trifluoroethane, 1,1,2-.	2210	11000		0.00108			0.00114	2400		0.00108
120–82–1	Trichlorobenzene, 1,2,4-	0.685	9.31		0.0002	3450		0.574	1.3		0.0002
71–55–6	Trichloroethane, 1,1,1-	73.9	120		0.00008	48200		0.0002	0.0539		0.00008
79–00–5	Trichloroethane, 1,1,2-	0.0117	0.007		0.0001	11.3		0.004	0.0018		0.0001
79–01–6	Trichloroethylene	138	0.0384		0.00019	567		0.0001	0.0128		0.00019
75–69–4	Trichlorofluoromethane	51.4	48		0.00008	25800		0.001	16		0.00008
75–70–7	Trichloromethanethiol			0.11775			1.66			6.4	
95–95–4	Trichlorophenol, 2,4,5-	38.8	18.1		0.00049	11500		0.0672	4.2		0.00049
88–06–2	Trichlorophenol, 2,4,6-	0.1	0.0536		0.0004	124		0.0785	0.0152		0.0004
93–76–5	Trichlorophenoxyacetic acid, 2,4,5- (245-T).	15.5	1.68		0.00008	63.2		0.0063	0.64		0.00008
93–72–1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex).	9.72	1.26		0.00008	6.36		0.00028	0.48		0.00008
96–18–4	Trichloropropane, 1,2,3-	707	1.1		0.00032	872		0.0009	0.34		0.00032
99–35–4	Trinitrobenzene, sym-	3	0.0078		0.00026	0.442		0.25	0.003		0.00026
126–72–7	Tris (2,3-dibromopropyl) phosphate.	0.000237	0.00252		0.0245	0.357		0.061	0.000099		0.0245
52–24–4	Tris (1-azridinyl) phosphine sulfide.			0.11775			1.66			6.4	
72–57–1	Trypan blue			14.7			6900			10.5	
66–75–1	Uracil mustard			0.159			19.955			0.105	
7440–62–2	Vanadium	15800	9.58		0.003	250		1	3.71		0.003
108–05–4	Vinyl acetate			14.7	0.005		6900	0.005		10.5	0.005
75–01–4	Vinyl chloride	0.00199	0.000156		0.00017	1.23		0.0017	0.00006		0.00017
81–81–2	Warfarin			0.0069415	0.05		0.194	3		0.48	0.05
1330–20–7	Xylenes (total)	22.4	859		0.002	172000		0.0002	147		0.002
7440–66–6	Zinc	23200	99		0.002	316		0.3	38.4		0.002

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
83–32–9	Acenaphthene	49.5	31.2		0.0018	9480		0.0742	4.9		0.0018
208–96–8	Acenaphthylene			0.00285	0.02		3.9	0.7		0.00119	0.02
67–64–1	Acetone	232000	15.6		0.2	17400		0.027	6		0.2
75–05–8	Acetonitrile	6.58	0.78		0.015	923		0.014	0.3		0.015
98–86–2	Acetophenone	5960	16.8		0.00158	1210		0.03	6.4		0.00158
75–36–5	Acetyl chloride			0.0241			30.85			0.0115	
591–08–2	Acetyl-2-thiourea, 1-			0.11775	1		1.66	70		6.4	1
53–96–3	Acetylaminofluorene, 2-			0.02762	0.02		3.28	1		0.00884	0.02
107–02–8	Acrolein	0.00248			0.013	2.63		0.075			0.013
79–06–1	Acrylamide	3.67	0.00026		0.01	0.00436		0.1	0.000038		0.01
107–13–1	Acrylonitrile	0.00428	0.0011		0.008	0.961		0.7	0.00034		0.008
1402–68–2	Aflatoxins			14.7			6900			10.5	
116–06–3	Aldicarb			0.0069415	0.05		0.194	1		0.54	0.05
309–00–2	Aldrin	5.640E–07	0.00469		0.000034	0.000444		0.0006	3.670E–06		0.000034
107–18–6	Allyl alcohol			39			36700			15	
107–05–1	Allyl chloride	0.0742			0.002	258		0.002			0.002
92–67–1	Aminobiphenyl, 4-			0.02762	0.02		3.28	1		0.00884	0.02
2763–96–4	Aminomethyl-3–isoxazolol, 5-.			0.159			19.955			0.105	
504–24–5	Aminopyridine, 4-			0.02762			3.28			0.00884	
61–82–5	Amitrole			0.0069415			0.194			0.54	
62–53–3	Aniline	0.444	0.053		0.00023	4.21		0.0132	0.017		0.00023
120–12–7	Anthracene			0.00285	0.007		3.9	0.5		0.00119	0.007
7440–36–0	Antimony	8210	0.136		0.0008	8.72		2	0.053		0.0008
140–57–8	Aramite			14.7	0.02		6900	1		10.5	0.02
7440–38–2	Arsenic	40.5	0.384		0.0005	0.17		0.3031	0.15		0.0005
2465–27–2	Auramine			0.159			19.955			0.105	
115–02–6	Azaserine			0.159			19.955			0.105	
7440–39–3	Barium		28		0.001	2080		0.2	10.8		0.001
71–43–2	Benzene	0.0209	0.0295		0.00004	.109		0.0001	0.009		0.00004
92–87–5	Benzidine	0.00015	2.2400E–06		0.0025	0.0000298		0.042	6.800E–07		0.0025

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water mod-eled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled exit level	Extrapo-lated exit level	NWW EQC	Ground-water modeled Leach level	Extrapo-lated Leach level	WW EQC
106–51–4	Benzoquinone, p-			14.7	0.01		6900	0.7		10.5	0.01
98–07–7	Benzotrichloride			0.27			142	0.004		0.033	
50–32–8	Benzo(a)pyrene	0.00231	1.88		0.000023	0.227		0.0621	0.0036		0.000023
205–99–2	Benzo(b)fluoranthene	0.000805	0.0164		0.000018	3.7		0.0699	0.0000661		0.000018
205–82–3	Benzo(j)fluoranthene			0.00285	0.0002		3.9	0.01		0.00119	0.0002
207–08–9	Benzo(k)fluoranthene			0.00285	0.0002		3.9	0.7		0.00119	0.0002
191–24–2	Benzo[g,h,i]perylene			0.00285	0.0008		3.9	0.7		0.00119	0.0008
100–51–6	Benzyl alochol	22500	39		0.00074	2740		0.034	15		0.00074
100–44–7	Benzyl chloride	1.13	3.9		5.000E–06	37.5		0.00276	15		5.000E–06
56–55–3	Benz(a)anthracene	0.0138	0.000717		0.000013	0.1		0.0826	4.300E–06		0.000013
225–51–4	Benz(c)acridine			0.00285	0.0005		3.9	0.03		0.00119	0.0005
7440–41–7	Beryllium	10.1	0.000827		0.0003	0.0591		0.1	0.00032		0.0003
39638–32–9	Bis (2-chloroisoproply) ether	0.569	0.007		0.00145	0.944		0.0586	0.0019		0.00145
111–44–4	Bis(2-chlorethyl)ether	0.00141	0.000648		0.0003	0.115		0.0651	0.00036		0.0003
117–81–7	Bis(2-ethylhexyl)phthalate	0.00044	1260		0.00027	225		0.143	0.108		0.00027
542–88–1	Bis(chloromethyl) ether			0.0241			30.85			0.0115	
598–31–2	Bromoacetone			0.0241	0.005		30.85	0.03		0.0115	0.005
75–27–4	Bromodichloromethane	33.3	0.00854		0.00008	19		0.0012	0.00252		0.00008
75–25–2	Bromoform (Tribromomethane).	0.178	0.064		0.0002	173		0.02	0.018		0.0002
101–55–3	Bromopheynl phenyl ether, 4-.			0.0241	0.01		30.85	0.7		0.0115	0.01
357–57–3	Brucine			0.159	20		19.955			0.105	20
71–36–3	Butanol	38600	15.6		0.014	18200		0.23	6		0.014
88–85–7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb).	15.4	0.0336		0.00029	772		0.042	0.0112		0.00029
85–68–7	Butylbenzylphthalate	235	437		0.000042	87		0.049	64		0.000042
7440–43–9	Cadmium	1600	0.038		0.00005	14.1		0.2	0.015		0.00005
86–74–8	Carbazole			0.159			19.955			0.105	
75–15–0	Carbon disulfide	0.738	18.4		0.00121	330		0.0002	6.4		0.00121
353–50–4	Carbon oxyfluoride			0.0241			30.85			0.0115	
56–23–5	Carbon tetrachloride	0.0115	0.1		0.00021	8.54		0.02	0.0115		0.00021
75–87–6	Chloral			0.27			142			0.033	
305–03–3	Chlorambucil			0.27			142			0.033	
57–74–9	Chlordane	0.000014	24		0.00004	0.00976		0.0015	0.036		0.00004
494–03–1	Chlomaphazin			0.27			142			0.033	
126–99–8	Chloro-1,3-butadiene, 2-(Chloroprene).	0.515			0.002	288		0.00099			0.002
107–20–0	Chloroacetaldehyde			0.0241			30.85			0.0115	
106–47–8	Chloroaniline, p-	517	0.42		0.00066	142		0.0592	0.16		0.00066
108–90–7	Chlorobenzene	1.5	0.68		0.00004	2470		0.0002	0.19		0.00004
510–15–6	Chlorobenzilate	0.0731	0.054		0.00504	6.82		0.069	0.0057		0.00504
124–48–1	Chlorodibromomethane	16.3	0.0066		0.00007	27.5		0.00085	0.0018		0.00007
75–00–3	Chloroethane (ethyl chloride).			0.0241	0.005		30.85	0.005		0.0115	0.005
110–75–8	Chloroethyl vinyl ether, 2-			0.27			142	0.005		0.033	
67–66–3	Chloroform	0.00759	0.057		0.00003	6.74		0.002	0.017		0.00003
59–50–7	Chloro-m-cresol, p-			0.27	0.02		142	1		0.033	0.02
107–30–2	Chloromethyl methyl ether			0.0241			30.85	0.005		0.0115	
91–58–7	Chloronaphthalene, 2-			0.27	0.01		142	0.7		0.033	0.01
95–57–8	Chlorophenol, 2-	134	0.9		0.00058	104		0.0758	0.32		0.00058
7005–72–3	Chlorophenyl phenyl ether, 4-.			0.0241	0.01		30.85	0.7		0.0115	0.01
5344–82–1	Chlorophenyl thiourea, 1-o-			0.0241			30.85			0.0115	
542–76–7	Chloropropionitrile, 3-			0.27	0.1		142	0.5		0.033	0.1
7440–47–3	Chromium	1300	0.618		0.002	9.76		0.003	0.238		0.002
218–01–9	Chrysene	1.32	0.1		0.00015	34.6		0.084	0.00119		0.00015
6358–53–8	Citrus red No. 2			14.7			6900			10.5	
7440–48–4	Cobalt			0.618	0.5		8.72	5		0.194	0.5
7440–50–8	Copper	674	2790		0.0007	5.91		0.5	1080		0.0007
108–39–4	Cresol, m-	615	8.4		0.00046	21500		0.035	3.2		0.00046
95–48–7	Cresol, o-	656	8.4		0.00055	27400		0.027	3.2		0.00055
106–44–5	Cresol, p-	63.5	0.84		0.00046	2550		0.035	0.32		0.00046
4170–30–3	Crotonaldehyde			7.8	0.06		1210	4		6.2	0.06
57–12–5	Cyanide			0.159	0.2		19.955	0.2		0.105	0.2
14901–08–7	Cycasin			14.7			6900			10.5	
108–94–1	Cyclohexanone			7.8	10		1210	10		6.2	10
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2-.			0.0252	0.1		2.991	7		0.0083	0.1
50–18–0	Cyclophosphamide			0.159			19.955			0.105	
20830–81–3	Daunomycin			14.7			6900			10.5	
72–54–8	DDD	0.000126	913000		0.00005	0.00648		0.0012	2800		0.00005
53–19–0	DDD (o,p')			0.0069415			0.194			0.54	
72–55–9	DDE	9.110E–06	0.228		0.000058	0.000936		0.0006	0.0000623		0.000058
3424–82–6	DDE (o,p')			0.0069415			0.194			0.54	

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water mod-eled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled exit level	Extrapo-lated exit level	NWW EQC	Ground-water modeled Leach level	Extrapo-lated Leach level	WW EQC
50–29–3	DDT	0.0000181	20.4		0.000081	0.00315		0.0006	0.0054		0.000081
789–02–6	DDT (o,p′)			0.0069415			0.194			0.54	
2303–16–4	Diallate	0.26	90.1		0.00063	1.26		0.023	0.46		0.00063
132–64–9	Dibenzofuran			8.4	0.01		27400	0.7		1.8	0.01
192–65–4	Dibenzo[a,e]pyrene			0.00285	0.001		3.9	0.7		0.00119	0.001
189–64–0	Dibenzo[a,h]pyrene			0.00285	0.0002		3.9	0.01		0.00119	0.0002
189–55–9	Dibenzo[a,i]pyrene			0.00285	0.0002		3.9	0.01		0.00119	0.0002
194–59–2	Dibenzo[c,g]carbazole, 7H-			0.00285	0.01		3.9	0.7		0.00119	0.01
226–36–8	Dibenz(a,h)acridine			0.00285	0.0002		3.9	0.01		0.00119	0.0002
53–70–3	Dibenz(a,h)anthracene	8.440E–06	0.00176		0.00003	0.000155		0.084	6.340E–07		0.00003
224–42–0	Dibenz[a,j]acridine			0.00285	0.001		3.9	0.7		0.00119	0.001
96–12–8	Dibromo-3-chloropropane, 1,2-.	0.0723	0.0022		0.00026	0.663		0.0003	0.00038		0.00026
864–41–0	Dichloro-2-butene, 1,4-			0.0241	0.005		30.85	0.005		0.0115	0.005
110–57–6	Dichloro-2-butene, trans-1,4-.			0.0241	0.005		30.85	0.005		0.0115	0.005
96–23–1	Dichloro-2-propanol, 1,3-			0.27	0.01		142	0.05		0.033	0.01
95–50–1	Dichlorobenzene, 1,2-	15.4	7.8		0.00003	50000		0.0002	1.62		0.00003
541–73–1	Dichlorobenzene, 1,3-			0.0241	0.005		30.85	0.7		0.0115	0.005
106–46–7	Dichlorobenzene, 1,4-	3.01	1.12		0.00004	63.9		0.0001	0.216		0.00004
91–94–1	Dichlorobenzidine, 3,3′-	0.0037	0.0042		0.0024	0.0524		0.116	0.00072		0.0024
75–71–8	Dichlorodifluoromethane	14.7	35.7		0.0001	8070		0.0052	11.9		0.0001
75–34–3	Dichloroethane, 1,1-	37.4	0.00016		0.00004	24.2		0.0002	0.00006		0.00004
107–06–2	Dichloroethane, 1,2-	0.00698	0.0475		0.00006	6.1		0.0001	0.009		0.00006
75–35–4	Dichloroethylene, 1,1-	0.00345	0.0413		0.00012	2.55		0.0014	0.0216		0.00012
156–59–2	Dichloroethylene, cis-1,2-	30000	0.294		000012	5400		0.02	0.112		0.00012
156–60–5	Dichloroethylene, trans-1,2-	44200	0.42		0.00006	13800		0.0006	0.16		0.00006
111–91–1	Dichloromethoxyethane			0.0241	0.01		30.85	0.7		0.0115	0.01
98–87–3	Dichloromethylbenezene (benzal chloride).			0.0241	0.005		30.85	0.3		0.0115	0.005
120–83–2	Dichlorophenol, 2,4-	6.94	0.62		0.00041	769		0.0788	0.18		0.00041
87–65–0	Dichlorophenol, 2,6-			0.0241	0.01		30.85	0.7		0.0115	0.01
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D).	58.5	0.273		0.00029	3140		0.00011	0.105		0.00029
78–87–5	Dichloropropane, 1,2-	0.303	0.115		0.00004	16.9		0.0001	0.0115		0.00004
542–75–6	Dichloropropene, 1,3-	0.00476	0.0028		0.0009	32.4		0.0003	0.00085		0.0009
10061–91–5	Dichloropropene, cis-1,3-	0.00485	90000		0.00069	2.64		0.0003	1150		0.00069
10061–02–6	Dichloropropene, trans-1,3-	0.0049	90000		0.00094	2.67		0.0003	1150		0.00094
60–57–1	Dieldrin	0.000059	682		0.000044	0.00176		0.0006	0.54		0.000044
1464–53–5	Diepoxybutane, 1,2,3,4-(2,2′-bioxirane.			14.7	0.005		6900	0.005		10.5	0.005
84–66–2	Diethl phthalate	3560	186		0.00025	4490		0.022	54		0.00025
311–45–5	Diethyl-p-nitrophenyl phosphate.			0.159			19.955			0.105	
56–53–1	Diethylstillbestrol	7.710E–07	4.2900E–07		0.0078	2.470E–11		1	6.500E–08		0.0078
94–58–6	Dihydrosafrole			14.7	0.05		6900	3		10.5	0.05
60–51–5	Dimethoate	38.1	29.4		0.00029	1.6		0.0691	0.77		0.00029
131–11–3	Dimethyl phthalate	200000	78		0.00064	3		0.013	30		0.00064
77–78–1	Dimethyl sulfate			0.11775			1.66			6.4	60
60–11–7	Dimethylaminoazobenzene, p-.			0.02762	0.01		3.28	0.7		0.00884	0.01
119–93–7	Dimethylbenzidine, 3,3′-	0.000625	0.0000702		0.0033	0.00062		0.7	0.000018		0.0033
57–97–6	Dimethylbenz(a)anthracene, 7,12-.	3.820E–06	0.00464		0.00037	0.00263		0.039	2.760E–06		0.00037
79–44–7	Dimethylcarbamoyl chloride			0.27			142			0.033	
122–09–8	Dimethylphenethylamine, alpha, alpha-.			0.159	0.05		19.955	3		0.105	0.05
105–67–9	Dimethylphenol,2,4-	151	3.78		0.00047	11300		0.052	1.19		0.00047
119–90–4	Dimethyloxybenzidine,3,3'-	1.78	0.0336		0.0077	0.236		7	0.0102		0.0077
84–74–2	Di-n-butyl phthalate	883	900		0.00033	90000		0.249	100		0.00033
99–65–0	Dinitrobenzene,1,3-	1.28	0.0168		0.00011	5.54		0.25	0.0064		0.00011
100–25–4	Dinitrobenzene,1,4-			0.0252	0.04		2.991	3		0.0083	0.04
534–52–1	Dinitro-o-cresol,4,6-			0.0252	0.05		2.991	3		0.0083	0.05
51–28–5	Dinitrophenol,2,4-	50.2	0.273		0.00042	56.1		0.03	0.105		0.00042
121–14–2	Dinitrotoluene,2,4-	10.7	0.294		0.00002	213		0.26	0.112		0.00002
606–20–2	Dinitrotoluene,2,6-	12.9	0.168		0.00031	86.3		0.25	0.064		0.00031
117–84–0	Di-n-octyl phthalate	0.002	1260		0.000042	4480		0.139	0.1		0.000042
123–91–1	Dioxane,1,4-	558	0.0424		0.012	13.2		0.0005	0.0136		0.012
122–39–4	Diphenylamine	29	14.7		0.00151	11800		0.041	2.6		0.00151
122–66–7	Diphenylhydrazine,1,2-			0.159	0.01		19.955	0.7		0.105	0.01
298–04–4	Disulfoton	0.0131	458		0.00007	42.6		0.0035	13		0.00007
541–53–7	Dithiobiuret			0.11775			1.66			6.4	
115–29–7	Endosulfan	6.62	6		0.00004	73.1		0.0005	0.94		0.00004
959–98–8	Endosulfan I			0.0069415	0.0003		0.194	0.009		0.54	0.0003
33213–65–9	Endosulfan II			0.0069415	0.0004		0.194	0.003		0.54	0.0004

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water mod-eled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled exit level	Extrapo-lated exit level	NWW EQC	Ground-water modeled Leach level	Extrapo-lated Leach level	WW EQC
1031–07–8 ..	Endosulfan sulfate			0.0069415	0.0004		0.194	0.04		0.54	0.0004
145–73–3	Endothall			0.0069415	0.1		0.194			0.54	0.1
72–20–8	Endrin	0.0729	4800		0.00039	0.26		0.0036	24		0.00039
7421–93–4 ..	Endrin aldehyde			0.0069415	0.0005		0.194	0.02		0.54	0.0005
53494–70–5	Endrin ketone			0.0069415	0.0005		0.194	0.03		0.54	0.0005
106–89–8	Epichlorohydrin	0.335	414000		0.06519	44		0.0714	5400		0.06519
51–43–4	Epinephrine			0.159			19.955			0.105	
110–80–5	Ethoxyethanol,2-	14.7	39		1.16	6900		2.03	15		1.16
141–78–6	Ethyl acetate		390		0.009	272000		0.18	114		0.009
51–79–6	Ethyl carbamate		390	14.7	0.05		6900	3		10.5	0.05
107–12–0	Ethyl cyanide (propionitrile)			0.159	0.1		19.955	0.1		0.105	0.1
60–29–7	Ethyl ether		27.3		0.00153	41200		0.00319	10.5		0.00153
97–63–2	Ethyl methacrylate	25500	24		0.00345	3420		0.0011	6.6		0.00345
62–50–0	Ethyl methanesulfonate	0.0055	930000		0.00106	0.00133		0.018	11700		0.00106
100–41–4	Ethylbenzene	74.5	8.4		0.00006	550000		0.0002	1.75		0.00006
106–93–4	Ethylene Dibromide	0.000928	0.018		0.00006	0.00745		0.0001	0.00075		0.00006
75–21–8	Ethylene oxide			14.7	0.001		6900	0.07		10.5	0.001
96–45–7	Ethylene thiourea	17.7	0.00053			0.51			0.00017		
151–56–4	Ethyleneimine (azirindine)			0.159			19.955			0.105	
52–85–7	Famphur			0.0069415	0.02		0.194	1		0.54	0.02
640–19–7	Fluoracetamide, 2-			0.0241			30.85			0.0115	
62–74–8	Fluoracetic acid, sodium salt.			0.0069415			0.194			0.54	
206–44–0	Fluoranthene	1580	27.5		0.00021	5970		0.084	1.74		0.00021
86–73–7	Fluorene	1310	22.4		0.00021	89800		0.08	3.4		0.00021
16984–48–8	Fluoride			0	0.05		0			0	0.05
50–00–0	Formaldehyde	0.0158	27.3		0.0232	48.8		4	10.5		0.0232
64–18–6	Formic Acid		273		0.2	301000		10	105		0.2
765–34–4	Glycidylaldehyde			7.8			1210			6.2	
319–86–8	HCH, delta-			0.0069415	0.0002		0.194	0.0006		0.54	0.0002
76–44–8	Heptachlor	0.0000237			0.00004	7.79		0.0008			0.00004
1024–57–3 ..	Heptachlor epoxide	0.000528	17400		0.000032	0.0264		0.0006	66		0.000032
87–68–3	Hexachloro-1,3-butadiene	0.00788	0.0806		0.0001	36.4		0.046	0.00691		0.0001
118–74–1	Hexachlorobenzene	0.000424	3.6		0.00161	0.0116		0.0723	0.018		0.00161
319–84–6	Hexachlorocyclohexane, alpha- (alpha-BHC).	0.000142	21		0.000035	0.0333		0.0008	0.11		0.000035
319–85–7	Hexachlorocyclohexane, beta- (beta-BHC).	0.000445	0.0013		0.000023	0.12		0.0006	0.00021		0.000023
58–89–9	Hexachlorocyclohexane, gamma- (Lindane).	0.000783	340		0.000025	0.102		0.002	1.98		0.000025
77–47–4	Hexachlorocyclopentadiene	0.00521			0.00018	1450		0.092			0.00018
67–72–1	Hexachloroethane	0.049	0.212		1.600E-06	80.6		0.0206	0.033		1.600E-06
70–30–4	Hexachlorophene	5.150E-06	0.0521		0.207	0.0000241		1.87	0.00136		0.207
1888–71–7 ..	Hexachloropropene			0.27	0.01		142	0.7		0.033	0.01
757–58–4	Hexaethyl tetraphosphate			14.7			6900			10.5	
591–78–6	Hexanone, 2-			7.8	0.005		1210	0.005		6.2	0.005
302–01–2	Hydrazine			0.159			19.955	0.3		0.105	
193–39–5	Indeno(1,2,3-cd) pyrene	0.00285	0.0165		0.000043	3.9		0.0748	0.0000241		0.000043
74–88–4	Iodomethane			0.0241	0.005		30.85	0.005		0.0115	0.005
78–83–1	Isobutyl alcohol	180000	39		0.011	55200		0.0035	15		0.011
465–73–6	Isodrin			0.0069415	0.02		0.194	1		0.54	0.02
78–59–1	Isophorone	78.6	0.531		0.01	743		0.0719	0.162		0.01
120–58–1	Isosafrole			14.7	0.01		6900	0.7		10.5	0.01
143–50–0	Kepone	0.0000264	0.00022		0.016	0.000277		0.097	0.000032		0.016
303–43–4	Lasiocarpine			0.159			19.955			0.105	
7439–92–1 ..	Lead	907000	30		0.01	568		2	12		0.01
108–31–6	Maleic anhydride			14.7			6900	0.07		10.5	
123–33–1	Maleic hydrazide			0.159	0.05		19.955	3		0.105	0.05
109–77–3	Malononitrile			0.159	0.1		19.955	0.5		0.105	0.1
148–82–3	Melphalan			14.7			6900			10.5	
7439–97–6 ..	Mercury	125	0.0596		0.00009	0.598		0.1	0.023		0.00009
126–98–7	Methacrylonitrile	0.0708	0.1056		0.009	8.91		0.0005	0.006		0.009
74–93–1	Methanethiol			0.11775			1.66			6.4	
67–56–1	Methanol		78		0.021	138000		0.46	30		0.021
91–80–5	Methapyrilene			0.159	0.1		19.955	7		0.105	0.1
16752–77–5	Methomyl			0.0069415	0.05		0.194	3		0.54	0.05
72–43–5	Methoxychlor	6.73			0.000086	19.4		0.0057			0.000086
74–83–9	Methyl bromide (Bromomethane).	0.37	3.12		0.00011	504		0.02	0.92		0.00011
74–87–3	Methyl chloride (Chloromethane).	0.0959			0.00013	90.8		0.02			0.00013
78–93–3	Methyl ethyl ketone	141	78		0.01	112000		0.00834	30		0.01
1338–23–4 ..	Methyl ethyl ketone peroxide.			7.8			1210			6.2	
60–34–4	Methyl hydrazine			0.159			19.955			0.105	

