4–29–96
Vol. 61 No. 83
Pages 18661–18938

federal register

Monday
April 29, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–246–AD; Amendment 39–9574; AD 96–08–08]

Airworthiness Directives; Airbus Model A300 Series Airplanes (Excluding Model A300 B4–600 and Model A300 F4–600 Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 series airplanes (excluding Model A300 B4–600 series airplanes), that currently requires certain structural inspections and modifications. This amendment requires additional structural inspections and modifications that have been identified as necessary to ensure the structural integrity of these airplanes as they approach their economic design goal. This amendment also excludes additional airplanes from the applicability of the AD. The actions specified by this AD are intended to prevent degradation of the structural capability of the affected airplanes.

DATES: Effective May 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1996.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of April 13, 1992 (57 FR 8257, March 3, 1992).

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

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–02–09, amendment 39–8145 (57 FR 8257, March 9, 1992), which is applicable to all Airbus Model A300 series airplanes (excluding Model A300 B4–600 series airplanes), was published in the Federal Register on January 22, 1996 (61 FR 1528). The action proposed to continue to require certain structural inspections and modifications specified in AD 92–02–09, and to require other additional structural inspections and modifications, as well.

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

The commenters support the proposed rule.

Since the issuance of the proposed rule, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that it has revised the French airworthiness directive (CN) that was parallel in its requirements to those of the notice for this AD rulemaking action. The revised CN is CN 90–22–116(B)R2, dated July 6, 1994; it was issued to exclude Airbus Model A300 C4–600 and A300 F4–600 series airplanes from the list of airplanes subject to the requirements of that CN.

The FAA has examined the findings of the DGAC, reviewed all available information, and determined that similar action is necessary for products of this type design that are certificated for operation in the United States. Accordingly, the final rule for this AD action has been revised to exclude the Model A300 F4–600 series airplanes from the applicability of the rule. (Model A300 C4–600 series airplanes are not typed certificated for operation in the U.S.; therefore, the FAA finds that no change to the final rule is necessary to exclude those airplanes from the applicability of the AD.)

The revised French CN also specifies the latest revisions of various referenced service bulletins. These latest revisions were cited correctly in the proposed rule. Therefore, no change to the final rule is necessary in this regard.

The date of issuance for Revision 2 of Airbus Service Bulletin A300–53–196 was specified incorrectly in paragraph (a)(5) of the proposed rule. That paragraph of the final rule has been revised to specify the correct date of March 17, 1994. Additionally, that paragraph has been revised to indicate that Service Bulletin Change Notice 1.A. amends Revision 1 of the service bulletin, rather than Revision 2.

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

There are approximately 4 Model A300 series airplanes of U.S. registry that will be affected by this proposed AD.

The recurring inspections, which were required by AD 92–02–09 and continue to be required by this AD, take approximately 196 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $2,000. Based on these figures, the cost impact on U.S. operators of the recurring inspections is estimated to be $13,760 per airplane, or $55,040 for the affected U.S. fleet.

The new recurring inspection procedures that are added by this new AD will take approximately 196 additional work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,000. Based on these figures, the added recurring inspection cost impact of this AD on U.S. operators is estimated to be $13,760 per airplane, or $55,040 for the affected U.S. fleet.

The modifications required by AD 92–02–09, which continue to be required by

this AD, take approximately 316 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost for required parts is $72,000. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $90,960 per airplane, or $363,840 for the affected U.S. fleet.

The modifications that are added by this new AD action will require approximately 1,599 additional work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost for required parts is $145,000. Based on these figures, the added modification cost impact of this AD on U.S. operators is estimated to be $240,940 per airplane, or $963,760 for the affected U.S. fleet.

Based on the figures discussed above, the cost impact of all of the requirements of this AD is estimated to be $418,880 for the recurring inspections and modifications required by AD 92–02–09, plus $1,018,800 for the additional inspections and modifications required by this AD. These cost impact figures assume that no operator has yet accomplished any of the requirements of this AD. However, it can be reasonably assumed that the majority of affected operators have already initiated the inspections and modifications required by AD 92–02–09, and many may have already initiated the additional inspections and modifications that are proposed by this new AD action.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8145 (57 FR 8257, March 9, 1992), and by adding a new airworthiness directive (AD), amendment 39–9574, to read as follows:

96–08–08 Airbus Industrie: Amendment 39–9574. Docket 94–NM–246–AD. Supersedes AD 92–02–09, Amendment 39–8145.

Applicability: All Model A300 series airplanes, excluding Model A300 B4–600 and Model A300 F4–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the airplane, accomplish the following:

(a) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after April 13, 1992 (the effective date of AD 92–02–09, amendment 39–8145), whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection. After the effective date of this AD, the actions shall only be accomplished in accordance with the latest revision of the service bulletins specified.

(1) Airbus Service Bulletin A300–53–103, Revision 4, dated June 30, 1983; or Revision 5, dated February 23, 1994;

(2) Airbus Service Bulletin A300–53–126, Revision 7, dated November 11, 1990; or Revision 8, dated September 18, 1991;

(3) Airbus Service Bulletin A300–53–146, Revision 7, dated April 26, 1991;

Note 2: Airbus Service Bulletin A300–53–146 provides for a compliance threshold of within 5 years after the date of issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990, the accomplishment of which is required by AD 85–07–09, amendment 39–5033.

(4) Airbus Service Bulletin A300–53–162, Revision 4, dated November 12, 1990; or Revision 5, dated March 17, 1994;

(5) Airbus Service Bulletin A300–53–196, Revision 1, dated November 12, 1990; as amended by Service Bulletin Change Notice 1.A., dated February 4, 1991, or Revision 2, dated March 17, 1994.

Note 3: Airbus Service Bulletin A300–53–196 provides for a compliance threshold of within 6,000 landings after accomplishment of Airbus Service Bulletin A300–53–194,

accomplishment of which is required by AD 87–04–12, amendment 39–5536.

(6) Airbus Service Bulletin A300–53–225, Revision 2, dated May 30, 1990;

(7) Airbus Service Bulletin A300–53–226, Revision 4, dated November 12, 1990; or Revision 5, dated September 7, 1991;

Note 4: Airbus Service Bulletin A300–53–226 provides for a compliance threshold of within 5 years after the issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990; but not later than 20 years after first delivery; the accomplishment of which is required by AD 90–03–08, amendment 39–6481.

(8) Airbus Service Bulletin A300–53–278, dated November 12, 1990; or Revision 1, dated March 17, 1994;

(9) Airbus Service Bulletin A300–54–045, Revision 4, dated January 31, 1990; or Revision 6, dated February 25, 1994;

(10) Airbus Service Bulletin A300–54–060, Revision 2, dated September 7, 1988, and Change Notice 2.A., dated February 13, 1990; or Revision 3, dated February 25, 1994;

(11) Airbus Service Bulletin A300–54–063, Revision 1, dated April 22, 1987, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994; and

(12) Airbus Service Bulletin A300–54–066, Revision 1, dated February 15, 1989, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994.

(b) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection.

(1) Airbus Service Bulletin A300–57–0194, Revision 2, including Appendix 1, dated August 19, 1993;

Note 5: Airbus Service Bulletin A300–57–0194 provides for a compliance threshold of prior to the accumulation of 36,000 landings for Model A300 B2 series airplanes on which the modification described in Airbus Service Bulletin A300–57–165 has not been accomplished and for Model A300 B2 series airplanes on which that modification has been accomplished prior to the accumulation of 24,000 landings on the airplane. Airbus Service Bulletin A300–57–0194 also provides for a compliance threshold of prior to the accumulation of 12,000 landings after the accomplishment of Airbus Service Bulletin A300–57–165 (for Model A300 B2 series airplanes on which the modification described in Airbus Service Bulletin A300–57–165 has been accomplished on or after the accumulation of 24,000 landings on the airplane).

(2) Airbus Service Bulletin A300–57–166, Revision 3, including Appendix 1, dated July 12, 1993;

(3) Airbus Service Bulletin A300–57–0167, Revision 1, including Appendix 1, dated May 25, 1993;

(4) Airbus Service Bulletin A300–57–0168, Revision 3, including Appendix 1, dated November 22, 1993;

(5) Airbus Service Bulletin A300–57–0180, Revision 1, dated March 29, 1993;

(6) Airbus Service Bulletin A300–57–0185, Revision 1, including Appendix 1, dated March 8, 1993; and

Note 6: The Airbus service bulletins specified in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this AD provide for a compliance threshold of prior to the accumulation of 36,000 landings (for Model A300 B2 series airplanes); 30,000 landings (for Model A300 B4–100 series airplanes); and 25,000 landings (for Model A300 B4–200 series airplanes) after the effective date of French airworthiness directive 93–154–149(B), issued on September 15, 1993.

(7) Airbus Service Bulletin A300–54–0084, dated April 21, 1994.

(c) If any discrepant condition identified in any service bulletin referenced in this AD is found during any inspection required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletin.

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

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) The actions shall be done in accordance with the Airbus service bulletins listed in Tables 1 and 2 of this paragraph. The incorporation by reference of the Airbus service bulletins listed in Table 1 were approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of April 13, 1992 (57 FR 8257, March 3, 1992).

TABLE 1

Airbus service bulletin No.	Revision level	Service bulletin date
A300–53–103	4	June 30, 1983.
A300–53–12	7	November 11, 1990.
A300–53–146	7	April 26, 1991.
A300–53–162	4	November 12, 1990.
A300–53–196	1	November 12, 1990.
Service Bulletin Change Notice 1.A. to A300–53–196	(Original)	February 4, 1991.
A300–53–225	2	May 30, 1990.
A300–53–226	4	November 12, 1990.
A300–53–226	5	September 7, 1991.
A300–53–278	(Original)	November 12, 1990.
A300–54–045	4	January 31, 1990.
A300–54–060	2	September 7, 1988.
Change Notice 2.A., to A200–54–060	(Original)	February 13, 1990.
A300–54–063	1	April 22, 1987.
Change Notice 1.A. to A300–54–063	(Original)	February 13, 1990.
A300–54–066	1	February 15, 1989.
Change Notice 1.A. to A300–54–066	(Original)	February 13, 1990.

The incorporation by reference of the Airbus service bulletins listed in Table 2 of this paragraph was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2

Airbus service bulletin and date	Page No.	Revision level shown on page	Date shown on page
A300–53–103, Revision 5, February 23, 1994.			
	1, 2, 4	5	February 23, 1994.
	3	4	June 30, 1983.
	5–36	3	December 21, 1979.
A300–53–126, Revision 8, September 18, 1991.			
	1, 3–5, 7, 8, 10, 22	8	September 18, 1992.
	11–15	7	November 11, 1990.
	2	6	October 3, 1989.
	16, 21	5	June 23, 1988.
	6	3	February 23, 1983.
	9, 19, 20	1	September 3, 1981.
	17, 18	Original	July 28, 1980.
A300–53–162, Revision 5, March 17, 1994.			
	1, 4	5	March 17, 1994.
	2, 3, 10, 11	4	November 12, 1990.
	5, 6	3	May 16, 1983.
	15	2	September 17, 1981.
	7–9, 12–14, 16–21	Original	January 20, 1981.
A300–53–278, Revision 1, March 17, 1994.			
	1, 3	1	March 17, 1994.
	2, 4–15	Original	November 12, 1990.
A300–54–045, Revision 6, February 25, 1994.			
	1, 5, 15	6	February 25, 1994.
	2, 3, 6, 10–12	5	September 30, 1991.
	4, 7–9, 13, 14, 16	4	January 31, 1990.
A300–54–060, Revision 3, February 25, 1994.			
	1–3	3	February 25, 1994.
	4–10, 13, 14, 17	2	September 7, 1988.
	11, 12, 15, 16, 18	Original	May 11, 1987.
A300–54–063, Revision 2, February 25, 1994.			
	1, 2	2	February 25, 1994.
	4, 5, 7, 8, 11, 12,15–17	1	April 22, 1987.
	3, 6, 9, 10, 13, 14	Original	April 7, 1986.
A300–54–066, Revision 2, February 25, 1994.			
	1, 4–8	2	February 25, 1994.
	2, 3, 9–10, 13, 22–24	1	February 15, 1989.
	11–12, 14–21, 25	Original	November 17, 1987.
A300–57–0194, Revision 2, (including Appendix 1), August 19, 1993.			
	1–30; Appendix pages 1, 3, 8, 9, 10	2	August 19, 1993.
	Appendix pages 2, 4, 5, 6, 7, 11	1	June 2, 1993.
A300–57–166, Revision 3, (including Appendix 1), July 12, 1993.			
	1, 2, 5, 8, 10; Appendix pages 3, 4	3	July 12, 1993.
	6, 7, 9, 13–28, 35; Appendix pages 1, 2	2	March 8, 1993.
	3, 4, 11, 12, 29–34	1	August 14, 1992.
A300–57–0167, Revision 1, (including Appendix 1), May 25, 1993.			
	1–6, 8, 9, 11, 15, 16, 19, 20, 23, 24, 27, 28, 31, 32; Appendix pages 1–4.	1	May 25, 1993.
	7, 10, 12–14, 17, 18, 21, 22, 25, 26, 29, 30, 33	Original	October 23, 1991.
A300–57–0168, Revision 3, (including Appendix 1), November 22, 1993.			
	1–5, 9, 10, 16, 20, 24, 28, 33, 34, 36, 40–49; Appendix pages 1–7.	3	November 22, 1993.
	6, 8, 11, 13–15, 17–19, 21–23, 25–27, 29–32, 35, 37–39.	2	March 8, 1993.
	7, 50–53	1	August 14, 1992.
	12	Original	October 24, 1991.
A300–57–0180, Revision 1, March 29, 1993.			
	1–12, 15–26	1	March 29, 1993.
	13, 14	Original	April 22, 1992.
A300–57–0185, Revision 1, (including Appendix 1), March 8, 1993.			
	1, 2, 4, 5, 9, 10, 22; Appendix pages 1, 2, 3	1	March 8, 1993.
	3, 6–8, 11–21	Original	August 14, 1992.
A300–54–0084, April 21, 1994	1–15	Original	April 21, 1994.

Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 29, 1996.

Issued in Renton, Washington, on April 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9336 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–245–AD; Amendment 39–9576; AD 96–09–02]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), that are applicable to Airbus Model A310 and A300–600 series airplanes. One AD currently requires repetitive operational tests of feel and limitation computers (FLC) 1 and 2; the other AD requires replacement of certain FLC's on Model A300–600 series airplanes. Those AD's were prompted by reports indicating that the elevator control operated with stiffness. The actions specified by those AD's are intended to prevent stiff operation of the elevator control and undetected loss of rudder travel limitation function, which could adversely affect the controllability of the airplane. This new amendment requires installation of new FLC's, which terminates the currently required repetitive operational tests. This amendment also revises the applicability of the rule to delete airplanes on which these new FLC's have been installed previously.

DATES: Effective May 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1996.

The incorporation by reference of Airbus All Operator Telex (AOT) 27–14, dated November 3, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 29, 1994 (59 FR 507, January 5 1994).

The incorporation by reference of Airbus Service Bulletin A300–27–6025, dated September 15, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 20, 1994 (59 FR 23133, May 5, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket 94–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1503; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–24–51, amendment 39–8783 (59 FR 507, January 5, 1994); and AD 94–09–16, amendment 39–8905 (59 FR 23133, May 5, 1994); was published in the Federal Register on January 19, 1996 (61 FR 1289). The previously-issued AD's are applicable to Airbus Model A310 and A300–600 series airplanes. The proposal proposed to require installation of new feel and limitation computers (FLC), which terminates the currently required repetitive operational tests of those units. The proposal also proposed to revise the applicability of the rule to delete airplanes on which these new FLC's have been installed previously.

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

Both commenters support the proposal.

Recently, Airbus issued Revision 1 to Service Bulletin A300–27–6026, dated August 31, 1995. This revision is essentially the same as the original release of the service bulletin (dated May 5, 1994), which was cited in the proposal as an appropriate source of service information; Revision 1, however, contains certain editorial revisions and an updated effectivity listing showing the current operators of the affected airplanes. The FAA has revised the final rule to include Revision 1 of this service bulletin as an additional source of service information.

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

The FAA estimates that approximately 55 Airbus Model A300–600 and A310 series airplanes of U.S. registry will be affected by this AD.

The operational tests of the FLC's, which were previously required by AD 93–24–51 and retained in this AD, take approximately .5 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the required operational tests is estimated to be $1,650, or $30 per airplane, per operational test.

Installation of the modified FLC's, as required by this new AD, will take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of this installation action is estimated to be $16,500, or $300 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8783 (59 FR 507, January 5, 1994), and amendment 39–8905 (59 FR 23133, May 5, 1994); and by adding a new airworthiness directive (AD), amendment 39–9576, to read as follows:

96–09–02 Airbus: Amendment 39–9576. Docket 94–NM–245–AD. Supersedes AD 93–24–51, amendment 39–8783; and AD 94–09–16, amendment 39–8905.

Applicability: Model A310 series airplanes on which Modifications 10712 and 10668 were not incorporated during production, or that are equipped with Feel and Limitation Computers (FLC) having the part numbers listed below; and Model A300–600 series airplanes on which Modifications 10713 and 10667 were not incorporated during production, or that are equipped with FLC's having the part numbers listed below; certificated in any category.

Airplane model	FLC part No.
A310	35–900–1008–009
	35–900–1009–011
	35–900–1011–011
	35–900–1011–011–A
A300–600	35–900–2000–200
	35–900–2000–201
	35–900–2002–201
	35–900–2002–201–A
	35–900–3002–302

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stiff operation of the elevator control and undetected loss of rudder travel limitation function, which may adversely affect controllability of the airplane, accomplish the following:

(a) For all airplanes: Within 7 days after January 20, 1994 (the effective date of AD 93–24–51, amendment 39–8783), perform an operational test to verify proper operation of the Feel and Limitation Computers (FLC) 1 and 2, in accordance with Airbus All Operator Telex 27–14, dated November 2, 1993.

(1) If the operational test is successful, repeat the test at intervals not to exceed 7 days until the requirements of paragraph (c) or (d) of this AD, as applicable, are accomplished.

(2) If any FLC fails the operational test, prior to further flight, accomplish the procedures specified in either paragraph (c) or (d) of this AD, as applicable.

(b) Except as provided by paragraphs (c) and (d) of this AD: As of January 20, 1994 (the effective date of AD 93–24–51, amendment 39–8783), no airplane shall be operated with an inoperative pitch feel system or inoperative pitch feel fault lights.

(c) For Model A310 series airplanes: Within 6 months after the effective date of this AD, replace or modify the currently installed FLC's in accordance with paragraphs (c)(1) and (c)(2) of this AD. Installation of FLC's that incorporate both Modifications 10668 and 10712 constitutes terminating action for the repetitive operational tests of the FLC's required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(1) Install Modification 10668 in accordance with Airbus Service Bulletin A310–27–2068, Revision 1, dated March 16, 1994, or Revision 2, dated April 19, 1995. And

(2) Install Modification 10712 in accordance with Airbus Service Bulletin A310–27–2070, dated May 5, 1994.

(d) For Model A300–600 series airplanes: Accomplish the requirements of paragraphs (d)(1), and (d)(2) of this AD. Accomplishment of these actions constitutes terminating action for the operational tests required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(1) Within 45 days after May 20, 1994 (the effective date of AD 94–09–16, amendment 39–8905), replace the FLC's, having part number (P/N) 35–900–2000–200 or 35–900–2000–201, serial numbers 755 and subsequent, with an FLC that has been previously modified, in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993, or Revision 1, dated August 31, 1994.

(2) Within 6 months after the effective date of this AD, replace or modify the FLC's in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of this AD. Installation of FLC's that incorporate both Modifications 10667 and 10713 constitutes terminating action for the repetitive operational tests of the FLC's required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(i) Install Modification 10667 in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993; or Revision 1, dated August 31, 1994; or Revision 2, dated April 19, 1995. And Lori Aliment (206) 227–2115.

(ii) Install Modification 10713 in accordance with Airbus Service Bulletin A300–27–6026, dated May 5, 1994, or Revision 1, dated August 31, 1995.

Note 2: The accomplishment of paragraph (d)(1) of this AD entails installing FLC's that incorporate Modification 10667, as does the accomplishment of paragraph (d)(2)(i). Paragraph (d)(2)(i) is included in this AD because the list of part numbers of affected FLC's in paragraph (d)(1), as well as in the parallel requirement of AD 94–09–16, is not comprehensive. Additional affected FLC part numbers were identified subsequent to the issuance of AD 94–09–16; FLC's having those part numbers are subject to the requirements of paragraph (d)(2) of this AD.

(e) As of the effective date of this AD, operational tests in accordance with paragraph (a) of this AD may be discontinued on modified FLC's having the part numbers listed in Table 1 of this AD.

TABLE 1

Airplane model	FLC part No.
A310	35–900–1010–011
	35–900–1012–011
	35–900–1012–011–A
A300–600	35–900–3004–302
	35–900–2001–201
	35–900–2003–201
	35–900–2003–201–A

(f) (1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

(2) Alternative methods of compliance, approved in accordance with AD 93–24–51, amendment 398783; or AD 94–09–16, amendment 39–8905, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(h) The actions shall be done in accordance with the following Airbus Service Bulletins, having the indicated list of effective pages:

Service bulletin and date	Page No.	Revision level shown on page	Date shown on page
All Operator Telex (AOT) 27–14, November 3, 1993.	1–4	(Original)	November 3, 1993.
A310–27–2068, Revision 1, March 16, 1994.	1, 4–5, 7–8, 9–10	1	March 16, 1994.
	2–3, 6, 11	(Original)	December 13, 1993.
A310–27–2068, Revision 2, April 19, 1995.	1–2, 4–5	2	April 19, 1995.
	7–10	1	March 16, 1994.
	3, 6, 11	(Original)	December 13, 1993.
A310–27–2070, May 5, 1994	1–11	(Original)	May 5, 1994.
A300–27–6025, September 15, 1993	1–9	(Original)	September 15, 1993.
A300–27–6025, Revision 1, August 31, 1994.	1–4	1	August 31, 1994.
	5–9	(Original)	September 15, 1993.
A300–27–6025, Revision 2, April 19, 1995.	1, 3	2	April 19, 1995.
	2, 4	1	August 31, 1994.
	5–9	(Original	September 15, 1993.
A300–27–6026, May 5, 1994	1–9	(Original)	May 5, 1994.
A300–27–6026, Revision 1, August 31, 1995.	1–3	1	August 31, 1995.
	4–9	(Original)	May 5, 1994.

The incorporation by reference of Airbus All Operator Telex (AOT) 27–14, dated November 3, 1993, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 29, 1994 (59 FR 507, January 5, 1994). The incorporation by reference of Airbus Service Bulletin A300–27–6025, dated September 15, 1993, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of May 20, 1994 (59 FR 23133, May 5, 1994). The incorporation by reference of the other service bulletins, listed above, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 29, 1996.

Issued in Renton, Washington, on April 17, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9932 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–61–AD; Amendment 39–9580; AD 96–09–06]

RIN 2120–AA64

Airworthiness Directives; Brackett Aircraft Company, Inc. Air Filter Assemblies Installed on Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document supersedes airworthiness directive (AD) 95–03–02, which currently requires repetitively inspecting (visually) the air filter frame for a loose or deteriorating gasket on airplanes incorporating certain Brackett air filter assemblies and replacing any gasket found loose or deteriorated. This action requires retaining the repetitive inspection as contained in AD 95–03–02, and will incorporate additional Brackett air filter assemblies to the ''Applicability'' section of that AD. Additionally, this AD will provide a terminating action for the repetitive inspection. The Federal Aviation Administration's determination that certain additional Bracket air filter assemblies should be inspected and replaced prompted this AD action. The actions specified by this AD are intended to prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power and loss of control of the airplane.

DATES: Effective June 7, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri, 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California, 90712; telephone (310) 627–5265; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to airplanes incorporating certain Brackett air filter assemblies was published in the Federal Register on December 18, 1995 (60 FR 65038). This action would retain the requirement to repetitively inspect (visually) the air filter for a loose or deteriorated gasket and replacing any gasket found loose or deteriorated as contained in AD 95–03–02, and would incorporate additional Brackett air filter assemblies in the ''Applicability'' section of that AD. Additionally, this proposed AD would provide a terminating action for the repetitive inspection by replacing any gasket found loose or deteriorated with a gasket of improved design.

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

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

The FAA estimates that 50,000 airplanes in the U.S. registry will be affected by this AD. To accomplish this repetitive inspection and possible replacement of a damaged air filter will take approximately 1 hour per airplane for each task, and that the average labor rate is approximately $60 an hour. The air filter assembly replacement is estimated to be $40 per airplane. The

total estimated cost for this modification required at 500 hours TIS will be $100 per airplane and the total cost impact of the modification is estimated to be $5,000,000. The FAA knows that each owner/operator will have to repetitively inspect a maximum of four times before the mandatory replacement of the air filter assembly, and based on the assumption that no operator will incorporate the modification prior to the 500 hours TIS, the total cost of four repetitive inspections will be $240 per airplane plus the cost of the terminating action. Based on these figures the total cost impact of this AD on U.S. operators is estimated to be $17,000,000.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95–03–02, Amendment 39–9139, and by adding a new AD to read as follows:

96–09–06. Brackett Aircraft Company: Docket No. 95–CE–61–AD; Supersedes AD 95–03–02, Amendment 39–9139.