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Ground-water mod-eled exit level	Extrapo-lated exit level	WW EQC	Multipath modeled exit level	Extrapo-lated exit level	NWW EQC	Ground-water modeled Leach level	Extrapo-lated Leach level	WW EQC
108–10–1	Methyl isobutyl ketone	10.3	7.8		0.00083	17000		0.00315	3		0.00083
80–62–6	Methyl methacrylate	69900	28.2		0.005	39500		0.0027	8.1		0.005
66–27–3	Methyl methanesulfonate			0.11775	0.01		1.66	0.7		6.4	0.01
91–57–6	Methyl naphthalene, 2-			0.00285	0.01		3.9	0.7		0.00119	0.01
298–00–0	Methyl parathion	0.662	78		0.01	1.43		0.691	23.4		0.01
75–55–8	Methylazinidine, 2-			0.159			19.955			0.105	
56–49–5	Methylcholanthrene, 3-	9.880E–06	0.0117		0.01	0.000128		0.046	1.410E–06		0.01
74–95–3	Methylene bromide	11700	0.029		0.00024	8400		0.0001	0.0085		0.00024
75–09–2	Methylene chloride	0.376	0.039		0.00026	306		0.02	0.09		0.00026
101–14–4	Methylenegbis, 4,4'-(2-chloraoniline).			0.02762			3.28			0.00884	
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG).			0.159			19.955			0.105	
56–04–2	Methylthiouracil			0.11775			1.66			6.4	
50–07–7	Mitomycin C			14.7			6900			10.5	
7439–98–7	Molybdenum	121000	1.83		0.001	114		0.3	1.83		0.001
91–20–3	Naphthalene	385	14		0.0018	120000		0.0665	2.7		0.0018
130–15–4	Naphthoquinone, 1,4-			14.7	0.01		6900	0.7		10.5	0.01
86–88–4	Naphthyl-2-thiourea, 1-			0.11775			1.66			6.4	
134–32–7	Naphthylamine, 1-			0.159	0.01		19.995	0.7		0.105	0.01
91–59–8	Naphthylamine, 2-			0.159	0.01		19.955	0.7		0.105	0.01
7440–02–0	Nickel	5040	4.38		0.005	106		1	2.04		0.005
54–11–5	Nicotine and salts			0.159	0.02		19.955	1		0.105	0.02
88–74–4	Nitroaniline, 2-			0.02762	0.05		3.28	3		0.00884	0.05
99–09–2	Nitroaniline, 3-			0.02762	0.05		3.28	3		0.00884	0.05
100–01–6	Nitroaniline, 4-			0.02762	0.02		3.28	1		0.00884	0.02
98–95–3	Nitrobenzene	0.345	0.084		0.0064	44.8		0.0544	0.032		0.0064
55–86–7	Nitrogen mustard			0.159			19.955			0.105	
51–75–2	Nitrogen mustard hydro-chloride salt.			0.159			19.955			0.105	
126–85–2	Nitrogen mustard N-Oxide			0.159			19.955			0.105	
302–70–5	Nitrogen mustard N-Oxide, HCI salt.			0.159			19.955			0.105	
55–63–0	Nitroglycerine			0.159			19.955			0.105	
99–55–8	Nitro-o-toluidine, 5-			0.02762	0.01		3.28	0.7		0.00884	0.01
88–75–5	Nitrophenol, 2-			0.0252	0.01		2.991	0.7		0.0083	0.01
100–02–7	Nitrophenol, 4-			0.0252	0.05		2.991	3		0.0083	0.05
79–46–9	Nitropropane, 2-	0.00019			0.00577	0.128		0.0022			0.00577
56–57–5	Nitroquinoline-1-oxide, 4-			0.159	0.04		19.955	3		0.105	0.04
55–18–5	Nitrosodiethylamine	0.0000406	3,1800E–06		0.002	0.00064		1	1.020E–06		0.00262
62–75–9	Nitrosodimethylamine	0.000268	0.0000106		0.0006	0.00245		0.074	3.400E–06		0.0006
924–16–3	Nitrosodi-n-butylamine	0.000279	0.000122		0.06	0.094		0.03	0.000036		0.06
10595–95–6	Nitrosomethylethylamine	0.129	0.000212		0.028	0.00244		0.016	6.800E–06		0.028
1116–54–7	N-Nirtrosodiethanolamine			0.0000371	0.01		0.012875	0.7		0.0000119	0.01
621–64–7	N-Nitrosodi-n-propylamine	0.0644	0.000053		0.026	0.0233		0.0144	0.000017		0.026
86–30–6	N-Nitrosodiphenylamine	7.54	0.2		0.05	1270		0.0846	0.046		0.05
4549–40–0	N-Nitrosomethyl vinyl amine			0.0000371			0.012875			0.0000119	
59–89–2	N-Nitrosomorpholine			0.159	0.05		19.955	3		0.105	0.05
759–73–9	N-Nitroso-N-ethylurea			0.159			19.955			0.105	
684–93–5	N-Nitroso-N-methylurea			0.159	0.01		19.955	0.7		0.105	0.01
615–53–2	N-Nitroso-N-methylurethane			0.159			19.955			0.105	
16543–55–8	N-Nitrosonornicotine			0.159			19.955			0.105	
100–75–4	N-Nitrosopiperidine	0.0106	0.0000106		0.00135	0.00247		0.033	3.400E–06		0.00135
930–55–2	N-Nitrosopyrrolidine	0.101	0.000212		0.0047	0.0534		0.042	0.000068		0.0047
13256–22–9	N-Nitrososarcosine			0.159			19.955			0.105	
103–85–5	N-Phenylthiourea			0.11775			1.66			6.4	
1615–80–1	N,N-Diethylhydrazine			0.159			19.955			0.105	
152–16–9	Octamethylpyrophosphora-mide.	7310	0.273		0.0053	31		0.146	0.105		0.0053
20816–12–0	Osmium tetroxide			0.618	3		8.72	200		0.194	3
297–97–2	O,O-Diethyl O-pyrazinyl phosphorothioate.			0.1175	0.02		1.66	1		64	002
126–68–1	O,O,O-Triethyl phosphorothioate.			0.11775	0.05		1.66	3		6.4	0.05
123–63–7	Paraldehyde			7.8	1		1210	70		6.2	1
56–38–2	Parathion	2.63	440000		0.0005	0.128		0.025	11600		0.0005
608–93–5	Pentachlorobenzene	7.86	5.15		0.000038	205		0.02	0.0543		0.000038
76–01–7	Pentachloroethane			0.0241	0.005		30.85	0.01		0.0115	0.005
82–68–8	Pentachloronitrobenzene (PCNB).	13.9	0.27		0.02	11.4		0.052	0.018		0.02
87–86–5	Pentachlorophenol	0.301	0.00204		0.00008	2.92		0.1222	0.00041		0.00008
62–44–2	Phenacetin			14.7	0.02		6900	1		10.5	0.02
85–01–8	Phenanthrene			0.00285	0.006		3.9	0.7		0.00119	0.006
108–95–2	Phenol	19300	84		0.00028	163000		0.2185	32		0.00028
62–38–4	Phenyl mercuric acetate	0.506	0.0117			0.00932			0.0045		

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
25265–76–3	Phenylenediamines (N.O.S.)			0.159	0.01		19.955	0.7		0.105	0.01
108–45–2	Phenylenediamine, m-	5440	0.78		0.0174	784		0.7	0.3		0.0174
106–50–3	Phenylenediamine, p-			0.159	0.01		19.955	0.7		0.105	0.01
298–02–2	Phorate	0.106			0.00004	157		0.002			0.00004
298–06–6	Phosphorodithioic acid, o-o-diethyl ester.			0.11775			1.66			6.4	
3288–58–2	Phosphorodithioic acid, o-o-diethyl-s-methyl.			0.11775			1.66			6.4	
2953–29–9	Phosphorodithioic acid, trimethyl ester.			0.11775			1.66			6.4	
85–44–9	Phthalic anhydride			132			2352.5	7		42	
109–06–8	Picoline, 2-			0.159	0.001		19.955	0.07		0.105	0.001
1336–36–3	Polychlorinated biphenyls	0.000286	11.5		0.0005	0.00596		0.04	0.009		0.0005
23950–58–5	Pronamide	80.3	21.3		0.00145	438		0.097	5.7		0.00145
1120–71–4	Propane sultone, 1,3-			0.11775			1.66			6.4	
107–10–8	Propylamine, n-			0.159	0.005		19.955	0.005		0.105	0.005
51–52–5	Propylthiouracil			0.11775	0.1		1.66	7		6.4	0.1
107–19–7	Propyn-1-ol, 2-			39	0.01		36700	0.05		15	0.01
129–00–0	Pyrene	3040	54.1		0.00027	15800		0.0726	1.69		0.00027
110–86–1	Pyridine	0.522	0.156		0.011	814		0.2	0.06		0.011
50–55–5	Reserpine			0.159	0.05		19.955	3		0.105	0.05
108–46–3	Resorcinol			0.0069415	0.1		0.194	7		0.54	0.1
81–07–2	Saccharin and salts			0.159			19.955			0.105	
94–59–7	Safrole	0.0829	0.0035		0.0021	10.5		0.015	0.00095		0.0021
7782–49–2	Selenium	822	0.232		0.0006	1.94		5	0.0892		0.0006
7440–22–4	Silver	199			0.0005	1.134		0.3			0.0005
18883–66–4	Streptozotocin			14.7			6900			10.5	
57–24–9	Strychnine	3.34	0.045		0.0084	0.0041		3	0.016		0.0084
100–42–5	Styrene	75.7	0.91		0.00004	629000		0.004	0.22		0.00004
18496–25–8	Sulfide			0	2		0	2		0	2
1746–01–6	TCDD, 2,3,7,8-	1.050E–09	0.00057		1.000E–08	7.80E–06		1.000E–06	5.400E–07		1.000E–08
95–94–3	Tetrachlorobenzene, 1,2,4,5-.	14.8	0.234		0.00141	168		0.034	0.0317		0.00141
630–20–6	Tetrachloroethane, 1,1,1,2-	0.0241	0.075		0.00005	133		0.0001	0.0078		0.00005
79–34–5	Tetrachloroethane, 1,1,2,2-	0.0037	0.024		0.0002	29.3		0.0002	0.0077		0.0002
127–18–4	Tetrachloroethylene	15600	0.0255		0.00014	13300		0.0007	0.0085		0.00014
58–90–2	Tetrachlorophenol, 2,3,4,6-	2720	1.89		0.00062	6150		0.04	0.58		0.00062
107–49–3	Tetraethyl pyrophosphate			14.7			6900	3		10.5	
3689–24–5	Tetraethyldithiopyrophosphate.	0.23			0.000058	2.81		0.0039			0.000058
7440–28–0	Thallium (I)	646	0.0353		0.0007	5.12		3	0.014		0.0007
62–55–5	Thioacetamide			0.159	1		19.955			0.105	1
39196–18–4	Thiofanox			0.11775	0.05		1.66	3		6.4	0.05
108–98–5	Thiophenol			0.11775	0.02		1.66	1		6.4	0.02
79–19–6	Thiosemicarbazide			0.11775			1.66			6.4	
62–56–6	Thiourea			0.11775			1.66			6.4	
137–26–8	Thiram			0.0069415	0.05		0.194	3		0.54	0.05
7440–31–5	Tin			0.618	8		8.72	500		0.194	8
108–88–3	Toluene	29.8	5.9		0.00011	176000		0.0002	1.8		0.00011
584–84–9	Toluene diisocyanate			0.159			19.955	7		0.105	
95–80–7	Toluenediamine, 2,4-	0.211	0.000159		0.0134	0.0101		1	0.000051		0.0134
823–40–5	Toluenediamine, 2,6-			0.159	0.02		19.955	1		0.105	0.02
496–72–0	Toluenediamine, 3,4-			0.159	0.02		19.955	1		0.105	0.02
636–21–5	Toluidine hydrochloride, o-			0.159	0.01		19.955	0.7		0.105	0.01
95–53–4	Toluidine, o-	0.441	0.00224		0.0121	2.35		0.029	0.00068		0.0121
106–49–0	Toluidine, p-	0.703	0.00224		0.0168	0.128		0.043	0.00068		0.0168
8001–35–2	Toxaphene	0.000364	1170		0.00127	0.000176		0.0295	6.3		0.00127
76–13–1	Trichloro-1,2,2-trifluoroethane, 1,1,2-.	2210	0.77		0.00108			0.00114	0.168		0.00108
120–82–1	Trichlorobenzene, 1,2,4-	0.685	9.31		0.0002	3450		0.0574	1.3		0.0002
71–55–6	Trichloroethane, 1,1,1-	73.9	120		0.00008	48200		0.0002	0.0539		0.00008
79–00–5	Trichloroethane, 1,1,2-	0.0117	0.035		0.0001	11.3		0.004	0.009		0.0001
79–01–6	Trichloroethylene	138	0.024		0.00019	567		0.0001	0.008		0.00019
75–69–4	Trichlorofluoromethane	51.4	48		0.00008	25800		0.001	16		0.00008
75–70–7	Trichloromethanethiol			0.11775			1.66			6.4	
95–95–4	Trichlorophenol, 2,4,5-	38.8	18.1		0.00049	11500		0.0672	4.2		0.00049
88–06–2	Trichlorophenol, 2,4,6-	0.1	0.0536		0.0004	124		0.0785	0.0152		0.0004
93–76–5	Trichlorophenoxyacetic acid, 2,4,5- (245–T).	15.5	1.68		0.00008	63.2		0.0063	0.64		0.00008
93–72–1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex).	9.72	0.21		0.00008	6.36		0.00028	0.08		0.00008
96–18–4	Trichloropropane, 1,2,3-	707	1.1		0.00032	872		0.0009	0.34		0.00032
99–35–4	Trinitrobenzene, sym-	3	0.0078		0.00026	0.442		0.25	0.003		0.00026
126–72–7	Tris (2,3-dibromopropyl) phosphate.	0.000237	0.00252		0.0245	0.357		0.061	0.000099		0.0245

TABLE C–2.—SUMMARY OF CONSTITUENT-SPECIFIC EXIT LEVEL DEVELOPMENT USING MCL-BASED NUMBERS—Continued

CAS No.	Name	WW totals (mg/l)				NWW totals (mg/kg)			NWW leach (mg/l)		
		Multipath modeled exit level	Groundwater modeled exit level	Extrapolated exit level	WW EQC	Multipath modeled exit level	Extrapolated exit level	NWW EQC	Groundwater modeled Leach level	Extrapolated Leach level	WW EQC
52–24–4	Tris(1-azridinyl) phosphine sulfide.			0.11775			1.66			6.4	
72–57–1	Trypan blue			14.7			6900			10.5	
66–75–1	Uracil mustard			0.159			19.955			0.105	
7440–62–2	Vanadium	15800	9.58		0.003	250		1	3.71		0.003
108–05–4	Vinyl acetate			14.7	0.005		6900	0.005		10.5	0.005
75–01–4	Vinyl chloride	0.00199	0.0078		0.00017	1.23		0.0017	0.003		0.00017
81–81–2	Warfarin			0.0069415	0.05		0.194	3		0.54	0.05
1330–20–7	Xylenes (total)	22.4	88		0.002	172000		0.0002	21		0.002
7440–66–6	Zinc	23200	99		0.002	316		0.3	38.4		0.002

Appendix D

TABLE D–1.—COMPARISON BETWEEN MODELED EXIT LEVELS AND UNIVERSAL TREATMENT STANDARDS

CAS	Name	Wastewater		Nonwastewater			
		Exit level (mg/l)	UTS (mg/l)	Exit level (mg/kg)	UTS (mg/kg)	Exit level (mg/l)	UTS (mg/l)
83–32–9	Acenaphthene	31	0.059	9500	3.4	5	
67–64–1	Acetone	16	0.28	17000	160	6	
75–05–8	Acetonitrile	0.78	5.6	920	*1.8	0.3	
98–86–2	Acetophenone	17	0.01	1200	9.7	6	
107–02–8	Acrolein	eqc	0.29				
107–13–1	Acrylonitrile	eqc	0.24	0.96	84	eqc	
107–05–1	Allyl chloride	0.074	0.36	260	30		
62–53–3	Aniline	0.053	0.81	4	14	0.017	
7440–36–0	Antimony	0.14	1.9	9		0.053	2.1
7440–38–2	Arsenic	eqc	1.4	eqc		eqc	5
7440–39–3	Barium	33	1.2	2100		16	7.6
56–55–3	Benz(a)anthracene	0.00072	0.059	0.1	3.4	eqc	
71–43–2	Benzene	0.018	0.14	110	10	0.0054	
50–32–8	Benzo(a)pyrene	0.0023	0.061	0.23	3.4	eqc	
205–99–2	Benzo(b)fluoranthene	0.00081	0.11	4	6.8	0.000066	
7440–41–7	Beryllium	0.00083	0.82	eqc		0.00032	0.014
39638–32–9	Bis (2-chloroisopropyl) ether	0.007	0.055	0.94	7.2	0.0019	
111–44–4	Bis(2-chlorethyl)ether	0.00065	0.033	0.12	6	0.00036	
117–81–7	Bis(2-ethylhexyl)phthalate	0.00044	0.28	230	28	0.0011	
75–27–4	Bromodichloromethane	0.0085	0.35	19	15	0.0025	
75–25–2	Bromoform (Tribromomethane)	0.064	0.63	170	15	0.018	
71–36–3	Butanol	16	5.6	18000	2.6	6	
88–85–7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.19	0.066	770	2.5	0.064	
85–68–7	Butylbenzylphthalate	240	0.017	87	28	64	
7440–43–9	Cadmium	0.24	0.69	14		0.11	0.19
75–15–0	Carbon disulfide	0.74	3.8	330		6	4.8
56–23–5	Carbon tetrachloride	0.012	0.057	9	6	0.0016	
57–74–9	Chlordane	eqc	0.0033	0.0098	0.26	0.00016	
126–99–8	Chloro-1,3-butadiene, 2-(Chloroprene)	0.52	0.057	290	0.28		
106–47–8	Chloroaniline, p-	0.42	0.46	140	16	0.16	
108–90–7	Chlorobenzene	2	0.057	2500	6	1	
510–15–6	Chlorobenzilate	0.054	0.1				
124–48–1	Chlorodibromomethane	0.0066	0.057	28	15	0.0018	
67–66–3	Chloroform	0.0076	0.046	7	6	0.017	
95–57–8	Chlorophenol, 2-	0.9	0.044	100	5.7	0.32	
7440–47–3	Chromium	1	2.77	10		0.48	0.86
218–01–9	Chrysene	0.1	0.059	35	3.4	0.0012	
108–39–4	Cresol, m-	8	0.77	22000	5.6	3	
95–48–7	Cresol, o-	8	0.11	27000	5.6	3	
106–44–5	Cresol, p-	0.84	0.77	2600	5.6	0.32	
72–54–8	DDD	0.00013	0.023	0.0065	0.087	2800	
72–55–9	DDE	eqc	0.031	0.00094	0.087	0.000062	
50–29–3	DDT	eqc	0.0039	0.0032	0.087	0.0054	
84–74–2	Di-n-butyl phthalate	230	0.057	90000	28	25	
117–84–0	Di-n-octyl phthalate	0.002	0.017	4500	28	0.1	
96–12–8	Dibromo-3-choloropropane, 1,2-	0.00066	0.11	0.66	15	eqc	
95–50–1	Dichlorobenzene, 1,2-	15	0.088	50000	6	6	
106–46–7	Dichlorobenzene, 1,4-	0.056	0.09	64	6	0.011	
75–71–8	Dichlorodifluoromethane	15	0.23	8100	7.2	12	
75–34–3	Dichloroethane, 1,1-	0.00016	0.059	24	6	0.00006	
107–06–2	Dichloroethane, 1,2-	0.00016	0.21	6	6	0.00006	
75–35–4	Dichloroethylene, 1,1-	0.00059	0.025	3	6	0.00018	
156–60–5	Dichloroethylene, trans-1,2-	3	0.054	14000	30	1	
120–83–2	Dichlorophenol, 2,4-	0.62	0.044	770	14	0.18	

TABLE D–1.—COMPARISON BETWEEN MODELED EXIT LEVELS AND UNIVERSAL TREATMENT STANDARDS—Continued

CAS	Name	Wastewater		Nonwastewater			
		Exit level (mg/l)	UTS (mg/l)	Exit level (mg/kg)	UTS (mg/kg)	Exit level (mg/l)	UTS (mg/l)
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D)	2	0.72	3100	10	0.6	.....
78–87–5	Dichloropropane, 1,2-	0.023	0.85	17	18	0.0023	.....
10061–01–5	Dichloropropene, cis-1,3-	0.0049	0.036	3	18	1200	.....
10061–02–6	Dichloropropene, trans-1,3-	0.0049	0.036	3	18	1200	.....
60–57–1	Dieldrin	0.000059	0.017	0.0018	0.13	0.54	.....
84–66–2	Diethyl phthalate	190	0.2	4500	28	54	.....
131–11–3	Dimethyl phthalate	78	0.047	3	28	30	.....
105–67–9	Dimethylphenol,2,4-	4	0.036	11000	14	1	.....
51–28–5	Dinitrophenol,2,4-	0.27	0.12	56	160	0.11	.....
121–14–2	Dinitrotoluene,2,4-	0.29	0.32	210	140	0.11	.....
606–20–2	Dinitrotoluene,2,6-	0.17	0.55	86	28	0.064	.....
123–91–1	Dioxane,1,4-	0.042	*NA	13	170	0.014	.....
122–39–4	Diphenylamine	15	0.92	12000	13	3	.....
298–04–4	Disulfoton	0.013	0.017	43	6.2	13	.....
72–20–8	Enndrin	0.073	0.0028	0.26	0.13	32	.....
141–78–6	Ethyl acetate	390	0.34	270000	33	110	.....
60–29–7	Ethyl ether	27	0.12	41000	160	11	.....
97–63–2	Ethyl methacrylate	24	0.14	3400	160	7	.....
100–41–4	Ethylbenzene	39	0.057	550000	10	8	.....
206–44–0	Flouranthene	28	0.068	6000	3.4	2	.....
86–73–7	Flourene	22	0.059	90000	3.4	3	.....
76–44–8–	Heptachlor	eqc	0.0012	8	0.066	.....	.....
1024–57–3	Heptachlor epoxide	0.00053	0.016	0.026	0.066	0.45	.....
87–68–3	Hexachloro-1,3-butadiene	0.0079	0.055	36	5.6	0.0069	.....
118–74–1	Hexachlorobenzene	eqc	0.055	eqc	10	eqc	.....
319–84–6	Hexachlorocyclohexane, alpha-(alpha-BHC)	0.00014	0.00014	0.033	0.066	0.11	.....
319–85–7	Hexachlorocyclohexane, beta-(beta-BHC)	0.00044	0.00014	0.12	0.066	0.00021	.....
58–89–9	Hexachlorocyclohexane, gamma-(Lindane)	0.00078	0.0017	0.1	0.066	0.69	.....
77–47–4	Hexachlorocyclopentadiene	0.0052	0.057	1500	2.4	.....	.....
67–72–1	Hexachloroethane	0.049	0.055	81	30	0.033	.....
193–39–5	Indeno(1,2,3-cd) pyrene	0.0029	0.0055	4	3.4	eqc	.....
78–83–1	Isobutyl alcohol	39	5.6	55000	170	15	.....
7439–92–1	Lead	30	0.69	570	.....	12	0.37
7439–97–6	Mercury	0.3	0.15	0.6	.....	0.14	0.025
126–98–7	Methacrylonitrile	0.016	0.24	.....	.....	.....	.....
67–56–1	Methanol	78	5.6	140000	.....	30	0.75
72–43–5	Methoxychlor	7	0.25	19	0.18	.....	.....
74–83–9	Methyl bromide (Bromomethane)	0.37	0.11	500	15	0.92	.....
74–87–3	Methyl chloride (Chloromethane)	0.096	0.19	91	30	.....	.....
78–93–3	Methyl ethyl ketone	78	0.28	110000	36	30	.....
108–10–1	Methyl isobutyl ketone	8	0.14	17000	33	3	.....
80–62–6	Methyl methacrylate	28	0.14	40000	160	8	.....
298–00–0	Methyl parathion	0.66	0.014	1	4.6	23	.....
74–95–3	Methylene bromide	2	0.11	8400	15	0.19	.....
75–09–2	Methylene chloride	0.039	0.089	310	30	0.015	.....
86–30–6	N-Nitrosodiphenylamine	0.2	0.92	1300	13	eqc	.....
930–55–2	N-Nitrosopyrrolidine	eqc	0.013	0.053	35	eqc	.....
91–20–3	Naphthalene	14	0.059	120000	5.6	3	.....
7440–02–0	Nickel	11	3.98	110	.....	5	5
98–95–3	Nitrobenzene	0.084	0.068	45	14	0.032	.....
924–16–3	Nitrosodi-n-butylamine	.....	.....	0.094	17	eqc	.....
56–38–2	Parathion	3	0.014	0.13	4.6	12000	.....
608–93–5	Pentachlorobenzene	5	0.055	210	10	eqc	.....
82–68–8	Pentachloronitrobenzene (PCNB)	0.081	0.055	11	4.8	eqc	.....
87–86–5	Pentachlorophenol	0.002	0.089	3	7.4	0.00041	.....
108–95–2	Phenol	84	0.039	160000	6.2	32	.....
298–02–2	Phorate	0.11	0.021	160	4.6	.....	.....
1336–36–3	Polychlorinated biphenyls	eqc	0.1	eqc	10	eqc	.....
23950–58–5	Pronamide	21	0.093	440	1.5	6	.....
129–00–0	Pyrene	54	0.067	16000	8.2	2	.....
110–86–1	Pyridine	0.16	0.014	810	16	0.06	.....
94–59–7	Safrole	0.0035	0.081	11	0.16	eqc	.....
7782-49-2	Selenium	0.93	0.82	eqc	.....	0.36	0.16
7440-22-4	Silver	200	0.43	eqc	.....	.....	0.3
1746-01-6	TCDD,2,3,7,8	eqc	0.000063	8.000E-06	0.001	eqc	.....
95-94-3	Tetrachlorobenzene, 1,2,4,5-	0.23	0.055	170	14	0.032	.....
630-20-6	Tetrachloroethane, 1,1,1,2-	0.024	0.057	130	6	0.0078	.....
79-34-5	Tetrachloroethane, 1,1,2,2-	0.0037	0.057	29	6	0.0077	.....
127-18-4	Tetrachloroethylene	2	0.056	13000	6	0.68	.....
58-90-2	Tetrachlorophenol, 2,3,4,6-	2	0.03	6200	7.4	0.58	.....
7440-28-0	Thallium (I)	0.05	1.4	5	0.078	0.019	.....
108-88-3	Toluene	30	0.08	180000	10	13	.....
8001-35-2	Toxaphene	eqc	0.0095	eqc	2.6	0.11	.....
76-13-1	Trichloro-1,2,2-trifluoroethane, 1,1,2-	2200	0.057	.....	30	2400	.....
120-82-1	Trichlorobenzene, 1,2,4-	0.69	0.055	3500	19	1	.....
71-55-6	Trichloroethane, 1,1,1-	74	0.054	48000	6	0.054	.....
79-00-5	Trichloroethane, 1,1,2-	0.007	0.054	11	6	0.0018	.....
79-01-6	Trichloroethylene	0.038	0.054	570	6	0.013	.....
75-69-4	Trichlorofluoromethane	48	0.02	26000	30	16	.....

TABLE D–1.—COMPARISON BETWEEN MODELED EXIT LEVELS AND UNIVERSAL TREATMENT STANDARDS—Continued

CAS	Name	Wastewater		Nonwastewater			
		Exit level (mg/l)	UTS (mg/l)	Exit level (mg/kg)	UTS (mg/kg)	Exit level (mg/l)	UTS (mg/l)
95-95-4	Trichlorophenol, 2,4,5-	18	0.18	12000	7.4	4	
88-06-2	Trichlorophenol, 2,4,6-	0.054	0.035	120	7.4	0.015	
93-76-5	Trichlorophenoxyacetic acid, 2,4,5- (245-T)	2	0.72	63	7.9	0.64	
93-72-1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex)	1	0.72	6	7.9	0.48	
96-18-4	Trichloropropane, 1,2,3-	1	0.85	870	30	0.34	
126-72-7	Tris (2,3-dibromopropyl) phosphate	eqc	0.11	0.36	0.1	eqc	
7440-62-2	Vanadium	10	4.3	250		4	0.23
75-01-4	Vinyl chloride	eqc	0.27	1	6	eqc	
1330-20-7	Xylenes (total	22	0.32	170000	30	150	
7440-66-6	Zinc	99	2.61	320		38	5.3

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. In § 260.10, add the following definitions in alphabetical order:

* * * * *

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no approved State program, and there is an EPA administered program, Director means the Regional Administrator. When there is an approved State program, Director normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. In such cases, the term Director means the Regional Administrator and not the State Director.

* * * * *

Monofill means a landfill where waste of only one kind or type is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

4. Section 261.3 is amended by revising the first sentence of paragraph (a)(2)(iv) and the first sentence of paragraph (c)(2)(i) to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(a) * * *

(2) * * *

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded from paragraph (a)(2) of this section under either §§ 260.20 and 260.22, § 261.36, or § 261.37 of this chapter; however, the following mixtures of solid wastes and hazardous wastes listed in subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2) (i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the clean water act (including wastewater at facilities which have eliminated the discharge of wastewater) and:

* * * * *

(c) * * *

(2) * * *

(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, § 261.36, or § 261.37 of this chapter, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. * * *

* * * * *

5. A new § 261.36 is added to subpart D to read as follows:

§ 261.36 Exemption for listed hazardous wastes containing low concentrations of hazardous constituents.

(a) Any hazardous waste listed under this subpart, any mixture of such a listed waste with a solid waste, or any waste derived from the treatment, storage, or disposal of a listed hazardous waste that does not exhibit any of the characteristics of hazardous waste in subpart C of this part 261 and that meets all of the requirements in § 261.36(b)–(d) is exempt from all requirements of parts 262–266 and part 270 of this chapter. Any such waste which also meets the requirements of § 261.36(e) is also exempt from the requirements of part 268 of this chapter.

(b) *Requirements for qualifying for an exemption.*—(1) *Testing.* (i) For each waste for which an exemption is claimed, the claimant must test for all of the constituents on appendix X to this part 261 except those that the claimant determines should not be present in the waste. The claimant is required to document the basis of each determination that a constituent should not be present. No claimant may determine that any of the following categories of constituents should not be present:

(A) Constituents identified in appendix VII to this part 261 as the basis for listing the waste for which exemption is sought;

(B) Constituents listed in the table to § 268.40 of this chapter as regulated hazardous constituents for LDR treatment of the waste;

(C) Constituents detected in any previous analysis of the same waste conducted by or on behalf of the claimant;

(D) Constituents introduced into the process which generates the waste; and

(E) Constituents which the claimant knows or has reason to believe are byproducts or side reactions to the process that generates the waste.

Note: Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a claimant from liability should that constituent later be found in the waste.

(ii) The claimant must develop a sampling and analysis plan for each waste for which an exemption is sought. The plan must identify:

(A) Sampling procedures and locations sufficient to characterize the entire waste for which the exemption is

claimed. Grab sampling is acceptable for this purpose.

(B) Analytical methods that the claimant will use to determine, for wastewaters and nonwastewaters, the total concentration of each constituent on appendix X to this part except for those constituents which the claimant has determined should not be present under § 261.36(b)(1)(i).

(iii) The claimant must conduct sampling and analysis in accordance with the plan.

(iv) The results of the sampling and analysis must show, for both wastewaters and nonwastewaters, that all total constituent concentrations in the waste are at or below the exemption levels in appendix X to this part 261 and, for nonwastewaters, that all leachable constituent concentrations are either:

(A) At or below exemption levels in Appendix X to this part 261, as determined by testing an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, set out in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (SW–846)), or

(B) Estimated to be at or below exemption levels using the equation {[(A×B)+(C×D)]/[B+(20×D)]} leach exit level, where A=concentration of the analyte in the liquid portion of the sample; B=Volume of the liquid portion of the sample; C=Concentration of the analyte in the solid portion of the sample; D=Weight of the solid portion of the sample.

(2) *Treatment requirements.* Any waste that exits using an exit level on Table B to appendix X to this part 261 must meet the treatment standard for such a constituent under § 268.40 of this chapter, regardless of whether or not the waste is intended for land disposal, unless the claimant meets the exemption requirements in § 261.36(e).

(3) *Public Notice.* The claimant must submit for publication in a major newspaper of general circulation, local to the claimant, a notice entitled ''Notification of Exemption Claim for Listed Hazardous Wastes Containing Low Concentrations of Hazardous Constituents Under the Resource Conservation and Recovery Act'' containing the following information:

(i) The name, address, and RCRA ID number of the claimant's facility;

(ii) The applicable EPA Hazardous Waste Code of the waste for which the exemption is claimed and the narrative description associated with the listing from this part 261 subpart D;

(iii) A brief, general description of the manufacturing, treatment, or other process or operation producing the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of the waste claimed to be exempt;

(v) The name and mailing address of the agency to which the claimant is submitting the notification required under § 261.36(b)(4).

(4) *Notification to implementing agency.* Prior to managing any waste as exempt under this section, the claimant must send to the Director via certified mail or other mail service that provides written confirmation of delivery a notification of the exemption claim meeting the following requirements:

(i) The name, address, and RCRA ID number of the person claiming the exemption;

(ii) The applicable EPA Hazardous Waste Codes;

(iii) A brief description of the process that generated the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be exempt;

(v) Documentation for any claim that a constituent is not present as described under § 261.36 (b)(1)(i);

(vi) The results of all analyses and estimates of constituent concentrations required under § 261.36(b)(1)(iv) and all quantitation limits achieved;

(vii) Documentation that any waste that exits using a constituent exit level from Table B to Appendix X to this part has met the applicable treatment standards in § 268.40 of this chapter, unless the claimant is also claiming the exemption under § 261.36(e);

(viii) Evidence that the public notification requirements of § 261.36(b)(3) have been satisfied; and

(ix) The following statement signed by the person claiming the exemption or his authorized representative:

> ''Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.36(b) have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.36(d)(7) are available at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining 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.''

(c) *Effectiveness of exemption.* No claim shall take effect until the claimant receives confirmation of delivery for the notification required under § 261.36 (b)(4).

(d) *Conditions for maintaining the exemption.* To maintain any exemption claimed pursuant to this section, the claimant must satisfy the following conditions:

(1) *Changes in information.* The claimant must submit to the Director any change in any information submitted under § 261.36(b)(4) within ten business days of the claimant's first knowledge of the change.

(2) *Schedule for retesting.* The claimant must retest the waste for which the exemption was claimed on the following schedule:

(i) For the first three years of the exemption, the claimant must:

(A) Test wastes generated at the time the exemption is claimed in volumes greater than 10,000 tons/year on a quarterly basis;

(B) Test wastes generated at the time the exemption is claimed in volumes greater than 1000 tons/year but less than 10,000 tons/year must on a semi-annual basis;

(C) Test wastes generated at the time the volume is claimed in volumes less than 1000 tons/year on an annual basis.

(ii) After the first three years of an exemption, the claimant must retest the waste for which the exemption was claimed on an annual basis.

(3) For every retest the claimant must prepare and comply with a sampling and analysis plan meeting the requirements of § 261.36(b)(1)(ii) and determine the concentration of:

(i) Each constituent from Table A to appendix X to this part that was detected in the initial test within an order of magnitude below either its total or leachable exemption level and each constituent from Table B to appendix X of this part that is identified as a basis for listing the waste on appendix VII to this part or is listed as a regulated hazardous constituent for the waste in the table of ''Treatment Standards for Hazardous Wastes'' in § 268.40 of this chapter; and

(ii) Any other constituent that the claimant has reason to believe may be newly present in the waste since the most recent test.

(4) *Exemption levels.* The concentrations of all constituents tested must meet the criteria set out in § 261.36(b)(1)(iv).

(5) *Treatment requirements.* Any waste exiting by using an exit level for a hazardous constituent from Table B to appendix X to this part must meet the treatment requirements for such a constituent under § 268.40 of this chapter prior to exit regardless of whether or not the waste is intended for land disposal, unless the claimant meets

the exemption requirements in § 261.36(e).

(6) *Records.* The claimant must maintain records of the following information in files on-site for three years after the date of the relevant test:

(i) For initial testing, all information submitted under § 261.36(b)(4), all revisions to such material submitted under § 261.36(d)(1) and all information required to be maintained under § 261.36(d)(6)(iii);

(ii) For retests:

(A) All volume determinations made for the purpose of determining testing frequency under § 261.36(d)(2);

(B) All sampling and analysis plans required under § 261.36(d)(3);

(C) All analytical results and estimates of leachable concentrations (if any) for constituents required to be assessed under § 261.35(d)(3);

(D) Documentation showing that a waste exiting using any constituent exit level from Table B to appendix X to this part and is required to be reassessed under § 261.36(d)(3) has met applicable treatment standards under § 268.40 of this chapter, unless the claimant also claims the exemption under § 261.36(e); and

(iii) For both initial tests and retests, the claimant must also retain records of:

(A) The dates and times waste samples were obtained, and, for total concentrations and leachable concentrations that were analyzed, the dates of the analyses;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and extraction methods;

(F) All quantitation limits achieved and all other quality control results (including any method blanks, duplicate analyses, and matrix spikes), laboratory quality assurance data, and a description of any deviations from published analytical methods or from the plan which occurred; and

(G) All laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.36 (b)(2) and also provides for the availability of the documentation to the claimant upon request.

Note: Failure to satisfy any of these conditions voids the exemption and requires management of the waste for which the exemption has been claimed as hazardous waste. Submission of notification to the Director that all waste conditions have been satisfied re-establishes the exemption for all waste generated after that date.

(e) Exemption from part 268 requirements.—If all hazardous constituent levels in a waste qualifying for exemption are at or below the appendix X to this part concentration levels at the waste's point of generation, prior to any mixing with other solid or hazardous wastes and prior to any treatment, the waste is exempt from all requirements of part 268 of this chapter. The claimant also must meet the following documentation requirements:

(1) For initial tests, in place of the certification required at § 261.36 (b)(4)(ix), the claimant must submit the following statement signed by the person claiming the exemption or his authorized representative and, if the claimant is not the generator of the waste, also signed by the generator or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that, for the waste identified in this notification, the concentration of all constituents assessed as required under § 261.36 (b)(1)(iv) met the applicable levels in appendix X to this part 261 at the point of generation and that all other requirements of 40 CFR § 261.36 (b) have been met. Copies of the records and information required at 40 CFR § 261.36 (d)(4) are available at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining 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.''; or

(2) For every retest required under § 261.36(d)(2), the claimant must document that the concentrations of all constituents retested as required under § 261.36(d)(3) met the applicable levels in appendix X to this part 261 at the waste's point of generation, must include information supporting this claim from the waste's generator if the generator is not the person asserting the claim, and must retain such documentation in files on-site for three years after the date of the relevant test.

(f) Nothing in this paragraph preempts, overrides, or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(g) In an enforcement action, the burden of proof to establish conformance with the exemption criteria shall be on the claimant.

6. A new § 261.37 is added to read as follows:

§ 261.37 Exemption for listed hazardous wastes containing low concentrations of hazardous constituents and managed in landfills and monofills.

(a) Any hazardous waste listed under this subpart, any mixture of such a listed waste with a solid waste, or any waste derived from the treatment, storage or disposal of such a listed waste is exempt from regulation as a hazardous waste under parts 262–266 and 270 of this chapter if it meets the requirements in § 261.37(b) and (d) (including the requirement that all hazardous constituents present in the waste be at or below the levels listed in appendix XI to this part and that the waste be disposed in a landfill or monofill, but not a land application unit). To maintain the exemption, the waste must satisfy the conditions in § 261.37(e). Any such waste which also meets the requirements of 261.37(f) is also exempt from the requirements of part 268 of this chapter.

(b) *Requirements for qualifying for an exemption*—(1) *Testing.* (i) For each waste for which an exemption is claimed, the claimant must test for all of the constituents on appendix XI to this part 261 except those that the claimant determines should not be present in the waste. The claimant is required to document the basis of each determination that a constituent should not be present. No claimant may determine that any of the following categories of constituents should not be present:

(A) Constituents identified in appendix VII to this part 261 as the basis for listing the waste for which exemption is sought;

(B) Constituents listed in the table to § 268.40 as regulated hazardous constituents for LDR treatment of the waste;

(C) Constituents detected in any previous analysis of the same waste conducted by or on behalf of the claimant;

(D) Constituents introduced into the process which generates the waste; and

(E) Constituents which the claimant knows or has reason to believe are byproducts or side reactions to the process that generates the waste.

Note: Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a claimant from liability should that constituent later be found in the waste.

(ii) The claimant must develop a sampling and analysis plan for each

waste for which an exemption is sought. The plan must identify:

(A) Sampling procedures and locations sufficient to characterize the entire waste for which the exemption is claimed. Grab sampling is acceptable for this purpose.

(B) Analytical methods that the claimant will use to determine, for wastewaters and nonwastewaters, the total concentration of each constituent on appendix XI to this part except for those constituents which the claimant has determined should not be present under § 261.37(b)(1)(i).

(iii) The claimant must conduct sampling and analysis in accordance with the plan.

(iv) The results of the sampling and analysis must show, for both wastewaters and nonwastewaters, that all total constituent concentrations in the waste are at or below the exemption levels in appendix XI to this part 261 and, for nonwastewaters, that all leachable constituent concentrations are either:

(A) At or below exemption levels in appendix XI to this Part 261, as determined by testing an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, set out in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (SW–846)), or

(B) Estimated to be at or below exemption levels using the equation {(AxB)+(CxD)}/{B+(20xD)} < leach exit level, where A=concentration of the analyte in the liquid portion of the sample; B = Volume of the liquid portion of the sample; C=Concentration of the analyte in the solid portion of the sample; D = Weight of the solid portion of the sample.

(2) *Treatment requirements.* Any waste that exits using an exit level on Table B to appendix XI to this Part 261 must meet the treatment standard for such a constituent under § 268.40 of this chapter, regardless of whether or not the waste is intended for land disposal, unless the claimant meets the exemption requirements in § 261.37(f).

(3) *Public Notice.* The claimant must submit for publication in a major newspaper of general circulation, local to the claimant, a notice entitled ''Notification of Exemption Claim for Listed Hazardous Wastes Containing Low Concentrations of Hazardous Constituents and Managed in Landfills and Monofills Under the Resource Conservation and Recovery Act'' containing the following information:

(i) The name, address, and RCRA ID number of the claimant's facility;

(ii) The applicable EPA Hazardous Waste Code of the waste for which the exemption is claimed and the narrative description associated with the listing from this part 261 subpart D;

(iii) A brief, general description of the manufacturing, treatment, or other process or operation producing the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of the waste claimed to be exempt;

(v) The name and mailing address of the agency to which the claimant is submitting the notification required under § 261.37(b)(4);

(vi) The following statement:

> The exemption for this waste from the hazardous waste regulatory scheme is conditioned disposing of the waste in a landfill or monofill (and not a land application unit.)

(4) *Notification to implementing agency.* Prior to managing any waste as exempt under this section, the claimant must send to the Director via certified mail or other mail service that provides written confirmation of delivery a notification of the exemption claim meeting the following requirements:

(i) The name, address, and RCRA ID number of the person claiming the exemption;

(ii) The applicable EPA Hazardous Waste Codes;

(iii) A brief description of the process that generated the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be exempt;

(v) Documentation for any claim that a constituent is not present as described under § 261.37(b)(1)(i);

(vi) The results of all analyses and estimates of constituent concentrations required under § 261.37(b)(1)(iv) and all quantitation limits achieved;

(vii) Documentation that any waste that exits using a constituent exit level from Table B to appendix XI to this part have met the applicable treatment standards in § 268.40, of this chapter, unless the claimant is also claiming the exemption under § 261.37(f);

(viii) Evidence that the public notification requirements of § 261.37(b)(3) have been satisfied; and

(ix) The following statement signed by the person claiming the exemption or his authorized representative:

> Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of § 261.37(b) have been met, including the requirement that all hazardous constituents present in the waste are at or below the levels listed on appendix XI to this part, for all listed wastes identified in this notification. I also certify that arrangements have been made to dispose of the waste in a landfill or monofill (and not a land application unit). Copies of the records and information required at § 261.37 (e)(7) are available) at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining 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.

(5) The claimant must receive confirmation of delivery for the notification required under § 261.37 (b)(4).

(c) *Tracking, storage, treatment and other management prior to disposal.* Until a listed hazardous waste meeting the requirements of § 261.37(b) is placed in a landfill or monofill, it remains subject to all requirements of parts 262–266 and 270 of this chapter. The waste is also subject to the requirements of part 268 of this chapter unless it qualifies for an exemption under § 261.37(f).

(d) *Disposal in a landfill or monofill.* The claimant must ensure that any listed waste meeting the requirements of § 261.37(b) for which an exemption is sought is disposed of in either a landfill or monofill (and not a land application unit). The landfill or monofill need not be subject to regulation as a hazardous waste management unit. The waste becomes exempt as soon as it is placed in a landfill or monofill unit.

(e) *Conditions for maintaining the exemption.* To maintain any exemption claimed pursuant to this section, the claimant must satisfy the following conditions:

(1) *Compliance with modified hazardous waste manifest system.* If the landfill or monofill in which the waste is disposed is not a hazardous waste disposal unit subject to part § 264.71–264.72 or § 265.71–265.72 of this chapter, the claimant must:

(i) Ensure that the manifest form is returned from the disposal facility, and

(ii) Obtain information showing that the disposal facility designated on the manifest received the waste for which the exemption is sought and placed it in either a landfill or monofill (and not a land treatment unit).

(2) *Changes in information.* The claimant must submit to the Director any change in any information submitted under § 261.37(b)(4) within ten business days of the claimant's first knowledge of the change.

(3) *Schedule for retesting.* The claimant must retest the waste for which the exemption was claimed on the following schedule:

(i) For the first three years of the exemption, the claimant must:

(A) Test wastes generated at the time the exemption is claimed in volumes greater than 10,000 tons/year on a quarterly basis;

(B) Test wastes generated at the time the exemption is claimed in volumes greater than 1000 tons/year but less than 10,000 tons/year must on a semi-annual basis;

(C) Test wastes generated at the time the volume is claimed in volumes less than 1000 tons/year on an annual basis.

(ii) After the first three years of an exemption, the claimant must retest the waste for which the exemption was claimed on an annual basis.

(4) For every retest the claimant must prepare and comply with a sampling and analysis plan meeting the requirements of § 261.37(b)(1)(ii) and determine the concentration of:

(i) Each constituent from Table A to appendix XI to this part that was detected in the initial test within an order of magnitude below either its total or leachable exemption level and each constituent from Table B to appendix XI to this part that is identified as a basis for listing the waste on appendix VII to this part or is listed as a regulated hazardous constituent for the waste in the table of ''Treatment Standards for Hazardous Wastes'' in § 268.40 of this chapter; and

(ii) Any other constituent that the claimant has reason to believe may be newly present in the waste since the most recent test.

(5) Exemption levels.—The concentrations of all constituents tested must meet the criteria set out in § 261.37(b)(1)(iv).

(6) Treatment requirements.—Any waste exiting by using an exit level for a hazardous constituent from Table B to Appendix XI to this part must meet the treatment requirements for such a constituent under § 268.40 of this chapter prior to exit regardless of whether or not the waste is intended for land disposal, unless the claimant meets the exemption requirements in § 261.37(f).

(7) Records.—The claimant must maintain records of the following information in files on-site for three years after the date of the relevant test:

(i) For initial testing, all information submitted under § 261.37(b)(4) and all revisions to such material submitted under § 261.37(e)(2), all information obtained under § 261.37(e)(1), and all information required to be maintained under § 261.37(e)(7)(iii);

(ii) For retests:

(A) All volume determinations made for the purpose of determining testing frequency under § 261.37(e)(3);

(B) All sampling and analysis plans required under § 261.37(e)(4);

(C) All analytical results and estimates of leachable concentrations (if any) for constituents required to be assessed under § 261.37 (e)(5);

(D) Documentation showing that a waste exiting using any constituent exit level from Table B to Appendix XI to this part has met applicable treatment standards under § 268.40 of this chapter, unless the claimant also claims the exemption under § 261.37(f); and

(iii) For both initial tests and retests, the claimant must also retain records of:

(A) The dates and times waste samples were obtained, and, for total concentrations and leachable concentrations that were analyzed, the dates of the analyses;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and extraction methods;

(F) All quantitation limits achieved and all other quality control results (including any method blanks, duplicate analyses, and matrix spikes), laboratory quality assurance data, and a description of any deviations from published analytical methods or from the plan which occurred; and

(G) All laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.37 (b)(2) and also provides for the availability of the documentation to the claimant upon request. Failure to satisfy any of these conditions voids the exemption and requires management of the waste for which the exemption has been claimed as hazardous waste. Submission of notification to the Director that all waste conditions have been satisfied re-establishes the exemption for all waste generated after that date.

(f) Exemption from part 268 requirements.—If all hazardous constituent levels in a waste qualifying for exemption are at or below the appendix XI to this part concentration levels at the waste's point of generation, prior to any mixing with other solid or hazardous wastes and prior to any treatment, the waste is exempt from all requirements of part 268 of this chapter. The claimant also must meet the following documentation requirements:

(1) For initial tests, in place of the certification required at § 261.37 (b)(4)(ix), the claimant must submit the following statement signed by the person claiming the exemption or his authorized representative and, if the claimant is not the generator of the waste, also signed by the generator or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that, for the waste identified in this notification, the concentration of all constituents assessed as required under § 261.37 (b)(1)(iv) met the applicable levels in appendix XI to this part 261 at the point of generation and that all other requirements of 40 CFR 261.37 (b) have been met. I also certify that arrangements have been made to dispose of the waste in a landfill or monofill (and not a land application unit). Copies of the records and information required at 40 CFR 261.37 (e)(7) are available at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining 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.''; and

(2) For every retest required under § 261.37(e)(3), the claimant must document that the concentrations of all constituents retested as required under § 261.37(e)(4) met the applicable levels in appendix XI to this part 261 at the waste's point of generation, must include information supporting this claim from the waste's generator if the generator is not the person asserting the claim, and must retain such documentation in files on-site for three years after the date of the relevant test.

(g) Nothing in this paragraph preempts, overrides, or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(h) In an enforcement action, the burden of proof to establish conformance with the exemption criteria shall be on the claimant.