Applicability: Air filter assemblies presented in the following chart that utilize a neoprene gasket installed on, but not limited to the following airplanes, certificated in any category:

Note 1: These air filters could be installed as original equipment or in accordance with Supplemental Type Certificate (STC) SA71GL or STC SA693CE.

Air filter assembly	Airplanes installed on
BA–2010	Beechcraft Model 77 Airplanes.
BA–4106	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; American Champion Models Bellanca (Champion) (Aeronca) 7ACA, 7ECA, and 7FC; Aviat, Inc. Models A–1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F; Piper Models PA–22, PA–22–135, PA–22–150, PA–22–160, PA–22–108, PA–20–115, PA–20–135, PA–38–112, J–3, J3C–65, J3C–65S, PA–11, PA–11S, J4A, J4A–S, J4E, J5A, J5A–80, PA–12, PA–12S, PA–16, PA–17, PA–18, PA–18A, PA–18S, PA–18–''125'' (Army L–21A), PA–18AS–''125'', PA–18S–''125'', PA–18AS–''135'', PA–18S–''135'', PA–18–''135'', PA–18–''150'', PA–18A–''150'' (SN 18–1 through 18–6963), PA–18S–''150'', PA–19, PA–18A (Restricted), PA–18A–''135'' (Restricted), and PA–18A–''150'' (Restricted) (SN 18–1 through 18–18–6963); Taylorcraft Models BC65, BCS–65, BC12–65, BCS12–65, BC12–D, BCS12–D1, BC12D85, BCS12D85, BC12D–4–85, BCS12D–4–85, 19, F19, F21, DC–65, DCO–65, F22, F22A, F22B, and F22C; Univair Models (Alon) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC–1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, AND FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S.
BA–4106–1	Aviat, Inc. Model (Christian) A–1.
BA–4210	Gulfstream Models AA–1, AA–1A, AA–1B, AA–1C, and AA–5.
BA–5110	Cessna Models 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; Mooney Mite Model M–18C; Reims Aviation Models (Cessna) F172D, F172E, F172F, F172G, F172H, F172K, F172L, and F172M; Socata-Groupe Aerospatiale Models TB9, TB10, Rallye Series MS892A–150, MS892E–150, MS892E–150T, and MS892E–150ST; Panstwowe Zakolady Kotnicze Model PZL-Koliber 150A; Augustair, Inc. Model Varga (Morrisey) 2180.
BA–5110A	Cessna Models 172N and 172P; Reims Aviation Models (Cessna) F172N and F172P.
BA–6110	Maule Models M–4, M–4C, M–4S, M–4T, M–4–220, M–4–220C, M–4–220S, M–4–220T, M–4–180C, M–4–180S, M–4–180T, M–5–220C, M–5–235C, M–5–180C, M–5–210TC, M–6–180, M–6–235, M–7–235, MX–7–180, MXT–7–160, MXT–7–180, MX–7–160, MX–7–235, and MX–8–235; Mooney Models M20, M20A, M20B, M20C, M20D, and M20G.
BA–8910	Dynac Models (Aero Commander) 100 and 100A.

Air filter assembly	Airplanes installed on
AAF–117	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; American Champion Models Bellanca (Champion) (Aeronca) 7ACA, 7ECA, and 7FC; Aviat, Inc. Models A–1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F; Piper Models PA–22, PA–22–135, PA–22–150, PA–22–160, PA–22–108, PA–20–115, PA–20–135, PA–38–112, J–3, J3C–65, J3C–65S, PA–11, PA–11S, J4A, J4A–S, J4E, J5A, J5A–80, PA–12, PA–12S, PA–16, PA–17, PA–18, PA–18A, PA–185, PA–18–''125'' (Army L–21A), PA–18AS–''125'', PA–185–''125'', PA–18AS–''135'', PA–18S–''135'', PA–18–''135'', PA–18–''150'', PA–18A–''150'' (SN 18–1 through 18–6963), PA–18S–''150'', PA–19, PA–18A (Restricted), PA–18A–''135'' (Restricted), and PA–18A–''150'' (Restricted) (SN 18–1 through 18–6963); Taylorcraft Models BC65, BCS–65, BC12–65, BCS12–65, BC12–D, BCS12–D1, BC12D85, BCS12D85, BC12D–4–85, BCS12D–4–85, 19, F19, F21, DC–65, DCO–65, F22, F22A, F22B, and F22C; Univair Models (Alon) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC–1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, AND FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S, F22B, and F22C; Univair Models (Alon) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC–1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, and FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S.
AAF–118	Cessna Models 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; Mooney Mite Model M–18C; Reims Aviation Models (Cessna) F172D, F172E, F172F, F172G, F172H, F172K, F172L, and F172M; Socata-Groupe Aerospatiale Models TB9, TB10, Rallye Series MS892A–150, MS892E–150, MS892E–150T, and MS892E–150ST; Panstwowe Zakolady Kotnicze Model PZL-Koliber 150A; Augustair, Inc. Model Varga (Morrisey) 2180.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, or within the next 100 hours (TIS) after the last inspection accomplished in accordance with AD 95–03–02, whichever occurs first, and thereafter as indicated in the body of this AD, unless already accomplished in accordance with paragraph (c) of this AD.

To prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power, accomplish the following:

(a) Inspect (visually) the inside and outside of the air filter frame for gasket looseness, movement, or deterioration in accordance with Brackett Document I–194, dated March 16, 1994. Continue this repetitive inspection at intervals not to exceed 100 hours TIS, until accomplishment of the terminating action required in paragraph (c) of this AD.

(b) If the gasket is found to be damaged, prior to further flight, replace the air filter assembly with one having a retaining lip in accordance with the Brackett INSTALLATION INSTRUCTION SHEET corresponding to the new air filter assembly part number that is applicable to the owner/operator's particular model of airplane:

Air filter assembly	Replace with assembly	Instruction sheet
BA–2010	BA–2010 Revision A	BA–2004, dated 6/6/95.
BA–4106	BA–4106 Revision D	BA–4105, dated 6/15/95.
BA–4106–1	BA–4106–1 Revision A	RM–1, dated 7/6/95.
BA–4210	BA–4210 Revision B	BA–4205, dated 6/14/95.
BA–5110	BA–5110 Revision H	BA–5105, dated 5/8/95.
BA–5110A	BA–5110A Revision D	BA–5111, dated 5/8/95.
BA–6110	BA–6110 Revision C	BA–6105, dated 6/5/95.
BA–8910	BA–8910 Revision B	BA–8910–3, dated 6/6/95.
AAF–117	BA–4106 Revision D	BA–4105, dated 6/15/95.
AAF–118	BA–5110 Revision H	BA–5105, dated 5/8/95.

(c) Within the next 500 hours TIS after the effective date of this AD, replace the air filter assembly as a terminating action to this AD in accordance with the Brackett INSTALLATION INSTRUCTION SHEET corresponding to the new air filter assembly part number that is applicable to the owner/operator's particular model of airplane as specified in paragraph (b) of this AD.

(d) The replacement in paragraphs (b) and (c) is considered terminating action for the repetitive inspection required by this AD.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(g) Alternative methods of compliance approved in accordance with AD 95–03–02 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(h) The inspections and replacements required by this AD shall be done in accordance with Brackett Air Filter Document I–194, dated March 16, 1994 and with the Brackett INSTALLATION INSTRUCTION SHEET corresponding to the new air filter assembly part number that is applicable to the owner/operator's particular model of airplane as specified in paragraph

(b) of this AD. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(i) This amendment supersedes AD 95–03–02, Amendment 39–9139.

(j) This amendment (39–9580) becomes effective on June 7, 1996.

Issued in Kansas City, Missouri, on April 18, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10307 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–CE–21–AD; Amendment 39–9579; AD 96–09–05]

RIN 2120–AA65

Airworthiness Directives; Diamond Aircraft Industries Model DA 20–A1 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Diamond Aircraft Industries (Diamond) Model DA 20–A1 airplanes. This action requires inspecting the aft wing cavities for manufacturing debris, removing any debris found, and modifying the aileron pushrod fairings to allow them to flex. Several reports of the aileron controls becoming blocked because of manufacturing debris getting jammed between the short aileron pushrod and the pushrod exit fairing on both left and right wings prompted this action. The actions specified by this AD are intended to prevent the aileron controls from becoming blocked causing jamming between the short aileron pushrod and the pushrod fairing exit, which, if not detected and corrected, could cause loss of control of the airplane.

DATES: Effective May 17, 1996.

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

Comments for inclusion in the Rules Docket must be received on or before June 17, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Diamond Aircraft Industries, Inc., 690 Crumlin Sideroad, Ontario, Canada N5V 1S2; telephone (519) 457–4000; facsimile (519) 457–4037. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Michalik, Senior Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon, Des Plaines, Illinois 60018; telephone (847) 294–7135; facsimile (847) 294–7834.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on Diamond Model DA 20–A1 airplanes. Transport Canada advises that partial blockage of the aileron controls because of manufacturing debris jamming between the short aileron pushrod and pushrod exit fairing has occurred in several of these airplanes.

Diamond Aircraft Industries has issued service bulletin (SB) No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996, which specifies procedures for inspecting the inside of the wings for debris, removing any debris, and modifying the aileron pushrod fairings.

Transport Canada classified this service bulletin as mandatory and issued Emergency AD CF–96–07, dated March 15, 1996 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

After examining the circumstances and reviewing all available information related to the incidents described above including that received from Transport Canada, the FAA has determined that AD action should be taken in order to prevent the aileron controls from becoming blocked causing jamming between the short aileron pushrod and the pushrod fairing exit, which, if not detected and corrected, could cause loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Diamond Model DA 20–A1 airplanes of the same type design registered for operation in the United States, this AD requires visually inspecting the aft wing cavities (both wings) for any manufacturing debris or foreign objects, removing any debris found, and modifying the aileron pushrod fairings in both wings. The actions are to be accomplished in accordance with the instructions in Diamond SB No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–21–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–09–05 Diamond Aircraft Industries: Amendment 39– 9579 ; Docket No. 96–CE–21–AD.

Applicability: Model DA 20–A1 airplanes (serial numbers 10002 through 10110), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 10 hours time-in-service (TIS), unless already accomplished.

To prevent the aileron controls from becoming blocked causing jamming between the short aileron pushrod and the pushrod fairing exit, which, if not detected and corrected, could cause loss of control of the airplane, accomplish the following:

(a) Visually inspect the aft wing cavities (both wings) for any manufacturing debris or foreign objects and remove any debris found in accordance with the ACCOMPLISHMENT INSTRUCTIONS: ''-Inspection'' section of Diamond Alert Service Bulletin (SB) No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996.

(b) Modify the aileron pushrod fairings (both wings) in accordance with the ACCOMPLISHMENT INSTRUCTIONS: ''-Modification of Fairing'' section of Diamond Alert SB No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago Aircraft Certification Office.

(e) The inspection and modification required by this AD shall be done in accordance with Diamond Aircraft Industries Alert Service Bulletin No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Diamond Aircraft Industries, Inc., 690 Crumlin Sideroad, Ontario, Canada N5V 1S2; telephone (519) 457–4000; facsimile (519) 457–4037. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9579) becomes effective on May 17, 1996.

Issued in Kansas City, Missouri, on April 18, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10306 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for approved new animal drug applications (NADA's) from Fisons plc, Pharmaceutical Division to Alstoe, Ltd., Animal Health.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Fisons plc, Pharmaceutical Division, 12 Derby Rd., Loughborough, Leicestershire, LE11 OBB, England, has informed the agency that it has transferred the ownership of, and all rights and interests in, approved NADA's 99–667 (Iron Dextran Complex Injection) and 110–399 (Gleptoferron Injection) to Alstoe, Ltd., Animal Health, 19 Foxhill, Whissendine, Oakham, Rutland, U.K., because the firm is no longer the sponsor of any approved NADA's. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) and the

drug labeler codes in 21 CFR 522.1055 and 522.1182 to reflect those changes.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Fisons, plc, Pharmaceutical Division'' and by alphabetically adding a new entry for ''Alstoe, Ltd., Animal Health'', and in the table in paragraph (c)(2) by removing the entry for ''012525'' and by numerically adding a new entry for ''062408'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Alstoe, Ltd., Animal Health, 19 Foxhill, Whissendine, Oakham, Rutland, U.K.	062408
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
062408	Alstoe, Ltd., Animal Health, 19 Foxhill, Whissendine, Oakham, Rutland, U.K.
* * * * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1055 [Amended]

4. Section 522.1055 *Gleptoferron injection* is amended in paragraph (b) by removing ''012525'' and adding in its place ''062408''.

§ 522.1182 [Amended]

5. Section 522.1182 *Iron dextran complex injection* is amended in paragraph (a)(4)(i) by removing ''012525'' and adding in its place ''062408''.

Dated: April 15, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–10546 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–2905–C–03]

RIN 2506–AB24

Office of the Assistant Secretary for Community Planning and Development; Community Development Block Grant Program; Correction of Identified Deficiencies and Updates; Technical Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Technical correction.

SUMMARY: On November 9, 1995 (60 FR 56892), HUD published in the Federal Register a final rule that corrected identified deficiencies in the Community Development Block (CDBG) program, implemented relevant portions of the Cranston-Gonzalez National Affordable Housing Act, amended the CDBG conflict of interest provisions, implemented statutory changes from the Housing and community Development Act of 1987 and the Appropriations Act of 1989, and provided criteria for performance reviews and timely expenditure of funds under the CDBG program. This document corrects minor errors in that final rule.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Deirdre Maguire-Zinni, Director, Entitlement Communities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–1577. (This telephone number is not toll-free.) Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Corrections to November 9, 1995 Final Rule

On November 9, 1995 (60 FR 56812), HUD published a final rule in the

Federal Register that amended the regulations for the Community Development Block Grant (CDBG) program in 24 CFR part 570. As described in the preamble (60 FR 65892), the November 9, 1995 final rule represented the final rulemaking for several prior rules, and it reflected the President's regulatory reinvention efforts by updating the regulations to conform with significant statutory changes to the CDBG program. More specifically, the November 9, 1995 final rule corrected identified deficiencies in the CDBG program, implemented relevant portions of the Cranston-Gonzalez National Affordable Housing Act, amended the CDBG conflict of interest provisions, implemented statutory changes from the Housing and Community Development Act of 1987 and the Appropriations Act of 1989, and provided criteria for performance reviews and timely expenditure of funds under the CDBG program. In reviewing this final rule in preparation for its codification in the Code of Federal Regulations (CFR), HUD discovered several minor errors.

In the November 9, 1995 final rule (60 FR 56912), HUD amended § 570.208 by adding and redesignating certain paragraphs. However, the rule inadvertently did not make the necessary conforming change to the definition of ''*Income*'' in § 570.3, which contains a reference to the CDBG regulations on resident income surveys (60 FR 56909). The definition incorrectly refers to § 570.208(a)(1)(iv) for those regulations, but the November 9, 1995 rule redesignated this paragraph as paragraph (a)(1)(vi). Therefore, this document corrects the definition of ''*Income*'' in § 570.3 to refer correctly to § 570.208(a)(1)(vi).

Similarly, the first sentence of the newly redesignated § 570.208(a)(1)(vi) contains an internal reference to paragraph (a)(1)(v). However, the November 9, 1995 rule redesignated paragraph (a)(1)(v) as (a)(1)(vii). Therefore, this document corrects § 570.208(a)(1)(vi) to refer correctly to paragraph (a)(1)(vii).

The November 9, 1995 final rule removed the obsolete reference in § 570.200(d)(1) to a compensation level of General Schedule (GS)–18, replacing it with a correct reference to Level IV of the Executive Schedule (60 FR 56910). The General Schedule and the Executive Schedule indicate certain levels of compensation for Federal employees. However, while the November 9, 1995 final rule updated § 570.200(d)(1), it inadvertently failed to update paragraph (d)(2) of that section. Therefore, this document corrects § 570.200(d)(2) regarding the correct level of consultant compensation.

In a proposed rule published on March 28, 1990 (55 FR 11556), HUD proposed to add a new paragraph (f) to § 570.202 that would implement section 510 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988), authorizing the substantial reconstruction of housing owned and occupied by low- and moderate-income persons under certain circumstances. However, in the November 9, 1995 final rule (60 FR 56902), HUD explained that it would not be finalizing the proposed § 570.202(f) at that time due to pending legislative proposals that would make this change unnecessary. Instead, the November 9, 1995 final rule used paragraph (f) to contain the authority for evaluating and reducing lead-based paint hazards. However, HUD failed to remove two incorrect references, in §§ 570.200(e) and 570.506(c), to paragraph (f) as it had been proposed for substantial reconstruction. This document removes those incorrect references.

This document also removes two references to ''enumeration districts,'' replacing them with the correct term ''block numbering areas.'' The Census Bureau now uses the term ''block numbering area,'' and HUD recognized the use of this term in its CDBG economic development final rule (January 5, 1995; 60 FR 1922, 1946) in § 570.208(a)(4)(iv). However, HUD used the incorrect term ''enumeration districts'' in § 570.208(a)(1)(iii) (B) and (D) of its November 9, 1995 final rule. therefore, this document corrects these paragraphs.

The effective date of this correction, December 11, 1995, reflects the effective date of the November 9, 1995 final rule (60 FR 56892).

II. Housing Opportunity Program Extension Act of 1996

The November 9, 1995 final rule updated § 570.201(n), by providing that CDBG funds could be used to provide direct homeownership assistance to low- and moderate-income households until October 1, 1995 (60 FR 56911). Although the eligibility for this activity had expired by the date the Department published the final rule, the Department maintained the provision in § 570.201(n), hoping that Congress would respond to the Department's request to reinstate the activity's eligibility (60 FR 56905).

This document corrects § 570.201(n) by removing the obsolete reference to the expiration date. Section 3(a) of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120; approved March 28, 1996) renewed the eligibility of using CDBG funds to provide direct homeownership assistance during Fiscal Year 1996 (October 1, 1995 through September 30, 1996). However, rather than simply changing the date, which will again become obsolete and require additional regulatory amendments, this document corrects the section to provide that direct homeownership assistance is eligible ''subject to statutory authority.'' In an effort to keep grantees informed, the Department will attempt to publish a notice in the Federal Register as quickly as possible if Congress does not reinstate this authority.

III. Other Corrections and Conforming Changes

The Department has also discovered several technical corrections and changes to other sections of the regulations that it should have included in the November 9, 1995 final rule. The Department will publish a separate technical amendment to correct these sections. The Department cannot include such corrections and changes in this technical correction document, because they involve sections that the Department did not otherwise amend in the November 9, 1995 final rule.

IV. Clarification Regarding ''Extent of Growth Lag''

The November 9, 1995 final rule revised the definition of ''*Extent of growth lag*'' in § 570.3 in an effort to reflect an amendment to section 102(a)(12) of the Housing and Community Development Act of 1974 (the Act). This amendment, in section 904 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), provides instructions on adjusting population in the event of annexation. In the November 9, 1995 final rule, the Department referred to the 1990 Census in the erroneous belief that the Act requires the most recent census data available when adjusting the ''extent of growth lag'' calculation (see 60 FR 56905).

However, the Department has reconsidered its interpretation of the Act and concludes that the Act's definition of ''*Extent of growth lag*'' requires the use of data from the 1980 Census, not the most recent census data available, in cases where boundaries have changed as a result of annexation. No further changes to the regulations are necessary, however, since the Department already removed the incorrect language from the definition in the CDBG Streamlining final rule,

published on March 20, 1996 (61 FR 11474). Section 570.3 now refers directly to section 102(a)(12) of the Act for the definition of ''*Extent of growth lag*''.

Accordingly, FR Doc. 95–27488, a final rule published in the Federal Register on November 9, 1995 (60 FR 56892), is corrected to read as follows:

1. On page 56909, in the third column, in § 570.3, the second sentence of the definition of the term ''*Income*'' is corrected to read as follows.

§ 570.3 Definitions.

* * * * *

Income. * * * The option to choose a definition does not apply to activities that qualify under § 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.208(a)(1)(vi). * * *

* * * * *

2. On page 56910, in the third column, in § 570.200, paragraph (d)(2) is corrected, and the third sentence of paragraph (e) is corrected, to read as follows:

§ 570.200 General policies.

* * * * *

(d) * * *

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36, and are not subject to the compensation limitation of Level IV of the Executive Schedule.

(e) * * * A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, and 570.309.

* * * * *

2a. On page 56911, in the second column, in instruction paragraph 8., the words ''the introductory text of paragraph (n)'' are corrected to read ''paragraph (n)''.

3. On page 56911, in the third column, in § 570.201, paragraph (n) is corrected to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(n) *Homeownership assistance.* Subject to statutory authority, CDBG funds may be used to provide direct homeownership assistance to low- and moderate-income households, as provided in section 105(a)(25) of the Act.

* * * * *

4. On page 56912, in the second and third columns, in § 570.208, the second sentence of paragraph (a)(1)(iii)(B), the second sentence of paragraph (a)(1)(iii)(D), and the first sentence of paragraph (a)(1)(vi) are corrected to read as follows:

§ 570.208 Ineligible activities.

(a) * * *

(1) * * *

(iii) * * *

(B) * * * As available, the recipient must provide information that identifies the total number of calls actually received over the preceding 12-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, block numbering areas, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. * * *

* * * * *

(D) * * * For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or block numbering areas), the total number of persons and the total number of low- and moderate-income persons within each census division, the percentage of low- and moderate-income persons within the service area, and the total cost of the system.

* * * * *

(vi) In determining whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by an activity to qualify under paragraphs (a)(1) (i), (ii), or (vii) of this section, the most recently available decennial census information must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. * * *

* * * * *

5. On page 56916, in the first column, in § 570.506, paragraph (c) is corrected to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(c) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, and 570.309.

* * * * *

Dated: April 18, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96–10240 Filed 4–26–96; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Real Estate Settlement Procedures Act; Streamlining Final Rule; Correction

24 CFR Part 3500

[Docket No. FR–4023–C–02]

RIN 2502–AG69

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Correction to final rule.

SUMMARY: On March 26, 1996 (61 FR 13232), the Department published a final rule streamlining its regulations under the Real Estate Settlement Procedures Act (RESPA). The preamble of the rule explained that, as part of this streamlining, the Department was removing from codification certain appendices. Instead, the material in these appendices would be made available from the Department as Public Guidance Documents. Because of an error in the amendatory instructions, the directions to remove the appendices as specified in the preamble were omitted from the rule text. This correction publishes those instructions.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 5241, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–4560 (this is not a toll-free number); or for legal questions: Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Grant E. Mitchell, Senior Attorney for RESPA, Room 9262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–1550 (this is not a toll-free number). For hearing- or speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 96–6511, Real Estate Settlement Procedures Act; Streamlining Final Rule (FR–4023–F–01), published on March 26, 1996, is corrected by adding on page 13251, in

the first column, a new amendatory instruction 6 to read as follows:

Appendix G (Consisting of Appendices G–1 and G–2), Appendix H (Consisting of Appendices H–1 and H–2), Appendix I (Consisting of Appendices I–1, I–2, I–3, I–4, I–5, I–6, I–7, and I–8), Appendix J (Consisting of Appendices J–1 and J–2), Appendix K (Consisting of Appendices K–1 Through K–4), Appendix L, Appendix M—[Removed]

6. Appendix G (consisting of Appendices G–1 and G–2), Appendix H (consisting of Appendices H–1 and H–2), Appendix I (consisting of Appendices I–1, I–2, I–3, I–4, I–5, I–6, I–7, and I–8), Appendix J (consisting of Appendices J–1 and J–2), Appendix K (consisting of Appendices K–1 through K–4), Appendix L, and Appendix M are removed.

Authority: 12 U.S.C. 2601 *et seq.;* 42 U.S.C. 3535(d).

Dated: April 19, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96–10533 Filed 4–26–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8667]

RIN 1545–AT33

Lease Term; Exchanges of Tax-Exempt Use Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the lease term of tax-exempt use property. The final regulations also provide guidance regarding certain like-kind exchanges among related parties involving tax-exempt use property.

DATES: These regulations are effective April 29, 1996.

For dates of applicability see ''Effective dates'' section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and §§ 1.168(h)–1(e) and 1.168(i)–2(g).

FOR FURTHER INFORMATION CONTACT: John M. Aramburu of the Office of Assistant Chief Counsel (Income Tax and Accounting) at (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under section 168 of the Internal Revenue Code of 1986 (Code). The regulations provide guidance relating to certain exchanges of tax-exempt use property among related parties and the determination of lease term under certain circumstances. Proposed regulations (IA–18–95) were published in the Federal Register on April 21, 1995 (60 FR 19868). The IRS received a number of comments on the proposed regulations. A scheduled public hearing was cancelled because there were no requests to testify. After consideration of all the comments, the regulations proposed by IA–18–95 are adopted as revised by this Treasury decision. The revisions are discussed below.

Overview

Under section 168, property used in a trade or business, or held for the production of income, generally may be depreciated under the general depreciation system (GDS) using accelerated methods over relatively short recovery periods. However, certain property, including ''tax-exempt use property,'' must be depreciated under the alternative depreciation system (ADS) described in section 168(g). Section 168(h)(1)(A) generally defines tax-exempt use property to include tangible property (other than nonresidential real property) leased to a tax-exempt entity. For this purpose, certain foreign entities and persons are considered tax-exempt entities.

Congress subjected tax-exempt use property to a slower depreciation system than GDS to prevent tax-exempt entities from indirectly claiming tax benefits (in the form of reduced rentals) ''from investment incentives for which they [would] not qualify directly, and effectively gain[ing] the advantage of taking income tax deductions and credits while having no corresponding liability to pay any tax on income from the property.'' S. Rep. No. 169 (Vol. 1), 98th Cong., 2d Sess. 123 (1984).