7. Appendix X is added to read as follows:

Appendix X

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
83–32–9	Acenaphthene	31	9500	5	31	9500	5
208–96–8	Acenaphthylene	(1)	4	(1)	(1)	4	(1)
67–64–1	Acetone	16	17000	6	16	17000	6
75–05–8	Acetonitrile	0.78	920	0.3	0.78	920	0.3
98–86–2	Acetophenone	17	1200	6	17	1200	6
75–36–5	Acetyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
591–08–2	Acetyl-2-thiourea, 1-	(1)	(1)	6	(1)	(1)	6
53–96–3	Acetylaminofluorene, 2-	0.028	3	(1)	0.028	3	(1)
107–02–8	Acrolein	(1)	3	.....	(1)	3	.....
79–06–1	Acrylamide	(1)	(1)	(1)	(1)	(1)	(1)
107–13–1	Acrylonitrile	(1)	0.96	(1)	(1)	0.96	(1)
1402–68–2	Aflatoxins	(1)	(1)	(1)	(1)	(1)	(1)
116–06–3	Aldicarb	(1)	(1)	0.54	(1)	(1)	0.48
309–00–2	Aldrin	(1)	(1)	(1)	(1)	(1)	(1)
107–18–6	Allyl Alcohol	(1)	(1)	(1)	(1)	(1)	(1)
107–05–1	Allyl chloride	0.074	260	.....	0.074	260	.....
92–67–1	Aminobiphenyl, 4-	0.028	3	(1)	0.028	3	(1)
2763–96–4	Aminomethyl-3-isoxazolol, 5-	(1)	(1)	(1)	(1)	(1)	(1)
504–24–5	Aminophyridine, 4-	(1)	(1)	(1)	(1)	(1)	(1)
61–82–5	Amitrole	(1)	(1)	(1)	(1)	(1)	(1)
62–53–3	Aniline	0.053	4	0.017	0.053	4	0.017
120–12–7	Anthracene	(1)	4	(1)	(1)	4	(1)
7440–36–0	Antimony	0.14	9	0.053	0.14	9	0.053
140–57–8	Aramite	15	6900	11	15	6900	11
7440–38–2	Arsenic	0.38	(1)	0.15	(1)	(1)	(1)
2465–27–2	Auramine	(1)	(1)	(1)	(1)	(1)	(1)
115–02–6	Azaserine	(1)	(1)	(1)	(1)	(1)	(1)
7440–39–3	Barium	28	2100	11	33	2100	16
71–43–2	Benzene	0.021	110	0.009	0.018	110	0.0054
92–87–5	Benzidine	(1)	(1)	(1)	(1)	(1)	(1)
106–51–4	Benzoquinone, p-	15	6900	11	15	6900	11
98–07–7	Benzotrichloride	(1)	140	(1)	(1)	140	(1)
50–32–8	Benzo(a)pyrene	0.0023	0.23	0.0036	0.0023	0.23	(1)
205–99–2	Benzo(b)- fluoranthene	0.00081	4	0.000066	0.00081	4	0.000066
205–82–3	Benzo(j)- fluoranthene	0.0029	4	0.0012	0.0029	4	(1)
207–08–9	Benzo(k)- fluoranthene	0.0029	4	0.0012	0.0029	4	(1)
191–24–2	Benzo[g,h,i]- perylene	0.0029	4	0.0012	0.0029	4	(1)
100–51–6	Benzyl alcohol	39	2700	15	39	2700	15
100–44–7	Benzyl chloride	1	38	15	1	38	15
56–55–3	Benz(a) anthracene	0.00072	0.1	(1)	0.00072	0.1	(1)
225–51–4	Benz[c]acridine	0.0029	4	0.0012	0.0029	4	(1)
7440–41–7	Beryllim	0.00083	(1)	o.00032	0.00083	(1)	0.00032
39638–32–9	Bis (2-chloroisopropyl) ether	0.007	0.94	0.0019	0.007	0.94	0.0019
111–44–4	Bis(2-chlorethyl)ether	0.00065	0.12	0.00036	0.00065	0.12	0.00036
117–81–7	Bis(2-ethylhexyl)phthalate	0.00044	230	0.11	0.00044	230	0.0011
542–88–1	Bis(chloromethyl) ether	(1)	(1)	(1)	(1)	(1)	(1)
598–31–2	Bromoacetone	0.024	31	0.012	0.023	31	0.015
75–27–4	Bromodichloromethane	0.0085	19	0.0025	0.0085	19	0.0025
75–25–2	Bromoform (Tribromomethane)	0.064	170	0.018	0.064	170	0.018
101–55–3	Bromophyenyl ether, 4-	0.024	31	0.012	0.023	31	0.015
357–57–3	Brucine	(1)	(1)	(1)	(1)	(1)	(1)
71–36–3	Butanol	16	1800	6	16	18000	6
88–85–7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.034	770	0.011	0.19	770	0.064
85–68–7	Butylbenzylphthalate	240	87	64	240	87	64
7440–43–9	Cadmium	0.038	14	0.015	0.24	14	0.11
86–74–8	Carbazole	(1)	(1)	(1)	(1)	(1)	(1)

Appendix X—Continued

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
75–15–0	Carbon disulfide	0.74	330	6	0.74	330	6
353–50–4	Carbon oxyfluoride	(1)	(1)	(1)	(1)	(1)	(1)
56–23–5	Carbon tetrachloride	0.012	9	0.012	0.012	9	0.0016
75–87–6	Chloral	(1)	(1)	(1)	(1)	(1)	(1)
305–03–3	Chlorambucil	(1)	(1)	(1)	(1)	(1)	(1)
57–74–9	Chlordane	(1)	0.0098	0.036	(1)	0.0098	0.00016
494–03–1	Chlornaphazin	(1)	(1)	(1)	(1)	(1)	(1)
126–99–8	Chloro-1,3-butadiene, 2-(Chloroprene)	0.52	290	.....	0.52	290	.....
107–20–0	Chloroacetaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
106–47–8	Chloroaniline, p-	0.42	140	0.16	0.42	140	0.16
108–90–7	Chlorobenzene	0.68	2500	0.19	2	2500	1
510–15–6	Chlorobenzilate	0.054	7	0.0057	0.054	7	0.0057
124–48–1	Chlorodibromomethane	0.0066	28	0.0018	0.0066	28	0.0018
75–00–3	Chloroethane (ethyl chloride)	0.024	31	0.012	0.023	31	0.015
110–75–8	Chloroethyl vinyl ether, 2-	(1)	140	(1)	(1)	140	(1)
67–66–3	Chloroform	0.0076	7	0.017	0.0076	7	0.017
59–50–7	Chloro-m-cresol, p-	0.27	140	0.033	0.081	140	0.032
107–30–2	Chloromethyl methyl ether	(1)	31	(1)	(1)	31	(1)
91–58–7	Chloronaphthalene, 2-	0.27	140	0.033	0.081	140	0.032
95–57–9	Chlorophenol, 2-	0.9	100	0.32	0.9	100	0.32
7005–72–3	Chlorophenyl phenyl ether, 4-	0.024	31	0.012	0.023	31	0.015
5344–82–1	Chlorophenyl thiourea, 1-0-	(1)	(1)	(1)	(1)	(1)	(1)
542–76–7	Chloropropionitrile, 3-	0.27	140	(1)	(1)	140	(1)
7440–47–3	Chromium	0.62	10	0.24	1	10	0.48
218–01–9	Chrysene	0.1	35	0.0012	0.1	35	0.0012
6358–53–8	Citrus red No. 2	(1)	(1)	(1)	(1)	(1)	(1)
7440–48–4	Cobalt	0.62	9	(1)	1	9	(1)
7440–50–8	Copper	670	6	1100	670	6	1100
108–39–4	Cresol, m-	8	22000	3	8	22000	3
95–48–7	Cresol, o-	8	27000	3	8	27000	3
106–44–5	Cresol, p-	0.84	2600	0.32	0.84	2600	0.32
4170–30–3	Crotonaldehyde	8	1200	6	8	1200	6
57–12–5	Cyanide	(1)	20	(1)	(1)	20	(1)
14901–08–7	Cycasin	(1)	(1)	(1)	(1)	(1)	(1)
108–94–1	Cyclohexanone	(1)	(1)	(1)	(1)	(1)	(1)
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2-	(1)	(1)	(1)	(1)	(1)	(1)
50–18–0	Cyclophosphamide	(1)	(1)	(1)	(1)	(1)	(1)
20830–81–3	Daunomycin	(1)	(1)	(1)	(1)	(1)	(1)
72–54–8	DDD	0.00013	0.0065	2800	0.00013	0.0065	2800
53–19–0	DDD (o,p′)	(1)	(1)	(1)	(1)	(1)	(1)
72–55–9	DDE	(1)	0.00094	0.000062	(1)	0.00094	0.00062
3424–82–6	DDE (o,p′)	(1)	(1)	(1)	(1)	(1)	(1)
50–29–3	DDT	(1)	0.0032	0.0054	(1)	0.0032	0.0054
789–02–6	DDT (o,p′)	(1)	(1)	(1)	(1)	(1)	(1)
2303–16–4	Diallate	0.26	1	0.46	0.26	1	0.46
132–64–9	Dibenzofuran	8	27000	2	8	27000	3
192–64–9	Dibenzo[a,e]pyrene	0.0029	4	0.0012	0.0029	4	(1)
189–64–0	Dibenzo[a,h]pyrene	0.0029	4	0.0012	0.0029	4	(1)
189–55–9	Dibenzo[a,i]pyrene	0.0029	4	0.0012	0.0029	4	(1)
194–59–2	Dibenzo[c,g]carbazole, 7H-	(1)	4	(1)	(1)	4	(1)
226–36–8	Dibenz(a,h)acridine	0.0029	4	0.0012	0.0029	4	(1)
53–70–3	Dibenz(a,h)anthracene	(1)	(1)	(1)	(1)	(1)	(1)
224–42–0	Dibenz[a,j]acridine	0.0029	4	0.0012	0.0029	4	(1)
96–12–8	Dibromo-3-chloropropane, 1,2-	0.0022	0.66	0.00038	0.00066	0.66	(1)
764–41–0	Dichloro-2-butene, 1,4-	0.024	31	0.012	0.023	31	0.016
110–57–6	Dichloro-2-butene, trans-1,4-	0.024	31	0.012	0.023	31	0.015

96–23–1	Dichloro-2-propanol, 1,3-	0.27	140	0.033	0.081	140	0.032
95–50–1	Dichlorobenzene, 1,2-	8	50000	2	15	50000	6
541–73–1	Dichlorobenzene, 1,3-	0.024	31	0.012	0.023	31	0.015
106–46–7	Dichlorobenzene, 1,4-	1	64	0.22	0.056	64	0.011
91–94–1	Dichlorobenzidine, 3,3′)	0.0037	(1)	(1)	0.0037	(1)	(1)
75–71–8	Dichlorodifluoromethane	15	8100	12	15	8100	12
75–34–3	Dichloroethane, 1,1-	0.00016	24	0.0006	0.00016	24	0.00006
107–06–2	Dichloroethane, 1,2-	0.007	6	0.009	0.00016	6	0.00006
75–35–4	Dichloroethylene, 1,1-	0.0035	3	0.013	0.00059	3	0.00018
156–59–2	Dichloroethylene, cis-1,2-	0.29	5400	0.11	2	5400	0.64
156–60–5	Dichloroethylene, trans-1,2-	0.42	14000	0.16	3	14000	1
111–91–1	Dichloromethoxy ethane	0.024	31	0.012	0.023	31	0.015
98–87–3	Dichloromethylbenzene (benzal chloride)	0.024	31	0.012	0.023	31	0.015
120–83–2	Dichlorophenol, 2,4-	0.62	770	0.18	0.62	770	0.18
87–65–0	Dichlorophenol, 2,6-	0.024	31	0.012	0.023	31	0.015
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D)	0.27	3100	0.11	2	3100	0.6
78–87–5	Dichloropropane, 1,2-	0.12	17	0.012	0.023	17	0.0023
542–75–6	Dichloropropene, 1,3-	0.0028	32	(1)	0.0028	32	(1)
10061–01–5	Dichloropropene, cis-1,3-	0.0049	3	1200	0.0049	3	1200
10061–02–6	Dichloropropene, trans-1,3-	0.0049	3	1200	0.0049	3	1200
60–57–1	Dieldrin	0.000059	0.0018	0.54	0.000059	0.0018	0.54
1464–53–5	Diepoxybutane, 1,2,3,4- (2,2'-bioxirane)	15	6900	11	15	6900	11
84–66–2	Diethyl phthalate	190	4500	54	190	4500	54
311–45–5	Diethyl-p-nitrophenyl phosphate	(1)	(1)	(1)	(1)	(1)	(1)
56–53–1	Diethylstilbestrol	(1)	(1)	(1)	(1)	(1)	(1)
94–58–6	Dihydrosafrole	15	6900	11	15	6900	11
60–51–5	Dimethoate	29	2	0.77	29	2	0.77
131–11–3	Dimethyl phthalate	78	3	30	78	3	30
77–78–1	Dimethyl sulfate	(1)	(1)	(1)	(1)	(1)	(1)
60–11–7	Dimethylaminoazobenzene, p-	0.028	3	(1)	0.028	3	(1)
119–93–7	Dimethylbenzidine, 3,3'	(1)	(1)	(1)	(1)	(1)	(1)
57–97–6	Dimethylbenz(a)anthracene, 7,12	(1)	(1)	(1)	(1)	(1)	(1)
79–44–7	Dimethylcarbamoyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
122–09–8	Dimethylphenethylamine, alpha, alpha-	0.16	20	0.11	0.16	20	0.11
105–67–9	Dimethylphenol, 2,4-	4	11000	1	4	11000	1
119–90–4	Dimethyoxybenzidine, 3,3-	0.034	(1)	0.01	0.034	(1)	0.01
84–74–2	Di-n-butyl phthalate	880	90000	100	230	90000	25
99–65–0	Dinitrobenzene, 1,3-	0.017	6	0.0064	0.017	6	0.0064
100–25–4	Dinitrobenzene, 1,4-	(1)	(1)	(1)	(1)	(1)	(1)
534–52–1	Dinitro-o-cresol, 4,6-	(1)	(1)	(1)	(1)	(1)	(1)
51–28–5	Dinitrophenol, 2,4-	0.27	56	0.11	0.27	56	0.11
121–14–2	Dinitrotoluene, 2,4-	0.29	210	0.11	0.29	210	0.11
606–20–2	Dinitrotoluene, 2,6-	0.17	86	0.064	0.17	86	0.064
117–84–0	Di-n-octyl phthalate	0.002	4500	0.1	0.002	4500	0.1
123–91–1	Dioxane, 1,4-	0.042	13	0.014	0.042	13	0.014
122–39–4	Diphenylamine	15	1200	3	15	12000	3
122–66–7	Diphenylhydrazine, 1,2-	0.16	20	0.11	0.16	20	0.11
298–04–4	Disulfoton	0.013	43	13	0.013	43	13
541–53–7	Dithiobiuret	(1)	(1)	(1)	(1)	(1)	(1)
	D, salts, esters, 2,4-	0.0069	(1)	0.54	0.0069	(1)	0.48
115–29–7	Endosulfan	6	73	0.94	6	73	0.94
959–98–8	Endosulfan I	0.0069	0.19	0.54	0.0069	0.19	0.48
33213–65–9	Endosulfan II	0.0069	0.19	0.54	0.0069	0.19	0.48
1031–07–8	Endosulfan sulfate	0.0069	0.19	0.54	0.0069	0.19	0.48
145–73–3	Endothall	(1)	(1)	0.54	(1)	(1)	0.48
72–20–8	Endrin	0.073	0.26	24	0.073	0.26	32
7421–93–4	Endrin aldehyde	0.0069	0.19	0.54	0.0069	0.19	0.48
53494–70–5	Endrin ketone	0.0069	0.19	0.54	0.0069	0.19	0.48
106–89–8	Epichlorohydrin	0.34	44	5400	0.34	44	5400
51–43–4	Epinephrine	(1)	(1)	(1)	(1)	(1)	(1)
110–80–5	Ethoxyethanol, 2-	15	6900	15	15	6900	15
141–78–6	Ethyl acetate	390	270000	110	390	270000	110
51–79–6	Ethyl carbamate	15	6900	11	15	6900	11
107–12–0	Ethyl cyanide (propionitrile)	0.16	20	0.11	0.16	20	0.11
60–29–7	Ethyl ether	27	41000	11	27	41000	11
97–63–2	Ethl methacrylate	24	3400	7	24	3400	7

Appendix X—Continued

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
62–50–0	Ethyl methanesulfonate	0.0055	(1)	12000	0.0055	(1)	12000
100–41–4	Ethylbenzene	8	550000	2	39	550000	8
106–93–4	Ethylene Dibromide	0.00093	0.0075	0.00075	0.00036	0.0075	(1)
75–21–8	Ethylene oxide	15	6900	11	15	6900	11
96–45–7	Ethylene thiourea	(1)	(1)	(1)	(1)	(1)	(1)
151–56–4	Ethyleneimine (aziridine)	(1)	(1)	(1)	(1)	(1)	(1)
52–85–7	Famphur	(1)	(1)	0.54 B	(1)	(1)	0.48
640–19–7	Fluoracetamide, 2-	(1)	(1)	(1)	(1)	(1)	(1)
62–74–8	Fluoracetic acid, sodium salt	(1)	(1)	(1)	(1)	(1)	(1)
206–44–0	Fluoranthene	28	6000	2	28	6000	2
86–73–7	Fluorene	22	90000	3	22	90000	3
16984–48–8	Fluoride	.....	.....	.....	.....	.....	.....
50–00–0	Formaldehyde	(1)	49	11	(1)	49	11
64–18–6	Formia Acid	270	300000	110	270	300000	110
765–34–4	Glycidylaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
319–86–8	HCH, delta-	0.0069	0.19	0.54	0.0069	0.19	0.48
76–44–8	Heptachlor	(1)	8	.....	(1)	8	.....
1024–57–3	Heptachlor epoxide	0.00053	0.026	66	0.00053	0.026	0.45
87–68–3	Hexachloro-1,3-butadiene	0.0079	36	0.0069	0.0079	36	0.0069
118–74–1	Hexachlorobenzene	(1)	(1)	0.018	(1)	(1)	(1)
319–84–6	Hexachloro- cyclohexane, alpha- (alpha-BHC)	0.00014	0.0033	0.11	0.00014	0.033	0.11
319–85–7	Hexach- lorocyclo- hexane, beta- (beta-BHC)	0.00044	0.12	0.00021	0.00044	0.12	0.00021
58–89–9	Hexach- lorocyc- lohexane, gamma- (Lindane)	0.00078	0.1	2	0.00078	0.1	0.69
77–47–4	Hexach- lorocyc- lopentadiene	0.0052	1500	.....	0.0052	1500	.....
67–72–1	Hexachloroethane	0.049	81	0.033	0.049	81	0.033
70–30–4	Hexachlorophene	(1)	(1)	(1)	(1)	(1)	(1)
1888–71–7	Hexachloropropene	0.27	140	0.033	0.081	140	0.032
757–58–4	Hexae- thylte- traphosphate	(1)	(1)	(1)	(1)	(1)	(1)
591–75–6	Hexanone, 2-	8	1200	6	8	1200	6
302–01–2	Hydrazine	(1)	20	(1)	(1)	20	(1)
193–39–5	Indeno(1,2,3-cd) pyrene	0.0029	4	(1)	0.0029	4	(1)
74–88–4	Iodomethane	0.024	31	0.012	0.023	31	0.015
78–83–1	Isobutyl alcohol	39	55000	15	39	55000	15
465–73–6	Isodrin	(1)	(1)	0.54	(1)	(1)	0.48
78–59–1	Isophorone	0.53	740	0.16	0.53	740	0.16
120–58–1	Isosafrole	15	6900	11	15	6900	11
143–50–0	Kepone	(1)	(1)	(1)	(1)	(1)	(1)
303–43–4	Lasiocarpine	(1)	(1)	(1)	(1)	(1)	(1)
7439–92–1	Lead	30	570	12	30	570	12
108–31–6	Maleic anhydride	(1)	6900	(1)	(1)	6900	(1)
123–33–1	Maleic hydrazide	0.16	20	0.11	0.16	20	0.11
109–77–3	Malononitrile	0.16	20	0.11	0.16	20	0.11
148–82–3	Melphalan	(1)	(1)	(1)	(1)	(1)	(1)
7439–97–6	Mercury	0.06	0.6	0.023	0.3	0.6	0.14
126–98–7	Methacrylonitrile	0.016	9	(1)	0.016	9	(1)
74–93–1	Methanethiol	(1)	(1)	(1)	(1)	(1)	(1)
67–56–1	Methanol	78	140000	30	78	140000	30
91–80–5	Methapyrilene	0.16	20	0.11	0.16	20	0.11
16752–77–5	Methomyl	(1)	(1)	0.54	(1)	(1)	0.48
72–43–5	Methoxychlor	7	19	.....	7	19	.....
74–83–9	Methyl bromide (Bromomethane)	0.37	500	0.92	0.37	500	0.92
74–87–3	Methyl chloride (Chloromethane)	0.096	91	.....	0.096	91	.....
78–93–3	Methyl ethyl ketone	78	110000	30	78	110000	30
1338–23–4	Methyl ethyl ketone peroxide	(1)	(1)	(1)	(1)	(1)	(1)
60–34–4	Methyl hydrazine	(1)	(1)	(1)	(1)	(1)	(1)
108–10–1	Methyl isobutyl ketone	8	17000	3	8	17000	3

80–62–6	Methyl methacrylate	28	40000	8	28	40000	8
66–27–3	Methyl methanesulfonate	0.12	2	6	0.12	2	6
91–57–6	Methyl naphthalene, 2-	(1)	4	(1)	(1)	4	(1)
298–00–0	Methyl parathion	0.66	1	23	0.66	1	23
75–55–8	Methylaziridine, 2-	(1)	(1)	(1)	(1)	(1)	(1)
56–49–5	Methylcholanthrene, 3-	(1)	(1)	(1)	(1)	(1)	(1)
74–95–3	Methylene bromide	0.029	8400	0.0085	2	8400	0.19
75–09–2	Methylene chloride	0.039	310	0.09	0.039	310	0.015
101–14–4	Methylenebis, 4,4′-(2-chloroaniline)	(1)	(1)	(1)	(1)	(1)	(1)
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG)	(1)	(1)	(1)	(1)	(1)	(1)
56–04–2	Methylthiouracil	(1)	(1)	(1)	(1)	(1)	(1)
50–07–7	Mitomycin C	(1)	(1)	(1)	(1)	(1)	(1)
7439–98–7	Molybdenum	2	110	2	2	110	2
91–20–3	Naphthalene	14	120000	3	14	120000	3
130–15–4	Naphthoquinone, 1,4-	15	6900	11	15	6900	11
86–88–4	Naphthyl-2-thiourea, 1-	(1)	(1)	(1)	(1)	(1)	(1)
134–32–7	Naphthylamine, 1-	0.16	20	0.11	0.16	20	0.11
91–59–8	Naphthylamine, 2-	0.16	20	0.11	0.16	20	0.11
7440–02–0	Nickel	4	110	2	11	110	5
54–11–5	Nicotine and salts	0.16	20	0.11	0.16	20	0.11
88–74–4	Nitroaniline, 2-	(1)	3	(1)	(1)	3	(1)
99–09–2	Nitroaniline, 3-	(1)	3	(1)	(1)	3	(1)
100–01–6	Nitroaniline, 4-	0.028	3	(1)	0.028	3	(1)
98–95–3-	Nitrobenzene	0.084	45	0.032	0.084	45	0.032
55–86–7	Nitrogen mustard	(1)	(1)	(1)	(1)	(1)	(1)
51–75–2	Nitrogen mustard Hydrochloride salt	(1)	(1)	(1)	(1)	(1)	(1)
126–85–2	Nitrogen mustard N-Oxide	(1)	(1)	(1)	(1)	(1)	(1)
302–70–5	Nitrogen mustard N-Oxide, HCI salt	(1)	(1)	(1)	(1)	(1)	(1)
55–63–0	Nitroglycerine	(1)	(1)	(1)	(1)	(1)	(1)
99–55–8	Nitro-o-toluidine, 5-	0.028	3	(1)	0.028	3	(1)
88–75–5	Nitrophenol, 2-	0.025	3	(1)	0.0.25	3	(1)
100–02–7	Nitrophenol, 4-	(1)	(1)	(1)	(1)	(1)	(1)
79–46–9	Nitropropane, 2-	(1)	0.13	.....	(1)	0.13	.....
56–57–5	Nitroquinoline-1-oxide, 4-	0.16	20	0.11	0.16	20	0.11
55–18–5	Nitrosodiethylamine	(1)	(1)	(1)	(1)	(1)	(1)
62–75–9	Nitrosodimethylamine	(1)	(1)	(1)	(1)	(1)	(1)
924–16–3	Nitrosodi-n-butylamine	(1)	(1)	(1)	(1)	(1)	(1)
10595–95–6	Nitro- somethyle thylamine	(1)	(1)	(1)	(1)	(1)	(1)
1116–54–7	N-Nitro- sodietha- nolamine	(1)	(1)	(1)	(1)	(1)	(1)
621–64–7	N-Nitrosodi-n-propylamine	(1)	0.023	(1)	(1)	0.023	(1)
86–30–6	N-Nitro- sodiphe- nylamine	0.2	1300	(1)	0.2	1300	(1)
4549–40–0	N-Nitrosomethyl vinyl amine	(1)	(1)	(1)	(1)	(1)	(1)
59–89–2	N-Nitrosomorpholine	0.16	20	0.11	0.16	20	0.11
759–73–9	N-Nitroso-N-ethylurea	(1)	(1)	(1)	(1)	(1)	(1)
684–93–5	N-Nitroso-N-methylurea	0.16	20	0.11	0.16	20	0.11
615–53–2	N-Nitroso-N-methylurethane	(1)	(1)	(1)	(1)	(1)	(1)
16543–55–8	N-Nitrosonornicotine	(1)	(1)	(1)	(1)	(1)	(1)
100–75–4	N-Nitrosopiperidine	(1)	(1)	(1)	(1)	(1)	(1)
930–55–2	N-Nitroopyrrolidine	(1)	0.053	(1)	(1)	0.053	(1)
13256–22–9	N-Nitrososarcosine	(1)	(1)	(1)	(1)	(1)	(1)
103–85–5	N-Phenylthiourea	(1)	(1)	(1)	(1)	(1)	(1)
1615–80–1	N,N-Diethylhydrazine	(1)	(1)	(1)	(1)	(1)	(1)
152–16–9	Octame- thylpyro- phospho- ramide	0.27	31	0.11	0.27	31	0.11
20816–12–0	Osmium Tetroxice	(1)	(1)	(1)	(1)	(1)	(1)
297–97–2	O,O-Diethyl O-pyrazinyl phosphorothioate	0.12	2	6	0.12	2	6
126–68–1	O,O,O-Triethyl phosphorothioate	0.12	(1)	6	0.12	(1)	6
123–63–7	Paraldehyde	8	1200	6	8	1200	6
56–38–2	Parathion	3	0.13	12000	3	0.13	12000
608–93–5	Pentachlorobenzene	5	210	0.054	5	210	0.054
76–01–7	Pentachloroethane	0.024	31	0.012	0.023	31	0.015
82–68–8	Penta- chloro- nitro-benzene (PCNB)	0.27	11	(1)	0.081	11	(1)
87–86–5	Pentachlorophenol	0.002	3	0.00041	0.002	3	0.00041
62–44–2	Phenacetin	15	6900	11	15	6900	11
85–01–8	Phenanthrene	(1)	4	(1)	(1)	4	(1)
108–95–2	Phenol	84	160000	32	84	160000	32
62–38–4	Phenyl mercuric acetate	(1)	(1)	(1)	(1)	(1)	(1)