In particular, section 168(g)(3)(A) provides that tax-exempt use property subject to a lease must be depreciated using the straight-line method over a period equal to the greater of the property's class life or 125 percent of the lease term. Under section 168(i)(3), options to renew generally must be taken into account in determining the lease term and the periods of certain successive leases must be aggregated with the period of an original lease.

Lease Term

The proposed regulations generally include an additional period of time during which a lessee may not continue to be the lessee in the lease term if the lessee (or a related person) has agreed that one or both of them will or could be obligated to make a payment of rent, or a payment in the nature of rent, with respect to such period. The arrangements described in the proposed regulations are frequently referred to as ''replacement leases.'' One commentator requested that the portion of the proposed regulations dealing with replacement leases be withdrawn. The commentator argued that Congress would not have intended that the term of the replacement lease be taken into account in determining lease term. The IRS and Treasury believe that the proposed regulations are consistent with Congressional intent, and thus the final regulations retain this portion of the proposed regulations.

Another commentator indicated that application of the proposed regulations was unclear where property is subject to multiple leases, possibly involving multiple parties. The final regulations clarify that if property is subject to more than one lease (including any sublease) entered into as part of a single transaction (or a series of related transactions), the lease term shall include all periods described in one or more of such leases. Thus, for example, if one taxable corporation leases property to another taxable corporation for a 20-year term and, as part of the same transaction, the lessee subleases the property to a tax-exempt entity for a 10-year term, then the lease term of the property is 20 years, and during the period of tax-exempt use it must be depreciated using the straight line method over the greater of its class life or 25 years.

Finally, the final regulations provide that lease term also includes any period during which the lessee (or a related party) has assumed or retained any risk of loss with respect to the property (including, for example, by holding a note secured by the property). The IRS and Treasury believe that such an arrangement is generally similar to the replacement leases described in the proposed regulations. As in the case of a replacement lease, the lessee is assuming risk with respect to the value of the property at the termination of the initial lease term. In addition, the term of the debt provides an objective indication that the useful life of the property exceeds the original term of the lease, in which case failure to include the term of the debt in the lease term

could allow a tax-exempt lessee to benefit from depreciation deductions that exceed economic depreciation, which would be contrary to Congressional intent.

Like-kind Exchanges

The proposed regulations also address certain transactions between related persons that are designed to circumvent the tax-exempt use property rules through the use of a like-kind exchange described in section 1031. The proposed regulations provide that property (tainted property) transferred directly or indirectly to the taxpayer by a related person (the related party) as part of, or in connection with, a transaction described in section 1031 where the related party receives tax-exempt use property (related tax-exempt use property) will, if the tainted property is subject to an allowance for depreciation, be treated in the same manner as the related tax-exempt use property for purposes of determining the allowable depreciation deduction under section 167(a). Under this rule, the tainted property is depreciated by the taxpayer over the remaining recovery period of, and using the same depreciation method and convention as that of, the related tax-exempt use property.

The rule applies only with respect to direct or indirect transfers of property involving related persons where (1) section 1031 applies to any party, and (2) a principal purpose of the transfer is to avoid or limit the application of ADS. For purposes of this rule, a person is related to another person if they bear a relationship specified in section 267(b) or section 707(b)(1). An exchange between members of a consolidated group in a taxable year beginning on or after July 12, 1995, will not be subject to this provision because section 1031 does not apply to intercompany transactions. See § 1.1502–80(f).

No comments were received with respect to the treatment of like-kind exchanges under the proposed regulations. Accordingly, these provisions of the proposed regulations are adopted without modification by this Treasury decision.

Effective Dates

The definition of lease term is generally applicable to leases entered into on or after April 20, 1995. The changes made by the final regulations apply to leases entered into after April 26, 1996. The treatment of like-kind exchanges is applicable to transfers made on or after April 20, 1995. No inference is intended by these effective dates as to the treatment of any transaction under prior law. The regulations do not preclude the application of common law doctrines (such as the substance over form or step transaction doctrines) and other authorities to transactions described in the regulations (e.g., as to whether a particular transaction should be characterized as a lease or a conditional sale for federal income tax purposes).

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 John M. Aramburu of the Office of Assistant Chief Counsel (Income Tax and Accounting). 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 is amended by adding entries in numerical order to read as follows:

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

Section 1.168(h)–1 also issued under 26 U.S.C. 168. * * *

Section 1.168(i)–2 also issued under 26 U.S.C. 168. * * *

Par. 2. Sections 1.168(h)–1 and 1.168(i)–2 are added to read as follows:

§ 1.168(h)–1 Like-kind exchanges involving tax-exempt use property.

(a) *Scope.* (1) This section applies with respect to a direct or indirect transfer of property among related persons, including transfers made through a qualified intermediary (as defined in § 1.1031(k)–1(g)(4)) or other unrelated person, (a transfer) if—

(i) Section 1031 applies to any party to the transfer or to any related transaction; and

(ii) A principal purpose of the transfer or any related transaction is to avoid or limit the application of the alternative depreciation system (within the meaning of section 168(g)).

(2) For purposes of this section, a person is related to another person if they bear a relationship specified in section 267(b) or section 707(b)(1).

(b) *Allowable depreciation deduction for property subject to this section*—(1) *In general.* Property (tainted property) transferred directly or indirectly to a taxpayer by a related person (related party) as part of, or in connection with, a transaction in which the related party receives tax-exempt use property (related tax-exempt use property) will, if the tainted property is subject to an allowance for depreciation, be treated in the same manner as the related tax-exempt use property for purposes of determining the allowable depreciation deduction under section 167(a). Under this paragraph (b), the tainted property is depreciated by the taxpayer over the remaining recovery period of, and using the same depreciation method and convention as that of, the related tax-exempt use property.

(2) *Limitations*—(i) *Taxpayer's basis in related tax-exempt use property.* The rules of this paragraph (b) apply only with respect to so much of the taxpayer's basis in the tainted property as does not exceed the taxpayer's adjusted basis in the related tax-exempt use property prior to the transfer. Any excess of the taxpayer's basis in the tainted property over its adjusted basis in the related tax-exempt use property prior to the transfer is treated as property to which this section does not apply. This paragraph (b)(2)(i) does not apply if the related tax-exempt use property is not acquired from the taxpayer (e.g., if the taxpayer acquires the tainted property for cash but section 1031 nevertheless applies to the related party because the transfer involves a qualified intermediary).

(ii) *Application of section 168(i)(7).* This section does not apply to so much of the taxpayer's basis in the tainted property as is subject to section 168(i)(7).

(c) *Related tax-exempt use property.* (1) For purposes of paragraph (b) of this section, related tax-exempt use property includes—

(i) Property that is tax-exempt use property (as defined in section 168(h)) at the time of the transfer; and

(ii) Property that does not become tax-exempt use property until after the transfer if, at the time of the transfer, it

was intended that the property become tax-exempt use property.

(2) For purposes of determining the remaining recovery period of the related tax-exempt use property in the circumstances described in paragraph (c)(1)(ii) of this section, the related tax-exempt use property will be treated as having, prior to the transfer, a lease term equal to the term of any lease that causes such property to become tax-exempt use property.

(d) *Examples.* The following examples illustrate the application of this section. The examples do not address common law doctrines or other authorities that may apply to recharacterize or alter the effects of the transactions described therein. Unless otherwise indicated, parties to the transactions are not related to one another.

Example 1. (i) X owns all of the stock of two subsidiaries, B and Z. X, B and Z do not file a consolidated federal income tax return. On May 5, 1995, B purchases an aircraft (*FA*) for $1 million and leases it to a foreign airline whose income is not subject to United States taxation and which is a tax-exempt entity as defined in section 168(h)(2). On the same date, Z owns an aircraft (*DA*) with a fair market value of $1 million, which has been, and continues to be, leased to an airline that is a United States taxpayer. Z's adjusted basis in DA is $0. The next day, at a time when each aircraft is still worth $1 million, B transfers FA to Z (subject to the lease to the foreign airline) in exchange for DA (subject to the lease to the airline that is a United States taxpayer). Z realizes gain of $1 million on the exchange, but that gain is not recognized pursuant to section 1031(a) because the exchange is of like-kind properties. Assume that a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system. Following the exchange, Z has a $0 basis in FA pursuant to section 1031(d). B has a $1 million basis in DA.

(ii) B has acquired property from Z, a related person; Z's gain is not recognized pursuant to section 1031(a); Z has received tax-exempt use property as part of the transaction; and a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system. Accordingly, the transaction is within the scope of this section. Pursuant to paragraph (b) of this section, B must recover its $1 million basis in DA over the remaining recovery period of, and using the same depreciation method and convention as that of, FA, the related tax-exempt use property.

(iii) If FA did not become tax-exempt use property until after the exchange, it would still be related tax-exempt use property and paragraph (b) of this section would apply if, at the time of the exchange, it was intended that FA become tax-exempt use property.

Example 2. (i) X owns all of the stock of two subsidiaries, B and Z. X, B and Z do not file a consolidated federal income tax return. B and Z each own identical aircraft. B's aircraft (*FA*) is leased to a tax-exempt entity as defined in section 168(h)(2) and has a fair market value of $1 million and an adjusted basis of $500,000. Z's aircraft (*DA*) is leased to a United States taxpayer and has a fair market value of $1 million and an adjusted basis of $10,000. On May 1, 1995, B and Z exchange aircraft, subject to their respective leases. B realizes gain of $500,000 and Z realizes gain of $990,000, but neither person recognizes gain because of the operation of section 1031(a). Moreover, assume that a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system.

(ii) As in *Example 1,* B has acquired property from Z, a related person; Z's gain is not recognized pursuant to section 1031(a); Z has received tax-exempt use property as part of the transaction; and a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system. Thus, the transaction is within the scope of this section even though B has held tax-exempt use property for a period of time and, during that time, has used the alternative depreciation system with respect to such property. Pursuant to paragraph (b) of this section, B, which has a substituted basis determined pursuant to section 1031(d) of $500,000 in DA, must depreciate the aircraft over the remaining recovery period of FA, using the same depreciation method and convention. Z holds tax-exempt use property with a basis of $10,000, which must be depreciated under the alternative depreciation system.

(iii) Assume the same facts as in paragraph (i) of this *Example 2,* except that B and Z are members of an affiliated group that files a consolidated federal income tax return. Of B's $500,000 basis in DA, $10,000 is subject to section 168(i)(7) and therefore not subject to this section. The remaining $490,000 of basis is subject to this section. But see § 1.1502–80(f) making section 1031 inapplicable to intercompany transactions occurring in consolidated return years beginning on or after July 12, 1995.

(e) *Effective date.* This section applies to transfers made on or after April 20, 1995.

§ 1.168(i)–2 Lease term.

(a) *In general.* For purposes of section 168, a lease term is determined under all the facts and circumstances. Paragraph (b) of this section and § 1.168(j)–1T, Q&A 17, describe certain circumstances that will result in a period of time not included in the stated duration of an original lease (additional period) nevertheless being included in the lease term. These rules do not prevent the inclusion of an additional period in the lease term in other circumstances.

(b) *Lessee retains financial obligation*—(1) *In general.* An additional period of time during which a lessee may not continue to be the lessee will nevertheless be included in the lease term if the lessee (or a related person)—

(i) Has agreed that one or both of them will or could be obligated to make a payment of rent or a payment in the nature of rent with respect to such period; or

(ii) Has assumed or retained any risk of loss with respect to the property for such period (including, for example, by holding a note secured by the property).

(2) *Payments in the nature of rent.* For purposes of paragraph (b)(1)(i) of this section, a payment in the nature of rent includes a payment intended to substitute for rent or to fund or supplement the rental payments of another. For example, a payment in the nature of rent includes a payment of any kind (whether denominated as supplemental rent, as liquidated damages, or otherwise) that is required to be made in the event that—

(i) The leased property is not leased for the additional period;

(ii) The leased property is leased for the additional period under terms that do not satisfy specified terms and conditions;

(iii) There is a failure to make a payment of rent with respect to such additional period; or

(iv) Circumstances similar to those described in paragraph (b)(2) (i), (ii), or (iii) of this section occur.

(3) *De minimis rule.* For the purposes of this paragraph (b), obligations to make de minimis payments will be disregarded.

(c) *Multiple leases or subleases.* If property is subject to more than one lease (including any sublease) entered into as part of a single transaction (or a series of related transactions), the lease term includes all periods described in one or more of such leases. For example, if one taxable corporation leases property to another taxable corporation for a 20-year term and, as part of the same transaction, the lessee subleases the property to a tax-exempt entity for a 10-year term, then the lease term of the property for purposes of section 168 is 20 years. During the period of tax-exempt use, the property must be depreciated under the alternative depreciation system using the straight line method over the greater of its class life or 25 years (125 percent of the 20-year lease term).

(d) *Related person.* For purposes of paragraph (b) of this section, a person is related to the lessee if such person is described in section 168(h)(4).

(e) *Changes in status.* Section 168(i)(5) (changes in status) applies if an additional period is included in a lease term under this section and the leased property ceases to be tax-exempt use property for such additional period.

(f) *Example.* The following example illustrates the principles of this section. The example does not address common law doctrines or other authorities that may apply to cause an additional period to be included in the lease term or to recharacterize a lease as a conditional sale or otherwise for federal income tax purposes. Unless otherwise indicated, parties to the transactions are not related to one another.

Example. Financial obligation with respect to an additional period—(i) *Facts.* X, a taxable corporation, and Y, a foreign airline whose income is not subject to United States taxation, enter into a lease agreement under which X agrees to lease an aircraft to Y for a period of 10 years. The lease agreement provides that, at the end of the lease period, Y is obligated to find a subsequent lessee (replacement lessee) to enter into a subsequent lease (replacement lease) of the aircraft from X for an additional 10-year period. The provisions of the lease agreement require that any replacement lessee be unrelated to Y and that it not be a tax-exempt entity as defined in section 168(h)(2). The provisions of the lease agreement also set forth the basic terms and conditions of the replacement lease, including its duration and the required rental payments. In the event Y fails to secure a replacement lease, the lease agreement requires Y to make a payment to X in an amount determined under the lease agreement.

(ii) *Application of this section.* The lease agreement between X and Y obligates Y to make a payment in the event the aircraft is not leased for the period commencing after the initial 10-year lease period and ending on the date the replacement lease is scheduled to end. Accordingly, pursuant to paragraph (b) of this section, the term of the lease between X and Y includes such additional period, and the lease term is 20 years for purposes of section 168.

(iii) *Facts modified.* Assume the same facts as in paragraph (i) of this *Example,* except that Y is required to guarantee the payment of rentals under the 10-year replacement lease and to make a payment to X equal to the present value of any excess of the replacement lease rental payments specified in the lease agreement between X and Y, over the rental payments actually agreed to be paid by the replacement lessee. Pursuant to paragraph (b) of this section, the term of the lease between X and Y includes the additional period, and the lease term is 20 years for purposes of section 168.

(iv) *Changes in status.* If, upon the conclusion of the stated duration of the lease between X and Y, the aircraft either is returned to X or leased to a replacement lessee that is not a tax-exempt entity as defined in section 168(h)(2), the subsequent method of depreciation will be determined pursuant to section 168(i)(5).

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to leases entered into on or after April 20, 1995.

(2) *Special rules.* Paragraphs (b)(1)(ii) and (c) of this section apply to leases entered into after April 26, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: March 26, 1996.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 96–10395 Filed 4–26–96; 8:45 am]
BILLING CODE 4830–01–U

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[Notice No. 821]

Removal of Certain Restrictions on Importation of Defense Articles and Defense Services From the Russian Federation

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Statement of policy.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is announcing (1) that it will remove the Russian Federation from the list of countries from which defense articles and defense services may not be imported and (2) implementation of restrictions on the importation of certain firearms and ammunition located or manufactured in the Russian Federation or previously manufactured in the Soviet Union in accordance with an agreement between the United States and the Russian Federation and the guidance of the Secretary of State regarding matters affecting world peace and the external security and foreign policy of the United States as expressed in a letter dated April 5, 1996.

DATES: Removal of the Russian Federation from the list of proscribed countries was effective April 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Jo Hughes, Chief, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8320).

SUPPLEMENTARY INFORMATION: By letter dated April 5, 1996, the Secretary of State advised the Director, ATF, that, under the authority of Section 38 of the Arms Export Control Act (AECA), 22 U.S.C. § 2778, it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services destined for or originating in the Russian Federation (Russia). The State Department has requested that the Director implement this decision immediately with respect to his authority over imports under Section 38 of the AECA and amend the regulation at 27 CFR 47.52(a) to reflect this change in foreign policy.

The State Department also advised that the President decided to negotiate an agreement with Russia concerning the export of munitions. Carrying out such an agreement and keeping out unacceptable types of munitions from the United States are U.S. foreign policy concerns. In addition, the State Department informed ATF that an Agreement between the Government of the United States of America and the Government of the Russian Federation on exports of firearms and ammunition from the Russian Federation to the United States of America (the Agreement) was signed on April 3, 1996, and entered into force on that date. On this basis, the State Department advised the Department of the Treasury that Treasury should exercise the authority delegated to it under Section 38 of the AECA by denying applications to import firearms and ammunition located or manufactured in Russia or previously manufactured in the Soviet Union that would be inconsistent with the Agreement. The State Department advised Treasury that the foregoing did not apply to conditional imports of firearms and ammunition which would serve as samples for purposes of determining whether the items are of a type authorized for importation under the Agreement.

The Agreement provides that Russia shall not allow the exportation to the United States of (1) firearms other than those specified on Annex A to the Agreement; and (2) ammunition specified in Annex B to the Agreement. Nine handguns and 29 rifles are listed in Annex A. One type of ammunition is listed in Annex B. The Agreement also provides that new types of firearms and ammunition manufactured after February 9, 1996, may not be exported by Russia under the Agreement unless the parties agree in writing to amend the Agreement accordingly. The Agreement is published in its entirety at the end of this notice.

ATF has taken or will take the following actions to implement the above:

(1) ATF will remove Russia from the list of countries from which defense articles and defense services may not be imported into the United States. A Treasury Decision amending § 47.52(a) to reflect this action will be published in the near future.

(2) ATF will approve applications to import defense articles and defense services from Russia in accordance with the guidance contained in the April 5, 1996, letter from the Department of State. Consistent with that letter, only firearms listed in Annex A of the Agreement will be approved for importation from Russia. Surplus military curio or relic firearms manufactured or located in Russia or previously manufactured in the Soviet Union will not be approved for importation under 27 CFR 47.52(d) unless the firearms are listed in Annex A of the Agreement. Applications to import from Russia ammunition listed in Annex B will not be approved.

(3) ATF will not approve applications to import from any country or territory firearms and ammunition manufactured in Russia or previously manufactured in the Soviet Union that would be inconsistent with the the Agreement.

(4) Firearms that are subject to the AECA and the Agreement include any nonautomatic, semiautomatic, or automatic firearm to caliber .50 (12.7mm) inclusive, other than a sporting shotgun, and any component or part for such firearms.

(5) Prior to approval of an application to import firearms and ammunition located or manufactured in Russia or previously manufactured in the Soviet Union, ATF may require the conditional importation of a sample of the firearm or ammunition for examination to determine whether it is of a type that may be approved for importation consistent with the Agreement.

(6) For purposes of the AECA, the term ''United States'' is defined in 27 CFR 47.11 and includes Customs bonded warehouses (CBWs) and foreign trade zones (FTZs). Article 8 of the Agreement provides that the Agreement shall not affect the fulfillment of contracts with respect to firearms or ammunition entered or withdrawn from warehouse for consumption in the United States on or before February 9, 1996. This means that firearms and ammunition entered into a CBW or FTZ prior to February 9, 1996, that otherwise could not be imported under the restrictions set out above have been imported within the meaning of Section 38 of the AECA and are not subject to such restrictions.

(7) Permits authorizing the importation of firearms and ammunition whose exportation to the United States is prohibited under the Agreement, with the exception of those to which paragraph (6) are applicable, are hereby revoked. As required by 27 CFR 47.44(d), the revoked import permits must be returned to the Firearms and Explosives Imports Branch, ATF, immediately. Pursuant to 27 CFR 47.44(c), holders of such permits may, within 30 days of the date of publication of this notice in the Federal Register, make a written request for an opportunity to present additional information and to have a full review by the Director. Any such requests will be referred to the Department of State, as appropriate, for its guidance on matters affecting world peace and the external security and foreign policy of the United States.

Compliance With 5 U.S.C. Chapter 8

In accordance with 5 U.S.C. 808(2), ATF has found that, consistent with guidance from the Department of State and for reasons of the foreign policy of the United States, notice and public procedure under 5 U.S.C. 801 are unnecessary, impracticable, and contrary to the public interest.

Text of Agreement; Agreement Between the Government of the United States of America and the Government of the Russian Federation on Exports of Firearms and Ammunition From the Russian Federation to the United States of America

The Government of the United States of America and the Government of the Russian Federation, hereinafter referred to as the ''Parties,''

In the context of removing a number of existing restrictions on the importation into the United States of firearms and ammunition from the Russian Federation;

Recognizing the foreign policy interest of the Parties in expanding trade in firearms and ammunition between the United States and the Russian Federation in a manner compatible with domestic security;

Recognizing the intention of the United States of America that United States policy with respect to access to the United States market for firearms and ammunition be applied in a nondiscriminatory manner to all of its trading partners;

Wishing to promote trade and cooperation on an equal and mutually beneficial basis between the United States and the Russian Federation and to expand economic opportunities in the two countries;

Have agreed as follows:

Article 1: Definitions

The following definitions apply to this Agreement:

(a) ''Ammunition'' means any ammunition, cartridge case, primer, bullet, or propellent powder designed for use in any firearm.

(b) ''Firearm'' means any nonautomatic, semiautomatic, or automatic firearm, to caliber .50 (12.7 mm) inclusive other than a shotgun, or any component or part for such firearm.

(c) ''New model ammunition'' means a type of ammunition the manufacture of which began after February 9, 1996.

(d) ''New model firearm'' means a type of firearm the manufacture of which began after February 9, 1996.

Article 2: Firearms and Ammunition Export Prohibitions

The Government of the Russian Federation shall not allow the exportation from the Russian Federation, destined to the United States, of the following firearms and ammunition:

(a) any firearm, including any new model firearm, except a firearm described in Annex A to this Agreement;

(b) ammunition described in Annex B to this Agreement; and

(c) new model ammunition.

Article 3: Consultations

(a) Each Party shall provide to the other Party, on request, information necessary for the implementation and enforcement of this Agreement. A Party shall keep confidential all information received from the other Party that is designated by the providing Party as confidential and shall not provide it to any other government or any private person without the providing Party's written consent.

(b) The Parties agree to consult promptly, not later than 30 days after receipt of a request from either Party, regarding any matter concerning this Agreement.

(c) At any time, either Party may propose that a firearm be added to or deleted from Annex A or that ammunition be added to or deleted from Annex B. The Parties shall consult promptly regarding such a proposal and may amend either Annex by written agreement of the Parties.

(d) Where a question arises as to whether a particular firearm or ammunition is subject to the export prohibition in Article 2, the Parties shall consult promptly. The firearm or ammunition shall be subject to the export prohibition pending resolution of the matter.

Article 4: Construction

Nothing in this Agreement shall be construed to affect the applicability to firearms, ammunition, or other products of the laws and regulations of the United States or the Russian Federation imposing restrictions or requirements on importation.

Article 5: Actions To Ensure the Effectiveness of this Agreement

Either Party may take any action, as provided in its laws and regulations, necessary to ensure the effectiveness of this Agreement.

Article 6: Emergency Actions

If the Government of the United States determines that the actual or prospective importation of any firearm described in Annex A or ammunition other than that described in Annex B is causing or threatens to cause damage to the domestic security of the United States, the Government of the United States reserves the right to take any measure it deems appropriate consistent with the Agreement on Trade Relations, signed between the Union of Soviet Socialist Republics and the United States of America at Washington on June 1, 1990, as amended, brought into force between the United States of America and the Russian Federation pursuant to an exchange of notes on June 17, 1992. The Government of the United States shall consult with the Government of the

Russian Federation prior to taking any such measure. If prior and prompt consultations are not possible because of an emergency situation, the Government of the United States shall consult with the Government of the Russian Federation as soon as possible after taking the measure.

Article 7: Amendments

This Agreement may be amended by written agreement of the Parties.

Article 8: No Effect on Articles in U.S. Customs Territory

This Agreement shall not affect the fulfillment of contracts with respect to firearms or ammunition entered or withdrawn from warehouse for consumption in the United States on or before February 9, 1996.

Article 9: Annexes; Entry into Force; Termination

(a) The Annexes to this Agreement are an integral part of this Agreement.

(b) This Agreement shall enter into force upon the date of its signature by both Parties.

(c) Either Party may terminate this Agreement by providing written notification to the other Party at least twelve months prior to the date of termination.

Done at Washington on April 3, 1996, in duplicate, in the English and Russian languages, both texts being equally authentic.

signature

Ira Shapiro,

Ambassador, Senior Counsel, Negotiator, Office of the U.S. Trade Representative.

For the Government of the United States of America.

signature

Gennadiy Yanpolsky,

Deputy Chairman, State Committee on Defense Industry Branches.

For the Government of the Russian Federation.