Appendix X—Continued

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
25265–76–3	Phenylenediamines (N.O.S.)	0.16	20	0.11	0.16	20	0.11
108–45–2	Phenylenediamine, m-	0.78	780	0.3	0.78	780	0.3
106–50–3	Phenylenediamine, p-	0.16	20	0.11	0.16	20	0.11
298–02–2	Phorate	0.11	160	.....	0.11	160	.....
	Phosphorodithioic acid, dimethylethylester	(1)	(1)	(1)	(1)	(1)	(1)
298–06–6	Phosphorodithioic acid, o-o-diethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
3288–58–2	Phosphorodithioic acid, o-o-diethyl-s-methyl	(1)	(1)	(1)	(1)	(1)	(1)
2953–29–9	Phosphorodithioic acid, trimethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
85–44–9	Phthalic anhydride	(1)	2400	(1)	(1)	2400	(1)
109–06–8	Picoline, 2-	0.16	20	0.11	0.16	20	0.11
1336–36–3	Polychlorinated biphenyls	(1)	(1)	0.009	(1)	(1)	(1)
23950–58–5	Pronamide	21	440	6	21	440	6
1120–71–4	Propane sultone, 1,3-	(1)	(1)	(1)	(1)	(1)	(1)
107–10–8	Propylamine, n-	0.16	20	0.11	0.16	20	0.11
51–52–5	Propylthiouracil	0.12	(1)	6	0.12	(1)	6
107–19–7	Propyn-1-ol,2-	39	37000	15	39	37000	15
129–00–0	Pyrene	54	16000	2	54	16000	2
110–86–1	Pyridine	0.16	810	0.06	0.16	810	0.06
50–55–5	Reserpine	0.16	20	0.11	0.16	20	0.11
108–46–3	Resorcinol	(1)	(1)	0.54	(1)	(1)	0.48
81–07–2	Saccharin and salts	(1)	(1)	(1)	(1)	(1)	(1)
94–59–7	Safrole	0.0035	11	(1)	0.0035	11	(1)
7782–49–2	Selenium	0.23	(1)	0.089	0.93	(1)	0.36
7440–22–4	Silver	200	(1)	.....	200	(1)	.....
18883–66–4	Streptozotocin	(1)	(1)	(1)	(1)	(1)	(1)
57–24–9	Strychnine	0.045	(1)	0.016	0.045	(1)	0.016
100–42–5	Styrene	0.91	630000	0.22	64	630000	15
18496–25–8	Sulfide	.....	.....	.....	.....	.....	.....
1746–01–6	TCDD,2,3,7,8-	(1)	8.000E-06	5.400E-07	(1)	8.000E-06	(1)
95–94–3	Tetrachlorobenzene, 1,2,4,5-	0.23	170	0.032	0.23	170	0.032
630–20–6	Tetrachloroethane, 1,1,1,2-	0.024	130	0.0078	0.024	130	0.0078
79–34–5	Tetrachloroethane, 1,1,2,2-	0.0037	29	0.0077	0.0037	29	0.0077
127–18–4	Tetrachloroethylene	0.026	13000	0.0085	2	13000	0.68
58–90–2	Tetrachlorophenol, 2,3,4,6-	2	6200	0.58	2	6200	0.58
107–49–3	Tetraethylpyrophosphate	(1)	6900	(1)	(1)	6900	(1)
3689–24–5	Tetraethyldithiopyrophosphate	0.23	3	.....	0.23	3	.....
7440–28–0	Thallium (I)	0.035	5	0.014	0.05	5	0.019
62–55–5	Thioacetamide	(1)	(1)	(1)	(1)	(1)	(1)
39196–18–4	Thiofanox	0.12	(1)	6	0.12	(1)	6
108–98–5	Thiophenol	0.12	2	6	0.12	2	6
79–19–6	Thiosemicarbazide	(1)	(1)	(1)(1)	(1)	(1)	(1)
62–56–6	Thiourea	(1)	(1)	(1)	(1)	(1)	(1)
137–26–8	Thiram	(1)	(1)	0.54	(1)	(1)	0.48
7440–31–5	Tin	(1)	(1)	(1)	(1)	(1)	(1)
108–88–3	Toluene	6	180000	2	30	180000	13
584–84–9	Toluene diisocyanate	(1)	20	(1)	(1)	20	(1)
95–80–7	Toluenediamine,2,4-	(1)	(1)	(1)	(1)	(1)	(1)
823–40–5	Toluenediamine,2,6-	0.16	20	0.11	0.16	20	0.11
496–72–0	Toluenediamine,3,4-	0.16	20	0.11	0.16	20	0.11
636–21–5	Toluidine hydrochloride, o-	0.16	20	0.11	0.16	20	0.11
95–53–4	Toluidine, o-	(1)	2	(1)	(1)	2	(1)
106–49–0	Toluidine, p-	(1)	0.13	(1)	(1)	0.13	(1)
8001–35–2	Toxaphene	(1)	(1)	6	(1)	(1)	0.11
76–13–1	Trichloro-1,2,2-trifluoroethane,1,1,2-	0.77	.....	0.17	2200	.....	2400

120–82–1	Trichlorobenzene, 1,2,4-	0.69	3500	1	0.69	3500	1
72–55–6	Trichloroethane, 1,1,1-	74	48000	0.054	74	48000	0.054
79–00–5	Trichloroethane, 1,1,2-	0.012	11	0.009	0.007	11	0.0018
79–01–6	Trichloroethylene	0.024	570	0.008	0.038	570	0.013
75–69–4	Trichlorofluoromethane	48	26000	16	48	26000	16
75–70–7	Trichloromethanethiol	[1]	[1]	[1]	[1]	[1]	[1]
95–95–4	Trichlorophenol, 2,4,5-	18	12000	4	18	12000	4
88–06–2	Trichlorophenol, 2,4,6-	0.054	120	0.015	0.054	120	0.015
93–76–5	Trichlorophenoxyacetic acid, 2,4,5- (245–T)	2	63	0.64	2	63	0.64
93–72–1	Trichlorophenoxypropionic acid, 2,4,5-(Silvex)	0.21	6	0.08	1	6	0.48
96–18–4	Trichloropropane, 1,2,3-	1	870	0.34	1	870	0.34
99–35–4	Trinitrobenzene, sym-	0.0078	0.44	0.003	0.0078	0.44	0.003
126–72–7	Tris (2,3-dibromopropyl) phosphate	[1]	0.36	[1]	[1]	0.36	[1]
52–24–4	Tris(1-azridinyl)phosphine sulfide	[1]	[1]	[1]	[1]	[1]	[1]
72–57–1	Trypan blue	[1]	[1]	[1]	[1]	[1]	[1]
66–75–1	Uracil mustard	[1]	[1]	[1]	[1]	[1]	[1]
7440–62–2	Vanadium	10	250	4	10	250	4
108–05–4	Vinyl acetate	15	6900	11	15	6900	11
75–01–4	Vinyl chloride	0.002	1	0.003	[1]	1	[1]
81–81–2	Warfarin	[1]	[1]	0.54	[1]	[1]	0.48
1330–20–7	Xylenes (total)	22	170000	21	22	170000	150
7440–66–6	Zinc	99	320	38	99	320	38

[1] See Table B.

TABLE B.—QUANTITATION-BASED EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
208–96–8	Acenaphthylene	0.02	.....	0.02	0.02	.....	0.02
75–36–5	Acetyl chloride	[1]	[1]	[1]	[1]	[1]	[1]
591–08–2	Acetyl-2-thiourea, 1-	1	70	.....	1	70	.....
53–96–3	Acetylaminofluorene, 2-	.....	.....	0.02	.....	.....	0.02
107–02–8	Acrolein	0.013	.....	.....	0.013	.....	.....
79–06–1	Acrylamide	0.01	0.1	0.01	0.01	0.1	0.01
107–13–1	Acrylonitrile	0.008	.....	0.008	0.008	.....	0.008
1402–68–2	Aflatoxins	[1]	[1]	[1]	[1]	[1]	[1]
116–06–3	Aldicarb	0.05	1	.....	0.05	1	.....
309–00–2	Aldrin	0.000034	0.0006	0.000034	0.000034	0.0006	0.000034
107–18–6	Allyl alcohol	[1]	[1]	[1]	[1]	[1]	[1]
92–67–1	Aminobiphenyl, 4-	.....	.....	0.02	.....	.....	0.02
2763–96–4	Aminomethyl-3-isoxazolol, 5-	[1]	[1]	[1]	[1]	[1]	[1]
504–24–5	Aminopyridine, 4-	[1]	[1]	[1]	[1]	[1]	[1]
61–82–5	Amitrole	[1]	[1]	[1]	[1]	[1]	[1]
120–12–7	Anthracene	0.007	.....	0.007	0.007	.....	0.007
7440–38–2	Arsenic	.....	0.3	.....	0.0005	0.3	0.0005
2465–27–2	Auramine	[1]	[1]	[1]	[1]	[1]	[1]
115–02–6	Azaserine	[1]	[1]	[1]	[1]	[1]	[1]
92–87–5	Benzidine	0.0025	0.042	0.0025	0.0025	0.042	0.0025
98–07–7	Benzotrichloride	[1]	.....	[1]	[1]	.....	[1]
50–32–8	Benzo(a)pyrene	.....	.....	.....	.....	.....	0.000023
205–82–3	Benzo(j)fluor- anthene	.....	.....	.....	.....	.....	0.0002
207–08–9	Benzo(k)- fluoranthene	.....	.....	.....	.....	.....	0.0002
191–24–2	Benzo[g,h,i]- perylene	.....	.....	.....	.....	.....	0.0008
56–55–3	Benz(a)anth- racene	.....	.....	0.000013	.....	.....	0.000013
225–51–4	Benz[c]acri- dine	.....	.....	.....	.....	.....	0.0005
7440–41–7	Beryllium	.....	0.1	.....	.....	0.1	.....
542–88–1	Bis(chloro- methyl) ether	[1]	[1]	[1]	[1]	[1]	[1]
357–57–3	Brucine	20	[1]	20	20	[1]	20
86–74–8	Carbazole	[1	[1]	[1]	[1]	[1]	[1]
353–50–4	Carbon oxyfluoride	[1]	[1]	[1]	[1]	[1]	[1]

TABLE B.—QUANTITATION-BASED EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
75–87–6	Chloral	(1)	(1)	(1)	(1)	(1)	(1)
305–03–3	Chlorambucil	(1)	(1)	(1)	(1)	(1)	(1)
57–74–9	Chlordane	0.00004			0.00004		
494–03–1	Chlornaphazin	(1)	(1)	(1)	(1)	(1)	(1)
107–20–0	Chloroacetaldehyde	(1	(1)	(1)	(1)	(1)	(1)
110–75–8	Chloroethyl vinyl ether, 2-	(1)		(1)	(1)		(1)
107–30–2	Chloromethyl methyl ether	(1)		(1)	(1)		(1)
5344–82–1	Chlorophenyl thiourea, 1-o-	(1)	(1)	(1)	(1)	(1)	(1)
542–76–7	Chloropropionitrile, 3-			0.1	0.1		0.1
6358–53–8	Citrus red No. 2	(1)	(1)	(1)	(1)	(1)	(1)
7440–48–4	Cobalt			0.5			0.5
57–12–5	Cyanide	0.2		0.2	0.2		0.2
14901–08–7	Cycasin	(1)	(1)	(1)	(1)	(1)	(1)
108–94–1	Cyclohexanone	10		10	10		10
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2-	0.1	7	0.1	0.1	7	0.1
50–18–0	Cyclophosphamide	(1)	(1)	(1)	(1)	(1)	(1)
20830–81–3	Daunomycin	(1)	(1)	(1)	(1)	(1)	(1)
53–19–0	DDD (o,p[1])	(1)	(1)	(1)	(1)	(1)	(1)
72–55–9	DDE	0.000058			0.000058		
3424–82–6	DDE (o,p[1])	(1)	(1)	(1)	(1)	(1)	(1)
50–29–3	DDT	0.000081			0.000081		
789–02–6	DDT (o,p[1])	(1)	(1)	(1)	(1)	(1)	(1)
192–65–4	Dibenzo[a,e]- pyrene						0.001
189–64–0	Dibenzo[a,h]- pyrene						0.0002
189–55–9	Dibenzo(a,i)pyrene						0.0002
194–59–2	Dibenzo(c,g)car- bazole, 7H-	0.01		0.01	0.01		0.01
226–36–8	Dibenz(a,h)acri- dine						0.0002
53–70–3	Dibenz(a,h)ant- hracene	0.00003	0.084	0.00003	0.00003	0.084	0.00003
224–42–0	Dibenz(a,j)acridine						0.001
96–12–8	Dibromo-3-chloropropane, 1,2-						0.00026
91–94–1	Dichlorobenzidine, 3,3[1]-		0.12	0.0024		0.012	0.0024
542–75–6	Dichloropropene, 1,3-			0.0009			0.0009
311–45–5	Diethyl-p-nitrophenyl phosphate	(1)	(1)	(1)	(1)	(1)	(1)
56–53–1	Diethylstilbestrol	0.0078	1	0.0078	0.0078	1	0.0078
77–78–1	Dimethyl sulfate	(1)	(1)	(1)	(1)	(1)	(1)
60–11–7	Dimethylaminoazobenzene, p-			0.01			0.01
119–93–7	Dimethylbenzidine, 3,3[1]-	0.0033	0.7	0.0033	0.0033	0.7	0.0033
57–97–6	Dimethylbenz- (a)anthracene, 7,12-	0.00037	0.039	0.00037	0.00037	0.039	0.00037
79–44–7	Dimethylcarbamoyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
119–90–4	Dimethyoxybenzidine, 3,3[1]-		7			7	
100–25–4	Dinitrobenzene, 1,4-	0.04	3	0.04	0.04	3	0.4
534–52–1	Dinitro-o-cresol, 4,6-	0.05	3	0.05	0.05	3	0.05
541–53–7	Dithiobiuret	(1)	(1)	(1)	(1)	(1)	(1)
	D, salts, esters, 2,4-		0.2			0.2	
145–73–3	Endothall	0.1	(1)		0.1	(1)	
51–43–4	Epinephrine	(1)	(1)	(1)	(1)	(1)	(1)
62–50–0	Ethyl methanesulfonate		0.018			0.018	
106–93–4	Ethylene Dibromide						0.00006
96–45–7	Ethylene thiourea	(1)	(1)	(1)	(1)	(1)	(1)
151–56–4	Ethyleneimine (aziridine)	(1)	(1)	(1)	(1)	(1)	(1)
52–85–7	Famphur	0.02	1		0.02	1	
640–19–7	Fluoracetamide, 2-	(1)	(1)	(1)	(1)	(1)	(1)
62–74–8	Fluoracetic acid, sodium salt	(1)	(1)	(1)	(1)	(1)	(1)
16984–48–8	Fluoride						
50–00–0	Formaldehyde	0.023			0.023		
765–34–4	Glycidylaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
76–44–8	Heptachlor	0.00004			0.00004		

118–74–1	Hexachlorobenzene	0.0016	0.072	.....	0.0016	0.072	0.0016
70–30–4	Hexachlorophene	0.21	2	0.21	0.21	2	0.21
757–58–4	Hexaethyl tetraphosphate	(1)	(1)	(1)	(1)	(1)	(1)
302–01–2	Hydrazine	(1)	.....	(1)	(1)	.....	(1)
193–39–5	Indeno(1,2,3-cd) pyrene	.....	.....	0.000043	.....	.....	0.000043
465–73–6	Isodrin	0.02	1	.....	0.02	1	.....
143–50–0	Kepone	0.016	0.097	0.016	0.016	0.097	0.016
303–43–4	Lasiocarpine	(1)	(1)	(1)	(1)	(1)	(1)
108–31–6	Maleic anhydride	(1)	.....	(1)	(1)	.....	(1)
148–82–3	Melphalan	(1)	(1)	(1)	(1)	(1)	(1)
126–98–7	Methacrylonitrile	.....	.....	0.009	.....	.....	0.009
74–93–1	Methanethiol	(1)	(1)	(1)	(1)	(1)	(1)
16752–77–5	Methomyl	0.05	3	.....	0.05	3	.....
1338–23–4	Methyl ethyl ketone peroxide	(1)	(1)	(1)	(1)	(1)	(1)
60–34–4	Methyl hydrazine	(1)	(1)	(1)	(1)	(1)	(1)
91–57–6	Methyl naphthalene, 2-	0.01	.....	0.01	0.01	.....	0.01
75–55–8	Methylaziridine, 2-	(1)	(1)	(1)	(1)	(1)	(1)
56–49–5	Methylcholanthrene, 3-	0.01	0.046	0.01	0.01	0.046	0.01
101–14–4	Methylenebis, 4,4[1]-(2-chloroaniline)	(1)	(1)	(1)	(1)	(1)	(1)
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG)	(1)	(1)	(1)	(1)	(1)	(1)
56–04–2	Methylthiouracil	(1)	(1)	(1)	(1)	(1)	(1)
50–07–7	Mitomycin C	(1)	(1)	(1)	(1)	(1)	(1)
86–88–4	Naphthyl-2-thiourea, 1-	(1)	(1)	(1)	(1)	(1)	(1)
88–74–4	Nitroaniline, 2-	0.05	.....	0.05	0.05	.....	0.05
99–09–2	Nitroaniline, 3-	0.05	.....	0.05	0.05	.....	0.05
100–01–6	Nitroaniline, 4-	.....	.....	0.02	.....	.....	0.02
55–86–7	Nitrogen mustard	(1)	(1)	(1)	(1)	(1)	(1)
51–75–2	Nitrogen mustard hydrochloride salt	(1)	(1)	(1)	(1)	(1)	(1)
126–85–2	Nitrogen mustard N-Oxide	(1)	(1)	(1)	(1)	(1)	(1)
302–70–5	Nitrogen mustard N-Oxide, HCl salt	(1)	(1)	(1)	(1)	(1)	(1)
55–63–0	Nitroglycerine	(1)	(1)	(1)	(1)	(1)	(1)
99–55–8	Nitro-o-toluidine, 5-	.....	.....	0.01	.....	.....	0.01
88–75–5	Nitrophenol, 2-	.....	.....	0.01	.....	.....	0.01
100–02–7	Nitrophenol, 4-	0.05	3	0.05	0.05	3	0.05
79–46–9	Nitropropane, 2-	0.0058	.....	.....	0.0058	.....	.....
55–18–5	Nitrosodiethylamine	0.002	1	0.002	0.002	1	0.002
62–75–9	Nitrosodimethylamine	0.0006	0.074	0.0006	0.0006	0.074	0.0006
924–16–3	Nitrosodi-n-butylamine	0.06	.....	0.06	0.06	.....	0.06
10595–95–6	Nitrosomethylethylamine	0.028	0.016	0.028	0.028	0.016	0.028
1116–54–7	N-Nitrosodiethanolamine	0.01	0.7	0.01	0.01	0.7	0.01
621–64–7	N-Nitrosodi-n-propylamine	0.026	.....	0.026	0.026	.....	0.026
86–30–6	N-Nitrosodiphenylamine	.....	.....	0.05	.....	.....	0.05
4549–40–0	N-Nitrosomethyl vinyl amine	(1)	(1)	(1)	(1)	(1)	(1)
759–73–9	N-Nitroso-N-ethylurea	(1)	(1)	(1)	(1)	(1)	(1)
615–53–2	N-Nitroso-N-methylurethane	(1)	(1)	(1)	(1)	(1)	(1)
16543–55–8	N-Nitrosonornicotine	(1)	(1)	(1)	(1)	(1)	(1)
100–75–4	N-Nitrosopiperidine	0.0014	0.033	0.0014	0.0014	0.033	0.0014
930–55–2	N-Nitrosopyrrolidine	0.0047	.....	0.0047	0.0047	.....	0.0047
13256–22–9	N-Nitrososarcosine	(1)	(1)	(1)	(1)	(1)	(1)
103–85–5	N-Phenylthiourea	(1)	(1)	(1)	(1)	(1)	(1)
1615–80–1	N,N-Diethylhydrazine	(1)	(1)	(1)	(1)	(1)	(1)
20816–12–0	Osmium tetroxide	3	200	3	3	200	3
126–68–1	O,O,O-Triethyl phosphorothioate	.....	3	.....	.....	3	.....
82–68–8	Pentachloronitrobenzene (PCNB)	.....	.....	0.02	.....	.....	0.02
85–01–8	Phenanthrene	0.006	.....	0.006	0.006	.....	0.006
62–38–4	Phenyl mercuric acetate	(1)	(1)	(1)	(1)	(1)	(1)
.....	Phosphorodithiolic acid, dimethylethylester	(1)	(1)	(1)	(1)	(1)	(1)
298–06–6	Phosphorodithioic acid, o-o-diethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
3288–58–2	Phosphorodithioic acid, o-o-diethyl-s-methyl	(1)	(1)	(1)	(1)	(1)	(1)
2953–29–9	Phosphorodithioic acid, trimethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
85–44–9	Phthalic anhydride	(1)	(1)	(1)	(1)	(1)	(1)
1336–36–3	Polychlorinated biphenyls	0.0005	0.04	.....	0.0005	0.04	0.0005
1120–71–4	Propane sultone, 1,3-	(1)	(1)	(1)	(1)	(1)	(1)
51–52–5	Propylthiouracil	.....	7	.....	7	.....	
108–46–3	Resorcinol	0.1	7	.....	0.1	7	.....
81–07–2	Saccharin and salts	(1)	(1)	(1)	(1)	(1)	(1)

TABLE B.—QUANTITATION-BASED EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
94–59–7	Safrole	.....	.....	0.0021	.....	.....	0.0021
94–59–7	Safrole	.....	.....	0.0021	.....	.....	0.0021
7782–49–2	Selenium	.....	5	.....	.....	5	.....
7440–22–4	Silver	.....	0.3	.....	.....	0.3	.....
18883–66–4	Streptozotocin	(1)	(1)	(1)	(1)	(1)	(1)
57–24–9	Strychnine	.....	3	.....	.....	3	.....
1746–01–6	TCDD, 2,3,7,8-	1.000E-08	.....	.....	1.000E-08	.....	1.000E-08
107–49–3	Tetraethyl pyrophosphate	(1)	(1)	(1)	(1)	(1)	(1)
62–55–5	Thioacetamide	1	(1)	1	1	(1)	1
39196–18–4	Thiofanox	.....	3	.....	.....	3	.....
79–19–6	Thiosemicarbazide	(1)	(1)	(1)	(1)	(1)	(1)
62–56–6	Thiourea	(1)	(1)	(1)	(1)	(1)	(1)
137–26–8	Thiram	0.05	3	.....	0.05	3	.....
7440–31–5	Tin	8	500	8	8	500	8
584–84–9	Toluene diisocyanate	(1)	.....	(1)	(1)	.....	.....
95–80–7	Toluenediamine, 2,4-	0.013	1	0.013	0.013	1	0.013
95–53–4	Toluidine, o-	0.012	.....	0.012	0.012	.....	0.012
106–49–0	Toluidine, p-	0.017	.....	0.017	0.017	.....	0.017
8001–35–2	Toxaphene	0.0013	0.03	.....	0.0013	0.03	.....
75–70–7	Trichloromethanethiol	(1)	(1)	(1)	(1)	(1)	(1)
126–72–7	Tris (2,3-dibromopropyl) phosphate	0.025	.....	0.025	0.025	.....	0.025
52–24–4	Tris(1-azridinyl) phosphine sulfide	(1)	(1)	(1)	(1)	(1)	(1)
72–57–1	Trypan blue	(1)	(1)	(1)	(1)	(1)	(1)
66–75–1	Uracil mustard	(1)	(1)	(1)	(1)	(1)	(1)
75–01–4	Vinyl chloride	.....	.....	.....	0.00017	.....	0.00017
81–81–2	Warfarin	0.05	3	.....	0.05	3	.....

8. Appendix XI is added to read as follows:

Appendix XI

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED CONDITIONAL EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
83–32–9	Acenaphthene	31	63000	13	31	63000	13
208–96–8	Acenaphthylene	(1)	4	(1)	(1)	4	(1)
67–64–1	Acetone	16	39000	21	16	39000	21
75–05–8	Acetonitrile	0.78	2200	1	0.78	2200	1
98–86–2	Acetophenone	17	75000	22	17	75000	22
75–36–5	Acetyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
591–08–2	Acetyl-2-thiourea, 1-	(1)	590	24	(1)	590	24
53–96–3	Acetylaminofluorne, 2-	0.028	88	0.038	0.028	88	0.038
107–02–8	Acrolein	(1)	11	.....	(1)	11	.....
79–06–1	Acrylamide	(1)	(1)	(1)	(1)	(1)	(1)
107–13–1	Acrylonitrile	(1)	2	(1)	(1)	2	(1)
1402–68–2	Aflatoxins	(1)	(1)	(1)	(1)	(1)	(1)
116–06–3	Aldicarb	(1)	6	4	(1)	6	3
309–00–2	Aldrin	(1)	0.0045	(1)	(1)	0.0045	(1)
107–18–6	Allyl alcohol	(1)	(1)	(1)	(1)	(1)	(1)
107–05–1	Allyl chloride	0.074	260	.....	0.074	260	.....
92–67–1	Aminobiphenyl, 4-	0.028	88	0.038	0.028	88	0.038
2763–96–4	Aminomethyl-3-isoxazolol, 5-	(1)	(1)	(1)	(1)	(1)	(1)
504–24–5	Aminopyridine, 4-	(1)	(1)	(1)	(1)	(1)	(1)
61–82–5	Amitrole	(1)	(1)	(1)	(1)	(1)	(1)
62–53–3	Aniline	0.053	170	0.072	0.053	170	0.072
120–12–7	Anthracene	(1)	4	(1)	(1)	4	(1)
7440–36–0	Antimony	0.14	85	0.18	0.14	85	0.18
140–57–8	Aramite	15	6900	37	15	6900	37
7440–38–2	Arsenic	0.38	0.53	0.52	(1)	0.53	0.00052
2465–27–2	Auramine	(1)	(1)	(1)	(1)	(1)	(1)
115–02–6	Azaserine	(1)	(1)	(1)	(1)	(1)	(1)
7440–39–3	Barium	28	34000	38	33	34000	45
71–43–2	Benzene	0.021	250	0.039	0.018	250	0.023
92–87–5	Benzidine	(1)	(1)	(1)	(1)	(1)	(1)
106–51–4	Benzoquinone, p-	15	6900	37	15	6900	37
98–07–7	Benzotrichloride	(1)	1200	(1)	(1)	1200	(1)
50–32–8	Benzo(a)pyrene	0.0023	0.23	0.0036	0.0023	0.23	(1)
205–99–2	Benzo(b) fluoranthene	0.00081	4	0.000066	0.00081	4	0.000066
205–82–3	Benzo(j) fluoranthene	0.0029	4	0.0012	0.0029	4	(1)
207–08–9	Benzo(k) fluoranthene	0.0029	4	0.0012	0.0029	4	(1)
191–24–2	Benzo[g, h, i]perylene	0.0029	4	0.0012	0.0029	4	(1)
100–51–6	Benzyl alcohol	39	130000	53	39	130000	53
100–44–7	Benzyl chloride	1	81	50	1	81	50
56–55–3	Benz(a) anthracene	0.00072	0.1	(1)	0.00072	0.1	(1)
225–51–4	Benz[c] acridine	0.0029	4	0.0012	0.0029	4	(1)
7440–41–7	Beryllium	0.00083	0.22	0.0011	0.00083	0.22	0.0011
39638–32–9	Bis (2-chloroisopropyl) ether	0.007	97	0.0088	0.007	97	0.0088
111–44–4	Bis(2-chlore- thyl)ether	0.00065	1	0.002	0.00065	1	0.002
117–81–7	Bis(2-ethy- lexyl)phthalate	0.00044	740	0.11	0.00044	740	0.0011
542–88–1	Bis(chlor- omethyl)ether	(1)	(1)	(1)	(1)	(1)	(1)
598–31–2	Bromoacetone	0.024	140	0.054	0.023	140	0.053
75–27–4	Bromodich- loromethane	0.0085	240	0.011	0.0085	240	0.011
75–25–2	Bromoform (Tribromomethane)	0.064	1600	0.081	0.064	1600	0.081
101–55–3	Bromophenyl phenyl ether, 4-	0.024	140	0.054	0.023	140	0.053
357–57–3	Brucine	(1)	(1)	(1)	(1)	(1)	(1)
71–36–3	Butanol	16	41000	21	16	41000	21
88–85–7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.034	6000	0.043	0.19	6000	0.24
85–68–7	Butylbenzyl- phthalate	240	87	67	240	87	67

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
7440–43–9	Cadmium	0.038	110	0.051	0.24	110	0.32
86–74–8	Carbazole	(1)	(1)	(1)	(1)	(1)	(1)
75–15–0	Carbon disulfide	0.74	3800	24	0.74	3800	24
353–50–4	Carbon oxyfluoride	(1)	(1)	(1)	(1)	(1)	(1)
56–23–5	Carbon tetrachloride	0.012	130	0.055	0.012	130	0.0077
75–87–6	Chloral	(1)	(1)	(1)	(1)	(1)	(1)
305–03–3	Chlorambucil	(1)	(1)	(1)	(1)	(1)	(1)
57–74–9	Chlordane	(1)	0.19	0.036	(1)	0.19	0.00016
494–03–1	Chlornaphazin	(1)	(1)	(1)	(1)	(1)	(1)
126–99–8	Chloro-1,3-butabiene, 2-(Chloroprene)	0.52	1700	.....	0.52	1700	.....
107–20–0	Chloroacetaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
106–47–8	Chlororoaniline, p-	0.42	5800	0.56	0.42	5800	0.56
108–90–7	Chlorobenzene	0.68	41000	0.81	2	41000	6
510–15–6	Chlorobenzilate	0.054	14	0.029	0.054	14	0.029
124–48–1	Chlorodibromomethane	0.0066	200	0.0079	0.0066	200	0.0079
75–00–3	Chloroethane (ethyl chloride)	0.024	140	0.054	0.023	140	0.053
110–75–8	Chloroethyl vinyl ether, 2-	(1)	(1)	(1)	(1)	(1)	(1)
67–66–3	Chloroform	0.0076	76	0.075	0.0076	76	0.075
59–50–7	Chloro-m-cresol, p-	0.27	1200	0.068	0.081	1200	0.06
107–30–2	Chloromethyl methyl ether	(1)	140	(1)	(1)	140	(1)
91–58–7	Chloronaphthalene, 2-	0.27	1200	0.068	0.081	1200	0.06
95–57–8	Chlorophenol, 2-	0.9	8500	1	0.9	8500	1
7005–72–3	Chlorophenyl phenyl ether, 4-	0.024	140	0.054	0.023	140	0.053
5344–82–1	Chlorophenyl thiourea, 1-o-	(1)	(1)	(1)	(1)	(1)	(1)
542–76–7	Chloropropionitrile, 3-	0.27	1200	(1)	(1)	1200	(1)
7440–47–3	Chromium	0.62	16	0.31	1	16	2
218–01–9	Chrysene	0.1	35	0.0012	0.1	35	0.0012
6358–53–8	Citrus red No. 2	(1)	(1)	(1)	(1)	(1)	(1)
7440–48–4	Cobalt	0.62	110	(1)	1	110	1
7440–50–8	Copper	670	950	3800	670	950	3800
108–39–4	Cresol, m-	8	30000	11	8	30000	11
95–48–7	Cresol, o-	8	46000	11	8	46000	11
106–44–5	Cresol, p-	0.84	2900	1	0.84	2900	1
4170–30–3	Crotonaldehyde	8	38000	22	8	38000	22
57–12–5	Cyanide	(1)	51	0.37	(1)	51	0.37
14901–08–7	Cycasin	(1)	(1)	(1)	(1)	(1)	(1)
108–94–1	Cyclohexanone	(1)	38000	22	(1)	38000	22
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2-	(1)	42	(1)	(1)	42	(1)
50–18–0	Cyclophosphamide	(1)	(1)	(1)	(1)	(1)	(1)
20830–81–3	Daunomycin	(1)	(1)	(1)	(1)	(1)	(1)
72–54–8	DDD	0.00013	0.26	6800	0.00013	0.26	6800
53–19–0	DDD (o,p′)	(1)	(1)	(1)	(1)	(1)	(1)
72–55–9	DDE	(1)	0.033	0.000062	(1)	0.033	0.000062
3424–82–6	DDE (o,p′)	(1)	(1)	(1)	(1)	(1)	(1)
50–29–3	DDT	(1)	0.11	0.0054	(1)	0.11	0.0054
789–02–6	DDT (o,p′)	(1)	(1)	(1)	(1)	(1)	(1)
2303–16–4	Diallate	0.26	7	11	0.26	7	11
132–64–9	Dibenzofuran	8	38000	9	8	38000	11
192–65–4	Dibenzo- [a,e]pyrene	0.0029	4	0.0012	0.0029	4	(1)
189–64–0	Dibenzo- [a,h]pyrene	0.0029	4	0.0012	0.0029	4	(1)
189–55–9	Dibenzo- [a,i]pyrene	0.0029	4	0.0012	0.0029	4	(1)
194–59–2	Dibenzo- [c,g]carbazole, 7H-	(1)	4	(1)	(1)	4	(1)
226–36–8	Dibenz- (a,h)acridine	0.0029	4	0.0012	0.0029	4	(1)
53–70–3	Dibenz- (a,h)anth- racene	(1)	(1)	(1)	(1)	(1)	(1)
244–42–0	Dibenz- [a,j]acridine	0.0029	4	0.0012	0.0029	4	(1)
96–12–8	Dibromo-3-chloropro- pane, 1,2-	0.0022	7	0.0017	0.00066	7	0.00052
764–41–0	Dichloro-2-butene, 1,4-	0.024	140	0.054	0.023	140	0.053

110–57–6	Dichloro-2-butene, trans-1,4-	0.024	140	0.054	0.023	140	0.053
96–23–1	Dichloro-2-propanol, 1,3-	0.27	1200	0.068	0.081	1200	0.06
95–50–1	Dichlorobenzene, 1,2-	8	530000	8	15	530000	32
541–73–1	Dichlorobenzene, 1,3-	0.024	140	0.054	0.023	140	0.053
106–46–7	Dichlorobenzene, 1,4-	1	650	1	0.056	650	0.06
91–94–1	Dichlorobenzidine, 3,3′-	0.0037	1	0.0036	0.0037	1	0.0036
75–71–8	Dichloro- difluoromethane	15	8400	45	15	8400	45
75–34–3	Dichloroethane, 1,1-	0.00016	110	0.00021	0.00016	110	0.00021
107–06–2	Dichloroethane, 1,2-	0.007	59	0.011	0.00016	59	0.00021
75–35–4	Dichloroethy lene, 1,1-	0.0035	20	0.054	0.00059	20	0.00077
156–59–2	Dichlorethylene, cis-1,2-	0.29	46000	0.39	2	46000	2
150–60–5	Dichlorethylene, trans-1,2-	0.42	130000	0.56	3	130000	4
111–91–1	Dichloromethoxy ethane	0.024	140	0.054	0.023	140	0.053
98–87–3	Dichloromethylbenzene (benzal chloride)	0.024	140	0.054	0.023	140	0.053
120–83–2	Dichlorophenol, 2,4-	0.62	770	0.76	0.62	770	0.76
87–65–0	Dichlorophenol, 2,6-	0.024	140	0.054	0.023	140	0.053
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D)	0.27	12000	0.37	2	12000	2
78–87–5	Dichloropropane, 1,2-	0.12	180	0.055	0.023	180	0.011
542–75–6	Dichloropropene, 1,3-	0.0028	68	0.0038	0.0028	68	0.0038
10061–01–5	Dichloropropene, cis-1,3-	0.0049	65	10000	0.0049	65	10000
10061–02–6	Dichloropropene, trans-1,3-	0.0049	62	10000	0.0049	62	10000
60–57–1	Dieldrin	0.000059	0.048	36	0.000059	0.048	36
1464–53–5	Diepoxybutane, 1,2,3,4- (2,2′-bioxirane)	15	6900	37	15	6900	37
84–66–2	Diethyl phthalate	190	19000	220	190	19000	220
311–45–5	Diethyl-p-nitrophenyl phosphate	(1)	(1)	(1)	(1)	(1)	(1)
56–53–1	Diethylstilbestrol	(1)	(1)	(1)	(1)	(1)	(1)
94–58–6	Dihydrosafrole	15	6900	37	15	6900	37
60–51–5	Dimethoate	29	7	4	29	7	4
131–11–3	Dimethyl phthalate	78	3	110	78	3	110
77–78–1	Dimethyl sulfate	(1)	(1)	(1)	(1)	(1)	(1)
60–11–7	Dimethyl- aminoazo- benzene, p-	0.028	88	0.038	0.028	88	0.038
119–93–7	Dimethylbenzidine, 3,3′-	(1)	(1)	(1)	(1)	(1)	(1)
57–97–6	Dimethyl- benz(a)- anthracene, 7,12-	(1)	(1)	(1)	(1)	(1)	(1)
79–44–7	Dimethylcarbamoyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
122–09–8	Dimethyl- phenethyl- amine, alpha, alpha-	0.16	51	0.37	0.16	51	0.37
105–67–9	Dimethylphenol, 2,4-	4	24000	5	4	24000	5
119–90–4	Dimethyoxy- benzidine, 3,3′-	0.034	(1)	0.045	0.034	(1)	0.045
84–74–2	Di-n-butyl phthalate	880	90000	100	230	90000	25
99–65–0	Dinitrobenzene, 1,3-	0.017	60	0.022	0.017	60	0.022
100–25–4	Dinitrobenzene, 1,4-	(1)	42	(1)	(1)	42	(1)
534–52–1	Dinitro-o-cresol, 4,6-	(1)	42	(1)	(1)	42	(1)
51–28–5	Dinitrophenol, 2,4-	0.27	450	0.37	0.27	450	0.37
121–14–2	Dinitrotoluene, 2,4-	0.29	1400	0.39	0.29	1400	0.39
606–20–2	Dinitrotoluene, 2,6-	0.17	420	0.22	0.17	420	0.22
117–84–0	Di-n-octyl phthalate	0.002	21000	0.1	0.002	21000	0.1
123–91–1	Dioxane, 1,4-	0.042	71	0.058	0.042	71	0.058
122–39–4	Diphenylamine	15	12000	15	15	12000	15
122–66–7	Diphenylhydrazine, 1,2-	0.16	51	0.37	0.16	51	0.37
298–04–4	Disulfoton	0.013	58	120	0.013	58	120
541–53–7	Dithiobiuret	(1)	(1)	(1)	(1)	(1)	(1)
	D, salts, esters, 2,4-	0.0069	6	4	0.0069	6	3
115–29–7	Endosulfan	6	150	4	6	150	4
959–98–8	Endosulfan I	0.0069	6	4	0.0069	6	3
33213–65–9	Endosulfan II	0.0069	6	4	0.0069	6	3
1031–07–8	Endosulfan sulfate	0.0069	6	4	0.0069	6	3
145–73–3	Endothall	(1)	(1)	4	(1)	(1)	3
72–20–8	Endrin	0.073	27	880	0.073	27	770
7421–93–4	Endrin Aldehyde	0.0069	6	4	0.0069	6	3
53494–70–5	Endrin ketone	0.0069	6	4	0.0069	6	3
106–89–8	Epichlorohydrin	0.34	96	47000	0.34	96	47000
51–43–4	Epinephrine	(1)	(1)	(1)	(1)	(1)	(1)
110–80–5	Ethoxyethanol, 2-	15	6900	53	15	6900	53
141–78–6	Ethyl acetate	390	600000	510	390	600000	510
51–79–6	Ethyl carbamate	15	6900	37	15	6900	37
107–12–0	Ethyl cyanide (propionitrile)	0.16	51	0.37	0.16	51	0.37
60–29–7	Ethyl ether	27	260000	37	27	260000	37

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
97–63–2	Ethyl methacrylate	24	100000	27	24	100000	27
62–50–0	Ethyl methanesulfonate	0.0055	(1)	99000	0.0055	(1)	99000
100–41–4	Ethylbenzene	8	.....	9	39	.....	42
106–93–4	Ethylene Dibromide	0.00093	0.06	0.0049	0.00036	0.06	0.000098
75–21–8	Ethylene oxide	15	6900	37	15	6900	37
96–45–7	Ethylene thiourea	(1)	(1)	(1)	(1)	(1)	(1)
151–56–4	Ethyleneimine (aziridine)	(1)	(1)	(1)	(1)	(1)	(1)
52–85–7	Famphur	(1)	6	4	(1)	6	3
640–19–7	Fluoracetamide, 2-	(1)	(1)	(1)	(1)	(1)	(1)
62–74–8	Fluoracetic acid, sodium salt	(1)	(1)	(1)	(1)	(1)	(1)
206–44–0	Fluoranthene	28	21000	2	28	21000	2
86–73–7	Fluorene	22	90000	7	22	90000	7
16984–48–8	Fluoride	.....	.....	.....	.....	.....	
50–00–0	Formaldehyde	(1)	54	37	(1)	54	37
64–18–6	Formic Acid	270	680000	370	270	680000	370
765–34–4	Glycidylaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
319–86–8	HCH, delta-	0.0069	6	4	0.0069	6	3
76–44–8	Heptachlor	(1)	8	.....	(1)	8	.....
1024–57–3	Heptachlor epoxide	0.00053	0.56	1900	0.00053	0.56	10
87–68–3	Hexachloro-1,3-butadiene	0.0079	290	0.0069	0.0079	290	0.0069
118–74–1	Hexachlorobenzene	(1)	0.27	0.018	(1)	0.27	(1)
319–84–6	Hexachlorocyclohexane, alpha- (alpha-BHC)	0.00014	0.18	2	0.00014	0.18	2
319–85–7	Hexachlorocyclohexane, beta- (beta-BHC)	0.00044	0.64	0.0009	0.00044	0.64	0.0009
58–89–9	Hexachlorocyclohexane, gamma- (Lindane)	0.00078	0.75	26	0.00078	0.75	9
77–47–4	Hexachlorocyclopentadiene	0.0052	1500	.....	0.0052	1500	.....
67–72–1	Hexachloroethane	0.049	890	0.11	0.049	890	0.11
70–30–4	Hexachlorophene	(1)	(1)	(1)	(1)	(1)	(1)
1888–71–7	Hexachloropropene	0.27	1200	0.068	0.081	1200	0.06
757–58–4	Hexaethyl tetraphosphate	(1)	(1)	(1)	(1)	(1)	(1)
591–78–6	Hexanone, 2-	8	38000	22	8	38000	22
302–01–2	Hydrazine	(1)	51	(1)	(1)	51	(1)
193–39–5	Indeno(1,2,3-cd) pyrene	0.0029	4	(1)	0.0029	4	(1)
74–88–4	Iodomethane	0.024	140	0.054	0.023	140	0.053
78–83–1	Isobutyl alcohol	39	120000	53	39	120000	53
465–73–6	Isodrin	(1)	6	4	(1)	6	3
78–59–1	Isophorone	0.53	2000	0.69	0.53	2000	0.69
120–58–1	Isosafrole	15	6900	37	15	6900	37
143–50–0	Kepone	(1)	(1)	(1)	(1)	(1)	(1)
303–43–4	Lasiocarpine	(1)	(1)	(1)	(1)	(1)	(1)
7439–92–1	Lead	30	1600	41	30	1600	41
108–31–6	Maleic anhydride	(1)	6900	(1)	(1)	6900	(1)
123–33–1	Maleic hydrazide	0.16	51	0.37	0.16	51	0.37
109–77–3	Malononitrile	0.16	51	0.37	0.16	51	0.37
148–82–3	Melphalan	(1)	(1)	(1)	(1)	(1)	(1)
7439–97–6	Mercury	0.06	39	0.081	0.3	39	0.4
126–98–7	Methacrylonitrile	0.016	72	0.021	0.016	72	0.021
74–93–1	Methanethiol	(1)	(1)	(1)	(1)	(1)	(1)
67–561	Methanol	78	310000	110	78	310000	110
91–80–5	Methapyrilene	0.16	51	0.37	0.16	51	0.37
16752–77–5	Methomyl	(1)	6	4	(1)	6	3
72–43–5	Methoxychlor	7	280	.....	7	280	.....
74–83–9	Methy bromide (Bromomethane)	0.37	850	4	0.37	850	4
74–87–3	Methyl chloride (Chloromethane)	0.096	91	.....	0.096	91	.....
78–93–3	Methyl ethyl ketone	78	250000	110	78	250000	110
1338–23–4	Methyl ethyl ketone peroxide	(1)	(1)	(1)	(1)	(1)	(1)
60–34–4	Methyl hydrazine	(1)	(1)	(1)	(1)	(1)	(1)
108–10–1	Methyl isobutyl ketone	8	38000	11	8	38000	11

80–62–6	Methyl methacrylate	28	100000	33	28	100000	33
66–27–3	Methyl methanesulfonate	0.12	590	24	0.12	590	24
91–57–6	Methyl naphthalene, 2-	(1)	4	(1)	(1)	4	(1)
298–00–0	Methyl parathion	0.66	6	110	0.66	6	110
75–55–8	Methylaziridine, 2-	(1)	(1)	(1)	(1)	(1)	(1)
56–49–5	Methylcholanthrene, 3-	(1)	(1)	(1)	(1)	(1)	(1)
74–95–3	Methylene bromide	0.029	21000	0.037	2	21000	0.19
75–09–2	Methylene chloride	0.039	720	0.09	0.039	720	0.053
101–14–4	Methylenebis, 4,4'- (2-chloroaniline)	(1)	(1)	(1)	(1)	(1)	(1)
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG)	(1)	(1)	(1)	(1)	(1)	(1)
56–04–2	Methylthiouracil	(1)	(1)	(1)	(1)	(1)	(1)
50–07–7	Mitomycin C	(1)	(1)	(1)	(1)	(1)	(1)
7439–98–7	Molybdenum	2	1200	2	2	1200	2
91–20–3	Naphthalene	14	430000	15	14	430000	15
130–15–4	Naphthoquinone, 1,4-	15	6900	37	15	6900	37
86–88–4	Naphthyl-2-thiourea, 1-	(1)	(1)	(1)	(1)	(1)	(1)
134–32–7	Naphthylamine, 1-	0.16	51	0.37	0.16	51	0.37
91–59–8	Naphthylamine, 2-	0.16	51	0.37	0.16	51	0.37
7440–02–0	Nickel	4	8600	6	11	8600	14
54–11–5	Nicotine and salts	0.16	51	0.37	0.16	51	0.37
88–74–4	Nitroaniline, 2-	(1)	88	(1)	(1)	88	(1)
99–09–2	Nitroaniline, 3-	(1)	88	(1)	(1)	88	(1)
100–01–6	Nitroaniline, 4-	0.028	88	0.038	0.028	88	0.038
98–95–3	Nitrobenzene	0.084	520	0.11	0.084	520	0.11
55–86–7	Nitrogen mustard	(1)	(1)	(1)	(1)	(1)	(1)
51–75–2	Nitrogen mustard hydrochloride salt	(1)	(1)	(1)	(1)	(1)	(1)
126–85–2	Nitrogen mustard N-Oxide	(1)	(1)	(1)	(1)	(1)	(1)
302–70–5	Nitrogen mustard N-Oxide, HCl salt	(1)	(1)	(1)	(1)	(1)	(1)
55–63–0	Nitroglycerine	(1)	(1)	(1)	(1)	(1)	(1)
99–55–8	Nitro-o-toluidine, 5-	0.028	88	0.038	0.028	88	0.038
88–75–5	Nitrophenol, 2-	0.025	42	0.034	0.025	42	0.034
100–02–7	Nitrophenol, 4-	(1)	42	(1)	(1)	42	(1)
79–46–9	Nitropropane, 2-	(1)	3	.....	(1)	3	.....
56–57–5	Nitroquinoline-1-oxide, 4-	0.16	51	0.37	0.16	51	0.37
55–18–5	Nitrosodiethylamine	(1)	(1)	(1)	(1)	(1)	(1)
62–75–9	Nitrosodimethylamine	(1)	(1)	(1)	(1)	(1)	(1)
924–16–3	Nitrosodi-n-butylamine	(1)	1	(1)	(1)	1	(1)
10595–95–6	Nitrosomethylethylamine	(1)	0.035	(1)	(1)	0.035	(1)
1116–54–7	N-Nitrosodiethanolamine	(1)	(1)	(1)	(1)	(1)	(1)
621–64–7	N-Nitrosodi-n-propylamine	(1)	0.22	(1)	(1)	0.22	(1)
86–30–6	N-Nitrosodiphenylamine	0.2	3600	0.24	0.2	3600	0.24
45490–40–0	N-Nitrosomethyl vinyl amine	(1)	(1)	(1)	(1)	(1)	(1)
59–89–2	N-Nitrosomorpholine	0.16	51	0.37	0.16	51	0.37
759–73–9	N-Nitroso-N-ethylurea	(1)	(1)	(1)	(1)	(1)	(1)
684–93–5	N-Nitroso-N-methylurea	0.16	51	0.37	0.16	51	0.37
100–75–4	N-Nitrosopiperidine	(1)	(1)	(1)	(1)	(1)	(1)
930–55–2	N-Nitrosopyrrolidine	(1)	0.36	(1)	(1)	0.36	(1)
13256–22–9	N-Nitrososarcosine	(1)	(1)	(1)	(1)	(1)	(1)
103–85–5	N-Phenylthiourea	(1)	(1)	(1)	(1)	(1)	(1)
1615–80–1	N,N-Diethylhydrazine	(1)	(1)	(1)	(1)	(1)	(1)
152–16–9	Octamethylpyrophosphoramide	0.27	31	0.37	0.27	31	0.37
20816–12–0	Osmium tetroxide	(1)	(1)	(1)	(1)	(1)	(1)
297–97–2	O,O-Diethyl O-pyrazinyl phosphorothioate	0.12	590	24	0.12	590	24
126–68–1	O,O,O-Triethyl phosphorothioate	0.12	590	24	0.12	590	24
123–63–7	Paraldehyde	8	38000	22	8	38000	22
56–38–2	Parathion	3	19	160000	3	19	160000
608–93–5	Pentachlorobenzene	5	2300	0.054	5	2300	0.054
76–01–7	Pentachloroethane	0.024	140	0.054	0.023	140	0.053
82–68–8	Pentachloro- nitrobenzene (PCNB)	0.27	140	(1)	0.081	140	(1)
87–86–5	Pentachlorophenol	0.002	22	0.0022	0.002	22	0.0022
62–44–2	Phenacetin	15	6900	37	15	6900	37
85–01–8	Phenanthrene	(1)	4	(1)	(1)	4	(1)
108–95–2	Phenol	84	390000	110	84	390000	110
62–38–4	Phenyl mercuric acetate	(1)	(1)	(1)	(1)	(1)	(1)
25265–76–3	Phenylenediamines (N.O.S.)	0.16	51	0.37	0.16	51	0.37
108–45–2	Phenylenediamine, m-	0.78	1700	1	0.78	1700	1