Annex A

Firearms Permitted to Be Imported into the United States from the Russian Federation

Pistols/Revolvers

1. German Model P08 Pistol
2. IZH 34M, .22 caliber Target Pistol
3. IZH 35M, .22 caliber Target Pistol
4. Mauser Model 1896 Pistol
5. MC–57–1 Pistol
6. MC–1–5 Pistol
7. Polish Vis Model 35 Pistol
8. Soviet Nagant Revolver
9. TOZ 35, .22 caliber Target Pistol

Rifles

1. BARS–4 Bolt Action Carbine
2. Biathlon Target Rifle, .22LR caliber
3. British Enfield Rifle
4. CM2, .22 caliber Target Rifle (also known as SM2, .22 caliber)
5. German Model 98K Rifle
6. German Model G41 Rifle
7. German Model G43 Rifle
8. IZH–94
9. LOS–7 Bolt Action Rifle
10. MC–7–07
11. MC–18–3
12. MC–19–07
13. MC–105–01
14. MC–112–02
15. MC–113–02
16. MC–115–1
17. MC–125/127
18. MC–126
19. MC–128
20. Saiga Rifle
21. Soviet Model 38 Carbine
22. Soviet Model 44 Carbine
23. Soviet Model 91/30 Rifle
24. TOZ 18, .22 caliber Bolt Action Rifle
25. TOZ 55
26. TOZ 78
27. Ural Target Rifle, .22LR caliber
28. VEPR Rifle
29. Winchester Model 1895, Russian Model Rifle

Annex B

Ammunition Prohibited from Being Imported into the United States from the Russian Federation

1. 7.62X25mm caliber (also known as 7.63X25mm caliber or .30 Mauser)

Authority and Issuance

This notice is issued under the authority in 22 U.S.C. 2778.

Approved: April 19, 1996.

John W. Magaw,

Director.

[FR Doc. 96–10361 Filed 4–24–96; 4:32 pm]

BILLING CODE 4810–31–U

DEPARTMENT OF EDUCATION

34 CFR Parts 11, 50, 302, 358, 631, 632, 633, 634, 635, 653, 769, 770, 771, 772, 776, 777, 785, 786, 787, 788, 789, and 791

Removal of Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Code of Federal Regulations (CFR) to remove unnecessary and obsolete regulations. As a result of new legislation, absence of funding, and review in accordance with the President's regulatory reinvention initiative, the Secretary has determined that these regulations are no longer needed or will become unnecessary in the future. The Secretary takes this action to remove the regulations from the CFR.

EFFECTIVE DATE: Parts 11, 302, 358, 631, 632, 633, 634, 635, 653, 785, 786, 787, 788, 789, and 791 are removed effective May 29, 1996. Parts 50, 769, 771, 772, and 777 are removed effective October 1, 1996. Parts 770 and 776 are removed effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, Room 5112, FB–10, 600 Independence Avenue, SW., Washington, DC 20202–2241. Telephone: (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: President Clinton's memorandum of March 4, 1995, titled ''Regulatory Reinvention Initiative,'' directed heads of departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. The Department has undertaken a thorough review of its existing regulations and has identified the regulations removed by this document as obsolete or unnecessary. Additional obsolete and unnecessary regulations were previously removed on May 23, 1995 (60 FR 27223) as part of the Regulatory Reinvention Initiative. Based on this review, the Secretary also withdraws the notice of proposed rulemaking issued for 34 CFR Part 50 on March 1, 1993 (58 FR 11924).

The regulations being removed are no longer necessary to administer the program, have been superseded by new legislation, or were issued to implement a program that is no longer funded. To the extent that regulations are needed to implement new legislation, they will be issued separately from this document. Any determination to issue new regulations will be carefully considered to ensure that it is consistent with the President's regulatory reform efforts and the principles in Executive Order 12866.

The Department is continuing to review its other existing regulations thoroughly in consultation with its customers and partners. To the extent the Secretary can identify further opportunities for regulatory reinvention, the Secretary will propose appropriate amendments to revise or eliminate outdated provisions, reduce burden, and increase flexibility.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes and remove unnecessary and obsolete regulatory provisions. Removal of the regulations does not establish or affect substantive policy. Therefore, the

Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment is unnecessary and contrary to the public interest.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 11

Administrative practice and procedure, Advisory committees.

34 CFR Part 50

Cultural exchange programs, Foreign residence requirements, Reporting and recordkeeping requirements.

34 CFR Part 302

Education of handicapped, Elementary and secondary education, Grant programs-education.

34 CFR Part 358

Education of handicapped, Educational research, Grant programs-education.

34 CFR Part 631

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 632

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 633

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 634

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 635

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 653

Grant programs-education, Student aid, Teachers.

34 CFR Part 769

Grant programs-education, Libraries.

34 CFR Part 770

Grant programs-education, Libraries.

34 CFR Part 771

Grant programs-education, Libraries.

34 CFR Part 772

Grant programs-education, Libraries.

34 CFR Part 776

Grant programs-education, Libraries.

34 CFR Part 777

Grant programs-education, Libraries.

34 CFR Part 785

Educational research, Grant programs-education.

34 CFR Part 786

Adult education, Colleges and universities, Educational research, Grant programs-education, Elementary and secondary education.

34 CFR Part 787

Educational research, Grant-programs education, Teachers.

34 CFR Part 788

Educational research, Grant programs-education, States.

34 CFR Part 789

Educational research, Elementary and secondary education, Grant programs-education, Private schools.

34 CFR Part 791

Elementary and secondary education, Grant programs-education, Students.

Dated: April 23, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance numbers do not apply.)

For reasons stated in the preamble, under the authority at 20 U.S.C. 1221e–3, the Secretary amends Title 34 of the Code of Federal Regulations by removing Parts 11, 50, 302, 358, 631, 632, 633, 634, 635, 653, 769, 770, 771, 772, 776, 777, 785, 786, 787, 788, 789, and 791.

[FR Doc. 96–10473 Filed 4–26–96; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI57–01–7105a, WI58–01–7106a, WI59–01–7107a; FRL–5424–2]

Approval and Promulgation of State Implementation Plan; Wisconsin; Gasoline Storage Tank Vent Pipe, Traffic Marking Materials, and Solvent Metal Cleaning SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, through the direct final procedure, revisions to the Wisconsin State Implementation Plan (SIP) for ozone that were submitted on February 17, 1995 and April 12, 1995. These revisions require the control of volatile organic compound (VOC) emissions from the following sources: gasoline storage tanks, the application of traffic marking materials, and solvent metal cleaning operations. These regulations were submitted to generate reductions in VOC emissions, which the State will use to fulfill the 15 percent requirement of the amended Clean Air Act. In the proposed rules section of this Federal Register, the EPA is proposing approval of, and soliciting comments on, these requested SIP revisions. If adverse comments are received on this action, the EPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this Federal Register. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes federally enforceable the State's rules that have been incorporated by reference.

DATES: This action will be effective June 28, 1996, unless adverse comments are received by May 29, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson

Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b) of the Clean Air Act, as amended on November 15, 1990, sets forth the requirements for ozone nonattainment areas that have been classified as moderate or above. Section 182(b)(1)(A) requires those States with ozone nonattainment areas classified as moderate or above to submit plans to reduce VOC emissions by at least 15 percent from the 1990 baseline emissions. The 1990 baseline, as described by EPA's emission inventory guidance, is the amount of anthropogenic VOC emissions emitted on a typical summer day. As a part of its 15 percent plan, the State of Wisconsin has developed and adopted rules to reduce the VOC emissions from gasoline storage tanks, the application of traffic marking materials, and solvent metal cleaning operations in those areas of the State that are classified as moderate or higher.

II. Evaluation of State Submittal

On November 15, 1993, the State of Wisconsin submitted its proposed 15 percent plan. The 15 percent plan submittal was followed by several submittals that are the actual regulations that will achieve the reductions required by the 15 percent plan. The State's regulations are summarized below.

A. Gasoline Storage Tank Vent Pipe Rule—NR 420.035

Wisconsin submitted this regulation to the EPA on February 17, 1995 and supplemented it on June 14, 1995, as a SIP revision under the signature of the Governor's designee. The EPA found this rule to be complete in a letter to Donald Theiler, Director of WDNR's Bureau of Air Management, dated June 29, 1995. The WDNR followed the required legal procedures for adopting this rule which are prerequisites for EPA to consider including this rule in Wisconsin's federally enforceable ozone SIP. A public hearing for this rule was held on January 12, 1994.

Wisconsin has adopted a rule that requires gasoline storage tanks with a storage capacity of 2,000 gallons, or greater, to install pressure vacuum valves on the vent pipes. Evaporative emissions will readily escape through the gasoline storage tank vent pipe if the pipe has no control device to prevent this. These pressure vacuum valves will control evaporative VOC emissions from the storage tanks.

B. Traffic Marking Materials Rule—NR 422.17

Wisconsin submitted this regulation to EPA on April 12, 1995 and supplemented it on June 14, 1995, as a SIP revision under the signature of the Governor's designee. The EPA found this rule to be complete in a letter to Donald Theiler, Director of WDNR's Bureau of Air Management, dated June 29, 1995. The WDNR followed the required legal procedures for adopting this rule, which are prerequisites for EPA to consider including this rule in Wisconsin's federally enforceable ozone SIP. A public hearing for this rule was held on January 12, 1994.

The emission of VOCs from the application of traffic marking materials onto paved surfaces occurs during the drying of the markings themselves or from the drying of the adhesives used to affix the traffic markings. The State of Wisconsin has adopted a rule that will limit the VOC content of the traffic marking materials that are liquid or limit the amount of VOCs that can be emitted per mile of traffic marking applied for solid materials.

C. Solvent Metal Cleaning Rule—NR 423.03

Wisconsin submitted this regulation to EPA on April 12, 1995 and supplemented it on June 14, 1995, as a SIP revision under the signature of the Governor's designee. The EPA found this rule to be complete in a letter to Donald Theiler, Director of WDNR's Bureau of Air Management, dated June 29, 1995. The WDNR followed the required legal procedures for adopting this rule which are prerequisites for EPA to consider including this rule in Wisconsin's federally enforceable ozone SIP. A public hearing for this rule was held on January 12, 1994.

The State of Wisconsin currently has a solvent metal cleaning rule in place and this rule has been approved into the State's SIP as representing reasonably available control technology (RACT) for this source category. In order to obtain additional reductions that would be creditable towards the State's 15 percent plan, the State has: Added the category of wipe cleaning to the types of actions that require control under this rule (NR 423.02(10), NR 423.03(7)); established control technique requirements beyond those considered to be RACT (NR 423.03(3) (h) to (j), NR 423.03(4) (n) to (r), NR 423.03 (h) to (j), NR 423.03(6)(a) 8 and 9); added a provision that requires sources to also consider throughput on the applicability of size exemption cutoffs (NR 423.03(2) (c) to (f)); established more extensive recordkeeping requirements (NR 423.03(10)); and established a revised compliance schedule (NR 423.03(8)).

More detailed analyses of the State's submittals are available at the Regional Office listed above. In determining the approvability of these VOC rules, EPA evaluated the rules for consistency with Federal requirements, including Section 110 and Part D of the Clean Air Act.

III. Final Rulemaking Action

The EPA approves Wisconsin's rules for Gasoline Storage Tank Vent Pipes, the Application of Traffic Marking Materials, and Solvent Metal Cleaning thereby making these rules federally enforceable.

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on June 28, 1996. However, if we receive adverse comments by May 29, 1996. EPA will publish a document that withdraws this action.

IV. Miscellaneous

A. Applicability To Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

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), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 28, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*See* Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 6, 1995.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart YY—Wisconsin

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.2570 is amended by adding paragraphs (c) (84), (85), and (86) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(84) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on February 17, 1995, and supplemented on June 14, 1995. This revision consists of a volatile organic compound regulation that requires controls for gasoline storate tank vent pipes.

(i) Incorporation by reference. The following section of the Wisconsin Administrative Code is incorporated by reference.

(A) NR 420.035 as created and published in the (Wisconsin) Register, July, 1994, No. 463, effective August 1, 1994.

(85) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on April 12, 1995, and supplemented on June 14, 1995, and January 19, 1996. This revision consists of a volatile organic compound regulation that requires the control of emissions from traffic markings.

(i) Incorporation by reference. The following section of the Wisconsin Administrative Code is incorporated by reference.

(A) NR 422.02(16e), (42q), (42s) and (47m) as created and published in the (Wisconsin) Register, July, 1994, No. 463, effective August 1, 1994.

(B) NR 422.17 as created and published in the (Wisconsin) Register, July, 1994, No. 463, effective August 1, 1994.

(86) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on April 12, 1995, and supplemented on June 14, 1995, and January 19, 1996. This revision consists of a volatile organic compound regulation that requires additional controls on solvent metal cleaning operations. This rule is more stringent than the RACT rule it is replacing.

(i) Incorporation by reference. The following section of the Wisconsin Administrative Code is incorporated by reference.