TABLE A.—MODELED OR EXTRAPOLATED RISK-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
106–50–3	Phenylenediamine, p-	0.16	51	0.37	0.16	51	0.37
298–06–2	Phorate	0.11	510	.....	0.11	510	.....
	Phosphorodithioic acid, dimethylethylester	(1)	(1)	(1)	(1)	(1)	(1)
298–06–6	Phosphorodithioic acid, o-o-diethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
3288–58–2	Phosphorodithioic acid, o-o-diethyl-s-methyl	(1)	(1)	(1)	(1)	(1)	(1)
2953–29–9	Phosphorodithioic acid, trimethyl ester	(1)	(1)	(1)	(1)	(1)	(1)
85–44–9	Phthalic anhydride	(1)	9600	(1)	(1)	9600	(1)
109–06–8	Picoline, 2-	0.16	51	0.37	0.16	51	0.37
1336–36–3	Polychlorinated biphenyls	See Table B	0.25	0.009	See Table B	0.25	(1)
12305–58–5	Pronamide	21	230000	25	21	230000	25
1120–71–4	Propane sultone, 1,3-	(1)	(1)	(1)	(1)	(1)	(1)
107-10-8	Propylamine, n-	0.16	51	0.37	0.16	51	0.37
51–52–5	Propylthiouracil	0.12	590	24	0.12	590	24
107–19–7	Propyn-1ol, 2-	39	130000	53	39	130000	53
129–00–0	Pyrene	54	16000	2	54	16000	2
110–86–1	Pyridine	0.16	930	0.21	0.16	930	0.21
50–55–5	Reserpine	0.16	51	0.37	0.16	51	0.37
108–46–3	Resorcinol	(1)	(1)	4	(1)	(1)	(1)
81–07–2	Saccharin and salts	(1)	(1)	(1)	(1)	(1)	
94–59–7	Safrole	0.0035	28	0.0044	0.0035	28	0.0044
7782–49–2	Selenium	0.23	280	0.12	0.93	280	1
7440–22–4	Silver	200	9	.....	200	9	.....
18883–66–4	Streptozotocin	(1)	(1)	(1)	(1)	(1)	(1)
57–24–9	Strychnine	0.045	(1)	0.059	0.045	(1)	0.059
10–42–5	Stryene	0.91	.....	1	64	.....	70
18496–25–8	Sulfide	.....	.....	.....	.....	.....	.....
1746–01–6	TCDD, 2,3,7,8-	(1)	(1)	(1)	(1)	(1)	(1)
95–94–3	Tetrachlorobenzene, 1,2,4,5-	0.23	1600	0.032	0.23	1600	0.032
630–20–6	Tetrachloroethane 1,1,1,2-	0.024	370	0.042	0.024	370	0.042
79–34–5	Tetrachloroethane, 1,1,2,2-	0.0037	70	0.0077	0.0037	70	0.0077
127–18–4	Tetrachloroethylene	0.026	100000	0.032	2	100000	3
58–90–2	Tetrachlorophenol, 2,3,4,6-	2	35000	2	2	35000	2
107–49–3	Tetraethyl pyrophosphate	(1)	6900	(1)	(1)	6900	(1)
107–49–3	Tetraethyl pyrophosphate	(1)	6900	(1)	(1)	6900	(1)
3689–24–5	Tetraethyldithiopyrophosphate	0.23	1200	.....	0.23	1200	.....
7440–28–0	Thallium (I)	0.035	33	0.048	0.05	33	0.071
62–55–5	Thioacetamide	(1)	(1)	(1)	(1)	(1)	(1)
39196–18–4	Thiofanox	0.12	590	24	0.12	590	24
108–98–5	Thiophenol	0.12	590	24	0.12	590	24
79–19–6	Thiosemicarbazide	(1)	(1)	(1)	(1)	(1)	(1)
62–566	Thiourea	(1)	(1)	(1)	(1)	(1)	(1)
137–26–8	Thiram	(1)	(1)	(1)	(1)	(1)	(1)
7440–31–5	Tin	(1)	(1)	(1)	(1)	(1)	(1)
108–88–3	Toluene	6	560000	7	30	560000	51
584–84–9	Toluene diisocyanate	(1)	(1)	(1)	.....	.....	
95–80–7	Toluenediamine, 2,4—	(1)	(1)	(1)	(1)	(1)	(1)
823–40–5	Toluenediamine, 2,6-	0.16	51	0.37	0.16	51	0.37
496–72–0	Toluenediamine, 3,4-	0.16	51	0.37	0.16	51	0.37
636–21–5	Toulidene,3,4-	0.16	51	0.37	0.16	51	0.37
95–53–4	Toluidine, o-	(1)	(1)	(1)	(1)	(1)	(1)
106–49–0	Toluidine, p-	(1)	(1)	(1)	(1)	(1)	(1)
8001–35–2	Toxaphene	(1)	(1)	160	(1)	(1)	3
76–13–1	Trichloro-1,2,2-trifuoroethane, 1,1,2	0.77	.....	0.84	2200	.....	12000
120–82–1	Trichlorobenzene, 1,2,4-	0.69	62000	3	0.69	62000	3
71–55–6	Trichloroethane, 1,1,1-	74	630000	0.054	74	630000	0.054
79–00–5	Trichloroethane, 1,1,2-	0.012	190	0.039	0.007	190	0.0077

79–01–6	Trichloroethylene	0.024	3200	0.031	0.038	3200	0.049
79–69–4	Trichlorofluoromethane	48	170000	61	48	170000	61
75–70–7	Trichloromethanethiol	(1)	(1)	(1)	(1)	(1)	22
95–95–4	Trichlorophenol, 2,4,5-	18	55000	22	18	55000	22
88–06–2	Trichlorophenol, 2,4,6-	0.054	160	0.068	0.054	160	0.068
93–76–5	Trichlorophenoxyacetic acid, 2,4,5- (245-T)	2	150	2	2	150	2
93–72–1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex)	0.21	520	0.28	1	520	2
96–18–4	Trichloropropane, 1,2,3-	1	14000	1	1	14000	1
99–35–4	Trintrobenzene, sym-	0.0078	23	0.011	0.0078	23	0.011
126–72–7	Tris (2,3-dibromopropyl) phosphate	(1)	0.76	(1)	(1)	0.76	(1)
52–24–4	Tris (1-azridinyl) phosphine sulfide	(1)	(1)	(1)	(1)	(1)	(1)
72–57–1	Trypan blue	(1)	(1)	(1)	(1)	(1)	(1)
66–75–1	Uracil mustard	(1)	(1)	(1)	(1)	(1)	(1)
7440–62–2	Vanadium	10	2700	13	10	2700	13
108–05–4	Vinyl acetate	15	6900	37	15	6900	37
75–01–4	Vinyl chloride	0.002	3	0.011	(1)	3	0.00021
81–81–2	Warfarin	(1)	6	4	(1)	6	3
1330–20–7	Xylenes (total)	22	710000	100	22	710000	700
7440–66–6	Zinc	99	51000	130	99	51000	130

[1] See table B.

TABLE B.—QUANTITATION-BASED CONDITIONAL EXIT LEVELS

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
208–96–8	Acenaphthylene	0.02		0.02	0.02		
75–36–5	Acetyl chloride	(1)	(1)	(1)	(1)	(1)	(1)
591–08–2	Acetyl-2-thiourea,	1			1		
107–02–8	Acrolein	0.013			0.013		
79–06–1	Acrylamide	0.01	0.1	0.01	0.01	0.1	0.01
107–13–1	Acrylonitrile	0.008		0.008		0.008	
1402–68–2	Aflatoxins	(1)	(1)	(1)	(1)	(1)	(1)
116–06–3	Aldicarb	0.05			0.05		
309–00–2	Aldrin	0.000034		0.000034	0.000034		0.000034
107–18–6	Allyl alcohol	(1)	(1)	(1)	(1)	(1)	(1)
2763–96–4	Aminomethyl-3-isoxazolol, 5-.	(1)	(1)	(1)	(1)	(1)	(1)
504–24–5	Aminopyridine, 4-	(1)	(1)	(1)	(1)	(1)	(1)
61–82–5	Amitrole	(1)	(1)	(1)	(1)	(1)	(1)
120–12–7	Anthracene	0.007		0.007	0.007		0.007
7440–38–2	Arsenic				0.0005		
2465–27–2	Auramine	(1)	(1)	(1)	(1)	(1)	(1)
115–02–6	Azaserine	(1)	(1)	(1)	(1)	(1)	(1)
92–87–5	Benzidine	0.0025	0.042	0.0025	0.0025	0.042	0.0025
98–07–7	Benzotrichloride	(1)	(1)	(1)	(1)	(1)	(1)
50–32–8	Benzo(a)pyrene						0.000023
205–82–3	Benzo(j)fluoranthene						0.0002
207–08–9	Benzo(k)fluoranthene						0.0002
191–24–2	Benzo[g,h,i]perylene						0.0008
56–55–3	Benz(a)anthracene			0.000013			0.000013
225–51–4	Benz[c]acridine						0.0005
542–88–1	Bis(chloromethyl) ether.	(1)	(1)	(1)	(1)	(1)	(1)
357–57–3	Brucine	20	(1)	20	20	(1)	20
86–74–8	Carbazole	(1)	(1)	(1)	(1)	(1)	(1)
353–50–4	Carbon oxyfluoride	(1)	(1)	(1)	(1)	(1)	(1)
75–87–6	Chloral	(1)	(1)	(1)	(1)	(1)	(1)
305–03–3	Chlorambucil	(1)	(1)	(1)	(1)	(1)	(1)
57–74–9	Chlordane	0.00004			0.00004		
494–03–1	Chlornaphazin	(1)	(1)	(1)	(1)	(1)	(1)
107–20–0	Chloroacetaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
110–75–8	Chloroethyl vinyle ether, 2–.	(1)	(1)	(1)	(1)	(1)	(1)
107–30–2	Chloromethyl methyl ether.	(1)	(1)	(1)	(1)	(1)	(1)
5344–82–1	Chlorophenyl thio-urea, 1-o-.	(1)	(1)	(1)	(1)	(1)	(1)
542–76–7	Chloropropionitrile, 3–.			0.1	0.1		0.1
6358–53–8	Citrus red No. 2	(1)	(1)	(1)	(1)	(1)	(1)
7440–48–4	Cobalt			0.5			
57–12–5	Cyanida	0.2			0.2		
14901–08–7	Cycasin	(1)	(1)	(1)	(1)	(1)	(1)
108–94–1	Cyclohexanone	10			10	(1)	(1)
131–89–5	Cyclohexyl-4,6-dinitrophenol, 2–.	0.1	(1)	0.1	0.1	(1)	0.1
50–18–0	Cyclophosphamide	(1)	(1)	(1)	(1)	(1)	(1)
20830–81–3	Daunomycin	(1)	(1)	(1)	(1)	(1)	(1)
53–19–0	DDD (o,p')	(1)	(1)	(1)	(1)	(1)	(1)
72–55–9	DDE	0.000058			0.000058		
3424–82–6	DDE (o,p')	(1)	(1)	(1)	(1)	(1)	(1)
50–29–3	DDT	0.000081			0.000081		
789–02–6	DDT (o,p')	(1)	(1)	(1)	(1)	(1)	(1)
192–65–4	Dibenzo-[a,e]ypyrene.						0.001
189–64–0	Dibenzo- [a,h]pyrene						0.0002
189–64–9	Dibenzo- [a,i]pyrene						0.0002
194–59–2	Dibenzo-[c,g]carbazole, 7H–.	(0.01		0.01	0.01		0.01
226–36–8	Dibenz- (a,h)acridine						0.0002
53–70–3	Dibenz- (a,h)anthracene.	0.00003	0.084	0.00003	0.00003	0.084	0.00003
224–42–0	Dibenz[a,j] acridine						0.001
311–45–5	Diethyl-p-nitrophenyl phosphate.	(1)	(1)	(1)	(1)	(1)	(1)
56–53–1	Diethylstibestrol	0.0078	1	0.0078	0.0078	1	0.0078
77–78–1	Dimethyl sulfate	(1)	(1)	(1)	(1)	(1)	(1)
119–93–7	Dimethybenzidine, 3,3′-.	0.0033	0.7	0.0033	0.0033	0.7	0.0033
57–97–6	Dimethyl- benz(a)-anthracene, 7,12-.	0.00037	0.039	0.00037	0.00037	0.039	0.00037

TABLE B.—QUANTITATION-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
79–44–7	Dimethylcarbamoyl chloride.	(1)	(1)	(1)	(1)	(1)	(1)
119–90–4	Dimethy- oxybenzidine, 3,3′-.	.....	7	.....	.....	7	.....
100–25–4	Dinitrobenzene, 1,4-	0.04	.....	0.04	0.04	.....	0.04
534–52–1	Dinitro-o-cresol, 4,6-	0.05	.....	0.05	0.05	.....	0.05
541–53–7	Dithiobiuret	(1)	(1)	(1)	(1)	(1)	(1)
145–73–3	Endothall	0.1	(1)	.....	0.1	(1)	.....
51–43–4	Epinephrine	(1)	(1)	(1)	(1)	(1)	(1)
62–50–0	Ethyl methanesulfonate.	.....	0.018	.....	.....	0.018	.....
96–45–7	Ethylene thiourea	(1)	(1)	(1)	(1)	(1)	(1)
151–56–4	Ethyleneimine (aziridine).	(1)	(1)	(1)	(1)	(1)	(1)
52–85–7	Famphur	0.02	.....	.....	0.02	.....	.....
640–19–7	Fluoracetamide, 2-	(1)	(1)	(1)	(1)	(1)	(1)
62–74–8	Fluoracetic acid, sodium salt.	(1)	(1)	(1)	(1)	(1)	(1)
16984–48–8	Fluoride	.....	.....	.....	.....	.....	.....
50–00–0	Formaldehyde	0.023	.....	.....	0.023	.....	.....
765–34–4	Glycidylaldehyde	(1)	(1)	(1)	(1)	(1)	(1)
76–44–8	Heptachlor	0.00004	.....	.....	0.00004	.....	.....
118–74–1	Hexachlorobenzene	0.0016	.....	.....	0.0016	.....	0.0016
70–30–4	Hexachlorophene	0.21	2	0.21	0.21	2	0.21
757–58–4	Hexaethyl tetraphosphate.	(1)	(1)	(1)	(1)	(1)	(1)
302–01–2	Hydrazine	(1)	.....	(1)	(1)	.....	(1)
193–39–5	indeno(1,2,3-cde)pyrene.	.....	.....	0.000043	.....	.....	0.000043
465–73–6	Isodrin	0.02	.....	.....	0.02	.....	.....
143–50–0	Kepone	0.016	0.097	0.016	0.016	0.097	0.016
303–43–4	Lasiocarpine	(1)	(1)	(1)	(1)	(1)	(1)
108–31–6	Maleic anhydride	(1)	.....	(1)	(1)	.....	(1)
148–82–3	Melphalan	(1)	(1)	(1)	(1)	(1)	(1)
74–93–1	Methanethiol	(1)	(1)	(1)	(1)	(1)	(1)
16752–77–5	Methomyl	0.05	.....	.....	0.05	.....	.....
1338–23–4	Methyl ethyl ketone peroxide.	(1)	(1)	(1)	(1)	(1)	(1)
60–34–4	Methyl hydrazine	(1)	(1)	(1)	(1)	(1)	(1)
91–57–6	Methyl naphthalene, 2-.	0.01	.....	0.01	0.01	.....	0.01
75–55–8	Methylaziridine, 2-	(1)	(1)	(1)	(1)	(1)	(1)
56–49–5	Methylcholanthrene, 3-.	0.01	0.046	0.01	0.01	0.046	0.01
101–14–4	Methylenebis, 4,4′-(2-chloroaniline).	(1)	(1)	(1)	(1)	(1)	(1)
70–25–7	Methyl-nitro-nitrosoguanidine (MNNG).	(1)	(1)	(1)	(1)	(1)	(1)
56–04–2	Methylthiouracil	(1)	(1)	(1)	(1)	(1)	(1)
50–07–7	Mitomycin C	(1)	(1)	(1)	(1)	(1)	(1)
86–88–4	Naphthyl-2-thiourea, 1-.	(1)	(1)	(1)	(1)	(1)	(1)
88–74–4	Nitroaniline, 2-	0.05	.....	0.05	0.05	.....	0.05
99–09–2	Nitroaniline, 3-	0.05	.....	0.05	0.05	.....	0.05
55–86–7	Nitrogen mustard	(1)	(1)	(1)	(1)	(1)	(1)
51–75–2	Nitrogen mustard hydrochloride salt.	(1)	(1)	(1)	(1)	(1)	(1)
126–85–2	Nitrogen mustard N–Oxide.	(1)	(1)	(1)	(1)	(1)	(1)
302–70–5	Nitrogen mustard N-Oxide, HCI salt.	(1)	(1)	(1)	(1)	(1)	(1)
55–63–0	Nitroglycerine	(1)	(1)	(1)	(1)	(1)	(1)
110–02–7	Nitrophenol, 4-	0.05	.....	0.05	0.05	.....	0.05
79–46–9	Nitropropane, 2-	0.0058	.....	.....	0.0058	.....	.....
55–18–5	Nitrosodiethylamine	0.002	(1)	0.002	0.002	1	0.002
62–75–9	Nitrosodimethylamine	0.0006	0.074	0.0006	0.0006	0.074	0.0006
924–16–3	Nitrosodi-n-butylamine.	0.06	.....	0.06	0.06	.....	0.06
10595–95–6	Nitrosomethylethylamine.	0.028	.....	0.028	0.028	.....	0.028
1116–54–7	N-Nitrosodiethanolamine.	0.01	0.7	0.01	0.01	0.7	0.01
621–64–7	N-Nitrosodi-n-propyamine.	0.026	.....	0.026	0.026	.....	0.026

TABLE B.—QUANTITATION-BASED CONDITIONAL EXIT LEVELS—Continued

CAS No.	Name	MCL benchmark option			Toxicity benchmark option		
		Wastewater	Nonwastewater		Wastewater	Nonwastewater	
		Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)	Totals (mg/l)	Totals (mg/kg)	Leach (mg/l)
4549–40–0	N-Nitrosomethy vinyl amine.	(1)	(1)	(1)	(1)	(1) D(1)	
759–73–9	N-Nitroso-N-ethylurea.	(1)	(1)	(1)	(1)	(1)	(1)
615–53–2	N-Nitroso-N-methylurethane.	(1)	(1)	(1)	(1)	(1)	(1)
16543–55–8	N-Nitrosonornicotine	(1)	(1)	(1)	(1)	(1)	(1)
100–75–4	N-Nitrosopiperidine	0.0014	0.033	0.0014	0.0014	0.033	0.0014
930–55–2	N-Nitrosopyrrolidine	0.0047		0.0047	0.0047		0.0047
13256–22–9	N-Nitrososarcosine	(1)	(1)	(1)	(1)	(1)	(1)
103–85–5	N-Phenylthiourea	(1)	(1)	(1)	(1)	(1)	(1)
1615–80–1	N,N-Diethylhydrazine	(1)	(1)	(1)	(1)	(1)	(1)
20816–12–0	Osmium tetroxide	3	200	3	3	200	3
82–68–8	Pentachloronitrobenzene (PCNB).			0.02			0.02
85–01–8	Phenanthrene	0.006		0.006	0. 006		0.006
62–38–4	Phenyl mercuric acetate.	(1)	(1)	(1)	(1)	(1)	(1)
	Phosphorodithioic acid, dimethylethylester.	(1)	(1)	(1)	(1)	(1)	(1)
298–06–6	Phosphorodithioic acid, o-o-diethyl ester.	(1)	(1)	(1)	(1)	(1)	(1)
3288–58–2	Phosphorodithioic acid, o-o-diethyl-s-methlyl.	(1)	(1)	(1)	(1)	(1)	(1)
2953–29–9	Pyhosphorodithioic acid, trimethyl ester.	(1)	(1)	(1)	(1)	(1)	(1)
85–44–9	Phthalic anhydride	(1)		(1)	(1)		(1)
1336–36–3	Polychlorinated biphenyls.	0.0005			0.0005		0.0005
1120–71–4	Propane sultone, 1,3-.	(1)	(1)	(1)	(1)	(1)	(1)
108–46–3	Resorcinol	0.1	7		0.1	7	
81–07–2	Saccharin and salts	(1)	(1)	(1)	(1)	(1)	(1)
18883–66–4	Streptozotocin	(1)	(1)	(1)	(1)	(1)	(1)
57–24–9	Strychnine		3			3	
1746–01–6	TCDD, 2, 3, 7.8-	1.000E-08			1.000E-08		1.000E-08
107–49–3	Tetraethyl pyrophosphate.	(1)		(1)	(1)		(1)
62–55–5	Thioacetamide	1	(1)	1	1	(1)	1
79–19–6	Thiosemicarbazide	(1)	(1)	(1)	(1)	(1)	(1)
62–56–6	Thiourea	(1)	(1)	(1)	(1)	(1)	(1)
137–26–8	Thiram	0.05			0.05		
7440–31–5	Tin	8	500	8	8	500	8
584–84–9	Toluene diisocyanate	(1)		(1)	(1)		(1)
95–80–7	Toluenediamine, 2,4-	0.013	1	0.013	0.013	1	0.013
95–53–4	Toluidine, 0-	0.012		0.012	0.012		0.012
106–49–0	Toluidine, p-	0.017		0.017	0.017		0.017
8001–35–2	Toxaphene	0.0013	0.03		0.0013	0.03	
75–70–7	Trichloromethanethiol	(1)	(1)	(1)	(1)	(1)	(1)
126–72–7	Tris (2, 3-dibromopropyl) phosphate.	0.025		0.025	0.025		0.025
52–24–4	Tris (1-azridinyl) phosphine sulfide.	(1)	(1)	(1)	(1)	(1)	(1)
72–57–1	Trypan blue	(1)	(1)	(1)	(1)	(1)	(1)
66–75–1	Uracil mustard	(1)	(1)	(1)	(1)	(1)	(1)
75–01–4	Vinyl chloride				0.00017		
81–81–2	Warfarin	0.05			0.05		

[1] No testing required; additional LDR requirements apply.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES

9. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

10. Section 266.20 is amended by revising the first sentence of paragraph (b) to read as follows:

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if, for each hazardous constituent in each recyclable material (i.e., hazardous waste) that they contain, they meet the

applicable exit levels in appendix X to Part 261 of this chapter. * * *

PART 268—LAND DISPOSAL RESTRICTIONS

11. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) 6921, and 6924.

12. Section 268.2 is amended by adding paragraph (j) to read as follows:

* * * * *

(j) *Land treatment* means waste is applied onto or incorporated into the soil surface.

13. Section 268.40 is amended by revising the first sentence of paragraph (a), revising paragraph (e), and adding paragraph (g) to read as follows:

§ 268.41 Applicability of treatment standards

(a) Except as provided in paragraph (g) of this section, a waste identified in the table ''Treatment Standards for Hazardous Wastes'' may be land disposed only if it meets the requirements found in the table. * * *

* * * * *

(e) Except as provided in paragraph (g) of this section, for all characteristic wastes (D001, D002, and D012–D043) that are subject to treatment standards in the following table ''Treatment Standards for Hazardous Wastes,'' all underlying constituents (as defined in § 268.20(i)) must meet Universal Treatment Standards, found in § 268.48, Table UTS, prior to land disposal.

* * * * *

(g) Wastes subject to either the treatment standards described in paragraph (a)(1) or (a)(2) of this section or the Universal Treatment Standards described in paragraph (e) of this section may be land disposed if they meet either of the alternative, risk-based standards found in subpart F and G of this part and representing levels at which threats to human health or the environment are minimized.

14. Part 268 is amended by adding Subpart F consisting of § 268.60 to read as follows:

Subpart F—Minimize Threat Levels Without Management Requirements

§ 268.60 Minimize threat levels.

(a) Table ''Minimize Threat Levels'' identifies risk-based standards representing levels at which threats to human health and the environment are minimized. These levels may be used as alternatives to waste-specific treatment standards in the table to § 268.40 and to the Universal Treatment Standards in the table to § 268.48. Nonwastewaters must meet both the total and waste extract levels contained in the table of ''Minimize Threat Levels''.

(b) Wastes identified in the Table to § 268.40 may be land disposed if they meet either the requirements in that Table or the standards in the Minimize Threat Table for all constituents. Characteristic wastes that are subject to the requirement for meeting Universal Treatment Standards under § 268.40(e) must also meet the requirements of Table UTS or the Minimize Threat Table for all underlying hazardous constituents as defined in § 268.2(i).

(c) Wastes containing either regulated hazardous constituents under the Table to § 268.40 or UTS constituents which do not have treatment standards listed in the Minimize Threat Table must continue to comply with treatment standards for these constituents in the tables to § 268.40 or § 268.48 prior to land disposal.

268.60 TABLE 1.—MINIMIZE THREAT LEVELS

CAS	Constituent name	WW standard (mg/l)	NWW standard (mg/kg)	NWW standard (mg/l)
83–32–9	Acenaphthene	31	9500	5
67–64–1	Acetone	16	17000	6
75–05–8	Acetonitrile	.....	920	0.3
98–86–2	Acetophenone	17	1200	6
107–05–1	Allyl chloride	.....	260	.....
7440–39–3	Barium	33	2100	16
71–43–2	Benzene	.....	110	0.0054
117–81–7	Bis(2-ethylhexyl)phthalate	.....	230	0.0011
75–27–4	Bromodichloromethane	.....	19	0.0025
75–25–2	Bromoform (Tribromomethane)	.....	170	0.018
71–36–3	Butanol	16	18000	6
88–85–7	Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.19	770	0.064
85–68–7	Butylbenzylphthalate	240	87	64
75–15–0	Carbon disulfide	.....	330	6
56–23–5	Carbon tetrachloride	.....	9	0.0016
126–99–8	Chloro-1,3-butadiene, 2- (Chloroprene)	0.52	290	.....
106–47–8	Chloroaniline, p-	.....	140	0.16
108–90–7	Chlorobenzene	2	2500	1
124–48–1	Chlorodibromomethane	.....	28	0.0018
67–66–3	Chloroform	.....	7	0.017
95–57–8	Chlorophenol, 2-	0.9	100	0.32
218–01–9	Chrysene	0.1	35	0.0012
108–39–4	Cresol, m-	8	22000	3
95–48–7	Cresol, o-	8	27000	3
106–44–5	Cresol, p-	0.84	2600	0.32
84–74–2	Di-n-butyl phthalate	230	90000	25
117–84–0	Di-n-octyl phthalate	.....	4500	0.1
95–50–1	Dichlorobenzene, 1,2-	15	50000	6
106–46–7	Dichlorobenzene, 1,4-	.....	64	0.011
75–71–8	Dichlorodifluoromethane	15	8100	12
75–34–3	Dichloroethane, 1,1-	.....	24	0.00006
156–60–5	Dichloroethylene, trans-1,2-	3	14000	1
120–83–2	Dichlorophenol, 2,4-	0.62	770	0.18
94–75–7	Dichlorophenoxyacetic acid, 2,4- (2,4-D)	2	3100	0.6
84–66–2	Diethyl phthalate	190	4500	54
131–11–3	Dimethyl phthalate	78	.....	.....

268.60 TABLE 1.—MINIMIZE THREAT LEVELS—Continued

CAS	Constituent name	WW standard (mg/l)	NWW standard (mg/kg)	NWW standard (mg/l)
105–67–9	Dimethylphenol, 2,4-	4	11000	1
51–28–5	Dinitrophenol, 2,4-	0.27	.....	.....
121–14–2	Dinitrotoluene, 2,4-	.....	210	0.11
606–20–2	Dinitrotoluene, 2,6-	.....	86	0.064
122–39–4	Diphenylamine	15	12000	3
298–04–4	Disulfoton	.....	43	13
72–20–8	Endrin	0.073	0.26	32
141–78–6	Ethyl acetate	390	270000	110
60–29–7	Ethyl ether	27	41000	11
97–63–2	Ethyl methacrylate	24	3400	7
100–41–4	Ethylbenzene	39	550000	8
206–44–0	Fluoranthene	28	6000	2
86–73–7	Fluorene	22	90000	3
76–44–8	Heptachlor	.....	8	.....
87–68–3	Hexachloro-1,3-butadiene	.....	36	0.0069
319–85–7	Hexachlorocyclohexane, beta- (beta-BHC)	0.00044	0.12	0.00021
58–89–9	Hexachlorocyclohexane, gamma- (Lindane)	.....	0.1	0.69
77–47–4	Hexachlorocyclopentadiene	.....	1500	.....
67–72–1	Hexachloroethane	.....	81	0.033
78–83–1	Isobutyl alcohol	39	55000	15
7439–92–1	Lead	30	570	12
7439–97–6	Mercury	0.3	0.6	0.14
67–56–1	Methanol	78	140000	30
72–43–5	Methoxychlor	7	19	.....
74–83–9	Methyl bromide (Bromomethane)	0.37	500	0.92
74–87–3	Methyl chloride (Chloromethane)	.....	91	.....
78–93–3	Methyl ethyl ketone	78	110000	30
108–10–1	Methyl isobutyl ketone	8	17000	3
80–62–6	Methyl methacrylate	28	40000	8
298–00–0	Methyl parathion	0.66	.....	.....
74–95–3	Methylene bromide	2	8400	0.19
75–09–2	Methylene chloride	.....	310	0.015
91–20–3	Naphthalene	14	120000	3
7440–02–0	Nickel	11	110	5
98–95–3	Nitrobenzene	0.084	45	0.032
56–38–2	Parathion	3	.....	.....
608–93–5	Pentachlorobenzene	5	.....	.....
82–68–8	Pentachloronitrobenzene (PCNB)	0.081	.....	.....
108–95–2	Phenol	84	160000	32
298–02–2	Phorate	0.11	160	.....
23950–58–5	Pronamide	21	440	6
129–00–0	Pyrene	54	16000	2
110–86–1	Pyridine	0.16	810	0.06
7782–49–2	Selenium	0.93	.....	.....
7440–22–4	Silver	200	.....	.....
95–94–3	Tetrachlorobenzene, 1,2,4,5-	0;23	170	0.032
630–20–6	Tetrachloroethane, 1,1,1,2-	.....	130	0.0078
79–34–5	Tetrachloroethane, 1,1,2,2-	.....	29	0.0077
127–18–4	Tetrachloroethylene	2	13000	0.68
58–90–2	Tetrachlorophenol, 2,3,4,6-	2	6200	0.58
7440–28–0	Thallium (I)	.....	5	0.019
108–88–3	Toluene	30	180000	13
76–13–1	Trichloro-1,2,2,-trifluoroethane, 1,1,2-	2200	.....	.....
120–82–1	Trichlorobenzene, 1,2,4-	0.69	3500	1
71–55–6	Trichloroethane, 1,1,1-	74	48000	0.054
79–00–5	Trichloroethane, 1,1,2-	.....	11	0.0018
79–01–6	Trichloroethylene	.....	570	0.013
75–69–4	Trichlorofluoromethane	48	26000	16
95–95–4	Trichlorophenol, 2,4,5-	18	12000	4
88–06–2	Trichlorophenol, 2,4,6-	0.054	120	0.015
93–76–5	Trichlorophenoxyacetic acid, 2,4,5- (245-T)	2	63	0.64
93–72–1	Trichlorophenoxypropionic acid, 2,4,5- (Silvex)	1	.....	.....
96–18–4	Trichloropropane, 1,2,3-	1	870	0.34
7440–62–2	Vanadium	10	250	4
1330–20–7	Xylenes (total)	22	170000	150
7440–66–6	Zinc	99	320	38

15. Part 268 is amended by adding subpart G consisting of §§ 268.70 and 268.71 to read as follows:

Subpart G—Conditioned Minimize Threat Levels with Management Requirements

§ 268.70 Conditioned Minimize Threat Levels.

(a) Table ''Conditioned Minimize Threat Levels'' identifies risk-based standards representing levels at which threats to human health and the environment are minimized for wastes which are placed in landfills or monofills (but not land application units). These levels may be used as alternatives to waste-specific treatment standards in the table to § 268.40 and to the Universal Treatment Standards in the table to § 268.48 for wastes which comply with the requirements of § 268.71. Nonwastewaters must meet both the total and waste extract levels contained in the table of ''Minimize Threat Levels''.

(b) Wastes identified in the Table to § 268.40 may be land disposed if they meet, for all hazardous constituents identified in the table to § 268.40, either the requirements in that table, the standards in the Minimize Threat Table in subpart F, or, if they meet the requirements in § 268.71, the standards in the Conditioned Minimize Threat Table. Characteristic wastes that are subject to the requirement for meeting Universal Treatment Standards under § 268.40(e) must also meet the requirements of Table UTS, the Minimize Threat Table, or, if they meet the requirements of § 268.71, the Conditioned Minimize Threat Table, for all underlying hazardous constituents as defined in § 268.2(i).

(c) Wastes containing either regulated hazardous constituents under the Table to § 268.40 or UTS constituents which do not have treatment standards listed in the Minimize Threat Table must continue to comply with treatment standards for these constituents in the tables to § 268.40, § 268.48, or the Minimize Threat Table to Subpart F prior to land disposal.

268.70 TABLE 1.—CONDITIONAL MINIMIZE THREAT LEVELS

CAS	Constituent name	WW standard (mg/l)	NWW standard (mg/kg)	NWW standard (mg/l)
83–32–9	Acenaphthene	31	63000	13
67–64–1	Acetone	16	39000	21
75–05–8	Acetonitrile	.....	2200	1
98–86–2	Acetophenone	17	75000	22
107–05–1	Allyl chloride	.....	260	.....
62–53–3	Aniline	.....	170	0.072
7440–39–3	Barium	33	34000	45
71–43–2	Benzene	.....	250	0.023
39638–32–9	Bis (2-chloroisopropyl) ether	.....	97	0.0088
117–81–7	Bis(2-ethylhexyl)phthalate	.....	740	0.0011
75–27–4	Bromodichloromethane	.....	240	0.011
75–25–2	Bromoform (Tribromomethane)	.....	1600	0.081
71–36–3	Butanol	16	41000	21
88–85–7	Buthl-4,6-dinitrophenol, 2-sec- (Dinoseb)	0.19	6000	0.24
85–68–7	Butylbenzylphthalate	240	87	67
7440–43–9	Cadmium	.....	110	0.32
75–15–0	Carbon disulfide	.....	3800	24
56–23–5	Carbon tetrachloride	.....	130	0.0077
126–99–8	Chloro-1,3-butadiene, 2-(Chloroprene)	0.52	1700	.....
106–47–8	Chloroaniline, p-	.....	5800	0.56
108–90–7	Chlorobenzene	2	41000	6
124–48–1	Chlorodi- bromo- methane	.....	200	0.0079
67–66–3	Chloroform	.....	76	0.075
95–57–8	Chlorophenol, 2-	0.9	8500	1
7440–47–3	Chromium	.....	16	2
218–01–9	Chrysene	0.1	35	0.0012
108–39–4	Cresol, m-	8	30000	11
95–48–7	Cresol, o-	8	46000	11
106–44–5	Cresol, p-	0.84	2900	1
72–54–8	DDD	.....	0.26	6800
50–29–3	DDT	.....	0.11	0.0054
84–74–2	Di-n-butyl phthalate	230	90000	25
117–84–0	Di-n-octyl phthalate	.....	21000	0.1
95–50–1	Dichlorobenzene, 1,2-	15	530000	32
106–46–7	Dichlorobenzene, 1,4-	.....	650	0.06
75–71–8	Dichloro- difluoro- methane	15	8400	45
75–34–3	Dichloroethane, 1,1-	.....	110	0.00021
107–06–2	Dichloroethane, 1,2-	.....	59	0.00021
156–60–5	Dichloro- ethylene, trans-1,2-	3	130000	4
120–83–2	Dichlorophenol, 2,4-	0.62	770	0.76
94–75–7	Dichlorophen- oxyacetic acid, 2,4- (2,4-D)	2	12000	2
78–87–5	Dichloropropane, 1,2-	.....	180	0.011
10061–01–5	Dichloropropene, cis-1,3-	.....	65	10000
10061–02–6	Dichloropro- pene, trans-1,3-	.....	62	10000
84–66–2	Diethyl phthalate	190	19000	220
131–11–3	Dimethyl phthalate	78	.....	.....
105–67–9	Dimethylphenol, 2,4-	4	24000	5
51–28–5	Dinitrophenol, 2,4-	0.27	450	0.37
121–14–2	Dinitrotoluene, 2,4-	.....	1400	0.39

268.70 TABLE 1.—CONDITIONAL MINIMIZE THREAT LEVELS—Continued

CAS	Constituent name	WW standard (mg/l)	NWW standard (mg/kg)	NWW standard (mg/l)
606–20–2	Dinitrotoluene, 2,6-	.....	420	0.22
122–39–4	Diphenyla- mine	15	12000	15
298–04–4	Disulfoton	.....	58	120
72–20–8	Endrin	0.073	27	770
141–78–6	Ethyl acetate	390	600000	510
60–29–7	Ethyl ether	27	260000	37
97–63–2	Ethyl methacrylate	24	100000	27
100–41–4	Ethylbenzene	39	.....	42
206–44–0	Fluoranthene	28	21000	2
86–73–7	Fluorene	22	90000	7
76–44–8	Heptachlor	.....	8	.....
1024–57–3	Heptachlor epoxide	.....	0.56	10
87–68–3	Hexachloro-1,3-butadiene	.....	290	0.0069
319–84–6	Hexachloro- cyclohex- ane, alpha- (alpha-BHC)	.....	0.18	2
319–85–7	Hexachloro- cyclohex- ane, beta- (beta-BHC)	0.00044	0.64	0.0009
58–89–9	Hexachloro- cyclohex- ane, gamma- (Lindane)	.....	0.75	9
77–47–4	Hexachloro- cyclopent- adiene	.....	1500	.....
67–72–1	Hexachloroethane	.....	890	0.11
78–83–1	Isobutyl alcohol	39	120000	53
7439–92–1	Lead	30	1600	41
7439–97–6	Mercury	0.3	39	0.4
67–56–1	Methanol	78	310000	110
72–43–5	Methoxychlor	7	280	.....
74–83–9	Methyl bromide (Bromo- methane)	0.37	850	4
74–87–3	Methyl chloride (Chloro- methane)	.....	91	.....
78–93–3	Methyl ethyl ketone	78	250000	110
108–10–1	Methyl isobutyl ketone	8	38000	11
80–62–6	Methyl methacrylate	28	100000	33
298–00–0	Methyl parathion	0.66	6	110
74–95–3	Methylene bromide	2	21000	0.19
75–09–2	Methylene chloride	.....	720	0.053
86–30–6	N-Nitrosodi- phenylamine	.....	3600	0.24
91–20–3	Naphthalene	14	430000	15
7440–02–0	Nickel	11	8600	14
98–95–3	Nitrobenzene	0.084	520	0.11
152–16–9	Octamethyl- pyrophos- phoramide	.....	31	0.37
56–38–2	Parathion	3	19	160000
608–93–5	Pentachlorobenzene	5	.....	.....
82–68–8	Pentachloro- nitrobenzene (PCNB)	0.081	.....	.....
87–86–5	Pentachlorophenol	.....	22	0.0022
108–95–2	Phenol	84	390000	110
298–02–2	Phorate	0.11	510	.....
23959–58–5	Pronamide	21	230000	25
129–00–0	Pyrene	54	16000	2
110–86–1	Pyridine	0.16	930	0.21
94–59–7	Safrole	.....	28	0.0044
7782–49–2	Selenium	0.93	.....	.....
7440–22–4	Silver	200	.....	.....
95–94–3	Tetrachloro- benzene, 1,2,4,5-	0.23	1600	0.032
630.20–6	Tetrachloro- ethane, 1,1,1,2-	.....	370	0.042
79–34–5	Tetrachloro- ethane, 1,1,2,2,-	.....	70	0.0077
127–18–4	Tetrachloro- ethylene	2	100000	3
53–90–2	Tetrachloro- phenol, 2,3,4,6-	2	35000	2
7440–28–0	Thallium (I)	.....	33	0.071
108–88–3	Toluene	30	560000	51
76–13–1	Trichloro-1,2,2,-trifluoroethane, 1,1,2-	2200	.....	12000
120–82–1	Trichlorobenzene, 1,2,4-	0.69	62000	3
71–55–6	Trichloroeth- ane, 1,1,1-	.....	190	0.0077
79–01–6	Trichloroeth- ylene	.....	3200	0.049
75–69–4	Trichlorofluo- romethane	48	170000	61
95–95–4	Trichlorophenol, 2,4,5-	18	55000	22
88–06–2	Trichlorophenol, 2,4,6-	0.054	160	0.068
93–76–5	Trichlorophenoxyacetic acid, 2,4,5-(245-T)	2	150	2
93–72–1	Triclorophen- oxypropionic acid, 2,4,5- (Silvex)	1	520	2
96–18–4	Trichloropro- pane, 1,2,3-	1	14000	1
7440–62–2	Vanadium	10	2700	13
1330–20–7	Xylenes (total)	22	710000	700
7440–66–6	Zinc	99	51000	130

§ 268.71 Associated Management Requirements.

Waste may meet the standards set out in the Conditional Minimize Threat Table as an alternative to the treatment standards in the tables to Subpart D of this part or the Minimize Threat Table to subpart F of this part only if they are placed in a landfill or a monofill as defined in 40 CFR 260.10. Waste that is placed in land application units must comply with the minimize threat levels set forth in subpart F of this part or the treatment standards set forth in subpart D of this part.

[FR Doc. 95–29458 Filed 12–20–95; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
December 21, 1995

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 52 and 44
Allowable Cost and Payment Clause and Contractors' Purchasing Systems Reviews; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 93–024]

RIN 9000–AG74

Federal Acquisition Regulation; Allowable Cost and Payment Clause

AGENCIES Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to the Federal Acquisition Regulation (FAR) to clarify payment provisions for large business prime contractors which are awarded cost-type contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 20, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments on: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 93–024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 93–024.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Federal Procurement Policy SWAT Team on Civilian Agency Contracting in its report of December 1992, entitled ''Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts'', recommended several FAR revisions which were viewed to have Government-wide benefit.

One area identified for clarification included the payment provisions in FAR clauses 52.216–7, Allowable Cost and payment, and 52.232–7, Payment Under Time-and-Materials and Labor-Hour Contracts. The SWAT Team concluded that these clauses did not clearly convey the Government's intent that payments to subcontractors by large business prime contractors were not billable to the Government until the contractor had actually paid the subcontractors. The proposed rule amends these payment clauses to clarify that, on cost-type contracts,payments to subcontractors are not billable by large business prime contractors until the subcontractors have been paid by the prime contractor.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to large business entities who wish to be reimbursed under cost-type contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite (FAR case 93–024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 15, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.216–7 is amended by revising the clause date and paragraph (b)(i)(iii) to read as follows:

52.216–7 Allowable cost and payment.

* * * * *

Allowable Cost and Payment (Date)

* * * * *

(b) * * *

(1) * * *

(iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Contractor's subcontractors under similar cost standards.

* * * * *

3. Section 52.232–7 is amended by revising the clause date and the second sentence of paragraph (b)(2) to read as follows:

52.232–7 Payments under time-and-materials and labor-hour contracts.

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Date)

* * * * *

(b) * * *

(2) * * * Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Contractor that is a small business concern. * * *

* * * * *

[FR Doc. 95–30996 Filed 12–20–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 44

[FAR Case 94–605]

[RIN 9000–AG75]

Federal Acquisition Regulation; Contractors' Purchasing Systems Reviews

AGENCY: Department of Defense (DOD), General Services Administration (GSA),and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing a revision to the Federal Acquisition Regulation (FAR) concerning requirements under Contractors' Purchasing Systems Reviews (CPSR's). This regulatory action was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 20, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 94–605 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–605.

SUPPLEMENTARY INFORMATION:

A. Background

Concern has been expressed that FAR 44.302(a) includes contractors in the CPSR process that will be severely inconvenienced by the review, and allows for the review of systems even when there is no benefit to the Government. Under the current FAR 44.302, a CPSR is to be conducted for each contractor whose sales to the Government are expected to exceed $10 million during the next 12 months. However, the Councils have agreed to raise the $10 million threshold to $25 million and have determined that contractors meeting the $25 million threshold should be reviewed before conducting a CPSR, to decide if a CPSR is necessary. The increased thresholds ($10 million to $25 million) that are reflected in this proposed rule have previously been approved under FAR case 94–40, Contractors' Purchasing Systems Reviews and Subcontractor Consent, and is awaiting publication as a final rule. The need for a CPSR will be determined based on volume, complexity, and dollar value of subcontracting activity. The proposed revision is intended to prevent unwarranted CPSR's from being conducted.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will reduce the number of CPSR's being conducted by requiring a review to determine if a CPSR is needed. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–605), in correspondence.

C. Paperwork Reduction Act

The information collection requirements for CPSR's have been previously approved under Office of Management and Budget Number 9000–0132. This proposed rule does not contain any increased information collection requirements.

List of Subjects in 48 CFR Part 44

Government procurement.

Dated: December 15, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Part 44 be amended as set forth below:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR Part 44 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 44.302 is revised to read as follows:

§ 44.302 Requirements.

(a) Each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $25 million during the next 12 months, shall be reviewed to determine if Contractors' Purchasing Systems Review (CPSR) is needed. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. The need for a CPSR will be determined based on volume, complexity, and dollar value of subcontracting activity. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the $25 million review level if such action is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every 3 years the cognizant contract administration activity will either: conduct a follow-up purchasing review; or determine that a purchasing system review is not required based on volume, complexity, and dollar value of subcontracting activity.

[FR Doc. 95–30995 Filed 12–20–95; 8:45 am]

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Federal Register

Thursday
December 21, 1995

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 206

Home Equity Conversion Mortgage Insurance Demonstration: Streamlining the Demonstration and Allowing Use of the Direct Endorsement Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 206

[Docket No. FR–2958–F–03]

RIN 2502–AF32

Home Equity Conversion Mortgage Insurance Demonstration: Streamlining the Demonstration and Allowing Use of the Direct Endorsement Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final, without substantive changes, the interim rule that was promulgated by the Department on August 16, 1995, to amend HUD's regulations in 24 CFR parts 203 and 206. The interim rule simplified the Home Equity Conversion Mortgage (HECM) Insurance Demonstration and expedited the processing of HECMs by permitting use of the Direct Endorsement program. The interim rule also implemented the statutory disclosure amendments in section 334 of the Cranston-Gonzalez National Affordable Housing Act and made other changes, including technical and clarifying changes, to improve and streamline the program based on the first five years of the demonstration. This final rule does contain a correction to a technical error in the interim rule.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Richard K. Manuel, Acting Director, Single Family Development Division, Office of Insured Single Family Housing, Room number 9272, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2700; TDD (202) 708–9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Home Equity Conversion Mortgage (HECM) Insurance Demonstration was authorized by Section 417 of the Housing and Community Development Act of 1987 (42 U.S.C. 5301), which amended Section 255 of the National Housing Act (12 U.S.C. 1715z-20) to permit elderly homeowners to borrow against the equity in their homes. HUD published final regulations on June 9, 1989, at 54 FR 24823, issued HUD Handbook 4235.1 for the program in August 1989, and immediately began processing applications for commitments to insure. The regulations were codified at 24 CFR part 206. Revision 1 to HUD Handbook 4235.1 was issued in November 1994.

On August 16, 1995, the Department promulgated an interim rule, at 60 FR 42754, which reflected ideas for improving the program regulations based on experience from the first five years of the demonstration. It also reflected HUD's implementation of section 334 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12701), regarding additional disclosures to the mortgagor before loan closing, including projections of future loan balances and information that the mortgagor's liability is limited. The public was given 60 days in which to submit comments on the interim rule, and no public comments were received. Therefore, this rule makes final the interim rule without any substantive changes. This final rule does contain a correction to a technical error in the interim rule. The second and third sentences of 24 CFR 206.45(b) were inadvertently dropped from the Code of Federal Register when an amendment was made to the first sentence of that section. This final rule restates those two sentences.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule makes final, without changes, an interim rule that was limited to revision of the Home Equity Conversion Mortgage Demonstration. Specifically, the requirements of the interim rule were directed to making the program more efficient for participating mortgagees, mortgagors and the Department.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

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

List of Subjects

24 CFR Part 203

Hawaiian natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the interim rule published on August 16, 1995, at 60 FR 42754, is adopted as final, with the following amendment:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-200; 42 U.S.C. 3535(d).

2. In § 206.45, paragraph (b) is revised to read as follows:

§ 206.45 Eligible properties.

* * * * *

(b) *Type of property.* The property shall include a dwelling designed principally as a residence for one family

or such additional families as the Secretary shall determine. The dwelling may be connected with other dwellings by a party wall or otherwise. A condominium unit designed for one-family occupancy shall also be an eligible property.

* * * * *

Dated: November 29, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–31076 Filed 12–20–95; 8:45 am]

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Freedom of Information Act; implementation; published 12-21-95

AGRICULTURE DEPARTMENT

National Agricultural Library

Public information:

Access under Freedom of Information Act; integration into Agricultural Research Service and CFR part removed; published 12-21-95

COMMERCE DEPARTMENT

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Atlantic Coast weakfish; published 11-27-95

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

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Child support or alimony payments; legal process for enforcement; published 12-21-95

FEDERAL TRADE COMMISSION

Trade regulation rules:

Quick-freeze aerosol spray products used for frosting cocktail glasses; lethal effects of inhaling, failure to disclose; CFR part removed; published 12-21-95

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Public land orders:

Comments Due Next Week

POSTAL RATE COMMISSION

Practice and procedure rules:

Rate and classification changes; expedition, flexibility, and innovation; comments due by 12-26-95; published 10-27-95

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Federal regulatory review:

Government contracting assistance; comments due by 12-27-95; published 11-27-95

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Program Fraud Civil Remedies Act regulations; comments due by 12-27-95; published 11-27-95

Small business investment companies; comments due by 12-28-95; published 11-28-95

Freedom of Information and Privacy Acts; Federal regulatory review; comments due by 12-26-95; published 11-24-95

Reporting and recordkeeping requirements, etc.; Federal regulatory review; comments due by 12-26-95; published 11-24-95

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SAAB; comments due by 12-26-95; published 10-24-95

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AiRadio Corp.; Beech model 58 airplanes; comments due by 12-26-95; published 11-24-95

Bombardier Inc.; high-intensity radiated fields; comments due by 12-26-95; published 11-8-95

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Special use airspace; definitions; comments due by 12-27-95; published 11-27-95

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Lamps, reflective devices, and associated equipment--

Signal lamps geometric visibility requirements, and rear side marker color; comments due by 12-26-95; published 10-26-95

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Mental disorders; comments due by 12-26-95; published 10-26-95

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 1060/P.L. 104–65

Lobbying Disclosure Act of 1995 (Dec. 19, 1995; 109 Stat. 691)

Last List December 20, 1995