(A) NR 423.02(10) as renumbered from NR 423.02(9), amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994. NR 423.02(11) as renumbered from NR 423.02(10) and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994. NR 423.02(9) and (12) as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(B) NR 423.03 as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(C) NR 425.03(12)(a)7. as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

* * * * *

[FR Doc. 96–10451 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5461–4]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion Gallaway Pits Superfund Site, in Fayette County, Tennessee from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Gallaway Pits Site from the National Priorities List (NPL), (Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)). EPA and the State have determined that all appropriate Fund-

financed responses under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, have been implemented and that no further cleanup is appropriate. Moveover, EPA and the State have determined that remedial actions conducted at the site to date have been protective of public health, welfare and the environment. This deletion does not preclude future action under Superfund.

EFFECTIVE DATE: May 15, 1996.

FOR FURTHER INFORMATION CONTACT: Robert West, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Superfund Remedial Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 347–7791, extension 2033.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is: Gallaway Pits Superfund Site, in Fayette County, Tennessee.

A Notice of Intent to Delete for this site was published on February 22, 1996, (FR–5428–2). The closing date for comments on the Notice of Intent to Delete was March 22, 1996. EPA received no comments.

EPA identifies sites that appear to present a significant risk to the public health, welfare and the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the future. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: April 4, 1996.

Phyllis P. Harris,

Acting Deputy Regional Administrator, U.S. EPA Region 4.

For reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Gallaway Pits Superfund Site, in Fayette County, Tennessee.

[FR Doc. 96–10105 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5463–9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the 29th and Mead Ground Water Contamination Site located in Wichita, Kansas, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300. Part 300 is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. In light of the planned State action in this case, EPA finds that no further response under CERCLA is appropriate. The Site is instead, in a pilot project, deferred to the State of Kansas and will be addressed by the Kansas Department of Health and Environment (KDHE). Deletion under this approach does not indicate that the cleanup has been completed, but rather that no further Superfund involvement is necessary, and that the Agency expects the response at the Site will be completed under an Agreement between the City of Wichita and KDHE. EPA will consider the effectiveness and efficiency of the Site cleanup as well as the likelihood that a similarly favorable outcome could be reproduced elsewhere in deciding whether such a policy will be considered for other sites.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: William Bunn, Remedial Project Manager; Superfund Division, U.S. Environmental Protection Agency, Region 7; 726 Minnesota Avenue; Kansas City, Kansas 66101. Phone: (913) 551–7792.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the 29th and Mead Ground Water Contamination Site in Wichita, Kansas. A Notice of Intent to Delete was published January 31, 1996 (61 FR 3365). The closing date for comments on the Notice of Intent to Delete was March 1, 1996.

EPA received comment favoring this proposed action from Mr. Robert Knight, Mayor of Wichita, on behalf of the Wichita City Council.

Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial action. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 40 CFR 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

An explanation of the criteria for deleting this site from the NPL was presented in Section II of the January 31, 1996, Notice of Intent to Delete (FR 61 3365). A description of the site and how it meets the criteria for deletion was presented in Section IV of that Notice. The reasoning in the Notice of Intent is adapted as EPA's reasoning for this final deletion.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: April 23, 1996.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(C)(2); 42 U.S.C. 9601–9657; E.O. 1277, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the 29th and Mead Ground Water Contamination Site, Wichita, Kansas.

[FR Doc. 96–10537 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–115; RM–8508, RM–8562]

Radio Broadcasting Services; Woodville and Liberty, MS; Clayton and Jena, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gary P. Albarez (RM–8562), allots Channel 299C3 to Liberty, Mississippi, and delet Channel 299A from Woodville, Mississippi. Channel 299C3 can be allotted to Liberty in compliance with the Commission's distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) northwest. The coordinates for Channel 299C3 at Liberty are 31–10–44 and 90–49–51. The proposal filed by PDB Broadcasting (RM–8508), *see* 59 FR 51153, October 7, 1994, requesting the substitution of Channel 299C3 for Channel 299A at Woodville, Mississippi, is denied. With this action, this proceeding is terminated.

DATES: Effective June 7, 1996. The window period for filing applications will open on June 7, 1996, and close on July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–115, adopted April 5, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 299A at Woodville; and by adding Liberty, Channel 299C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10439 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 93–65; RM–6869, RM–8271, RM–8272, RM–8273]

Radio Broadcasting Services; New Port Richey, Naples Park, Sarasota and Sebring, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 288C1 for Channel 288A at New Port Richey, Florida, and modifies the license for Station WGUL-FM to specify operation on Channel 288C2 in response to a proposal filed by WGUL-FM, Inc. *See* 58 FR 19395, April 14, 1993. The coordinates for Channel 288C1 at New Port Richey are 28–11–04 and 82–45–39. To accommodate the upgrade at New Port Richey, we shall substitute Channel 282A for Channel 288A at Sarasota, Florida, and modify the license for Station WKZM(FM) accordingly. The coordinates for Channel 282A at Sarasota are 27–16–30 and 82–28–54. In response to a counterproposal filed by Roper Broadcasting, Inc., we shall substitute Channel 289C3 for Channel 288A at Sebring, Florida, and modify the license for Station WCAC(FM). The coordinates for Channel 289C3 at Sebring are 27–20–30 and 81–28–05. In response to a counterproposal filed by Wodlinger Broadcasting Company of Naples, Inc., we shall substitute Channel 288C2 for Channel 288A at Naples Park, Florida, and modify the license for Station WIXI. The coordinates for Channel 288C2 at Naples Park are 26–19–00 and 81–47–13. With this action this proceeding is terminated.

EFFECTIVE DATE: June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 93–65, adopted March 29, 1996, and released April 19, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 288A and adding Channel 288C1 at New Port Richey, removing Channel 288A and adding Channel 288C2 at Naples Park, removing Channel 288A and adding Channel 282A at Sarasota, removing Channel 288A and adding Channel 289C3 at Sebring.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10438 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–75; RM–8615, RM–8686]

Radio Broadcasting Services; Blossom, TX, DeQueen, AR, and Coalgate, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Coalgate Broadcasters, allots Channel 288C2 to Coalgate, Oklahoma, as the community's first local FM service. At the request of Red River Wireless Communications, the Commission allots Channel 224C2 to Blossom, Texas. To accommodate the allotment at Blossom, the Commission also substitutes Channel 227A for Channel 224A at DeQueen, Arkansas, and modifies the license of Station KDQN(FM) to specify the alternate Class A channel. *See* 60 FR 39819, June 12,

1995, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

DATES: Effective June 7, 1996. The window period for filing applications will open on June 7, 1996, and close on July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–75, adopted April 5, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

All channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 224C2 can be allotted to Blossom, Texas with a site restriction of 11.0 kilometers (6.8 miles) east to avoid a short-spacing conflict with the allotment of Channel 225A at Bells, Texas. The coordinates for Channel 224C2 at Blossom are 33–40–07 and 95–16–13. As noted, the allotment of Channel 224C2 at Blossom requires the substitution of Channel 227A for 224A at DeQueen, Arkansas, Channel 227A can be allotted to DeQueen and can be used at the site specified in Station KDQN(FM)'s license. The coordinates for Channel 227A at DeQueen are 34–01–57 and 94–19–43. Channel 288C2 can be allotted to Coalgate, Oklahoma, with a site restriction of 13.4 kilometers (8,3 miles) east to avoid short-spacing conflicts with the licensed site of Station KXXK(FM), Channel 288A, Chickasha, Oklahoma, and with Station KSTV(FM)'s pending application to upgrade from Channel 289C1 to Channel 289C at Decatur, Texas. The coordinates for Channel 288C2 at Coalgate are 34–32–20 and 96–04–20.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, Arkansas and Oklahoma, is amended by adding Blossom, Channel 224C2; by removing Channel 224A and adding Channel 227A at DeQueen; and by adding Coalgate, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10437 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–156; RM–8701]

Radio Broadcasting Services; Shelton, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sound Broadcasting, Inc., allots Channel 233A at Shelton, Washington, as the community's first local FM transmission service. *See* 60 FR 53892, October 18, 1995. Channel 233A can be allotted to Shelton in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) northwest to avoid short-spacings to the licensed sites of Station KMPS-FM, Channel 231C, Seattle, Washington, and Station KUKN(FM), Channel 233A, Kelso, Washington. The coordinates for Channel 233A at Shelton are North Latitude 47–14–43 and West Longitude 123–10–25. *See* Supplementary Information, *infra.*

DATES: Effective June 7, 1996. The window period for filing applications will open on June 7, 1996 and close on July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–156, adopted April 5, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Recognizing that the allotment of Channel 233A would be short-spaced to the proposed allotment of Channel 233C at Vancouver, British Columbia, we have determined that no potential interference would result from this allotment. Therefore, since the Shelton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government for the allotment of Channel 233A has been obtained as a specially-negotiated allotment. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Shelton, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10440 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 219, 236, 242, 252, and 253

[DFARS Case 95–D039]

Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense suspended the sections of the Defense Federal Acquisition Regulation Supplement (DFARS) that prescribe the set-aside of acquisitions for small disadvantaged businesses (SDBs). The Department is issuing this final rule to implement initiatives designed to limit the adverse impact of this suspension. The efforts of a government-wide group

to reform affirmative action programs in procurement continue. This action was reviewed by the Office of Management and Budget under Executive Order 12866.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement initiatives designed to facilitate awards to SDBs while taking account of the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena,* 115 S.Ct. 2097 (1995). This DFARS rule includes contracting procedures that: (1) expand the use of the evaluation factor for SDBs to include competitive awards based on other than price or price-related factors; (2) consider small, small disadvantaged, and women-owned small business subcontracting as a factor in the evaluation of past performance; (3) clarify that the contracting officer will weigh enforceable commitments to use small businesses, SDBs, women-owned small businesses, historically black colleges and universities, and minority institutions more heavily than non-enforceable ones, if the commitment to use such firms is included in the solicitation as a source selection criterion; (4) require prime contractors to notify the contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan; and (5) establish a test program of an SDB evaluation preference that would remove bond cost differentials between SDBs and other businesses as a factor in most source selections for construction acquisitions.

A proposed rule was published in the Federal Register on December 14, 1995 (60 FR 64135), with a correction published on December 21, 1995 (60 FR 66246). DoD considered all comments received in response to the proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies. A final regulatory flexibility analysis has been performed and is available by writing the Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies. OMB has approved the information collection requirement under OMB Control Number 0704–0386.

List of Subjects in 48 CFR Parts 215, 219, 236, 242, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215, 219, 236, 242, 252, and 253 are amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Parts 215, 219, 236, 242, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 215.605 is amended by revising the section title and paragraphs (b)(ii)(B) and (b)(ii)(E), and by adding paragraph (b)(iv) to read as follows:

215.605 Evaluation factors and subfactors.

(b) * * *

(ii) * * *

(B) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

* * * * *

(E) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

* * * * *

(iv) When an evaluation includes the criterion in paragraph (b)(ii)(A) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

* * * * *

3. Section 215.608 is amended by redesignating existing paragraph (a) as paragraph (a)(1) and by adding paragraph (a)(2) to read as follows:

215.608 Proposal evaluation.

(a) * * *

(2) When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

4. The heading of Part 219 is revised to read as set forth above.

5. Section 219.704 is amended by adding paragraph (a)(4) to read as follows:

219.704 Subcontracting plan requirements.

(a) * * *

(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

6. Section 219.1006 is amended by revising paragraph (b)(1)(B) to read as follows:

219.1006 Procedures.

(b)(1) * * *

(B) The evaluation preference at 219.70 shall not be used. However, note the test program at 219.72 for construction acquisitions.

* * * * *

7. Section 219.7001 is amended by revising paragraph (a) to read as follows:

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions except as provided in paragraph (b) of this section and in 219.1006(b)(1)(B).

* * * * *

8. Subpart 219.72 is added to read as follows:

Subpart 219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program

Sec.
219.7200 Policy.
219.7201 Administration of the test program.
219.7202 Applicability.
219.7203 Procedures.
219.7204 Contract clause.

219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program

219.7200 Policy.

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SDB) concerns shall be given an evaluation preference in construction acquisitions.

219.7201 Administration of the test program.

The test program will be conducted over a 36-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology (Director, SADBU). The military departments and defense agencies shall submit status reports to the Director, SADBU. The first status report shall be submitted 18 months after initiation of the test program; the second status report shall be submitted 36 months after initiation of the test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which—

(1) Are less than or equal to the simplified acquisition threshold;

(2) Are set aside for small businesses; or

(3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or nondisadvantaged small business concerns.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(1) Offers from SDBs which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303–70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219–7204 Contract clause.

Use the clause at 252.219–7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns—Construction Acquisitions—Test Program, in all solicitations—

(1) That involve the evaluation preference of this subpart; and

(2) Where work is to be performed inside the United States, 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

9. Section 236.303–70 is amended by revising the introductory text of paragraph (c)(2) 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 242—CONTRACT ADMINISTRATION

10. Subpart 242.15 is added to read as follows:

Subpart 242.15—Contractor Performance Information

Sec.
242.1503 Procedures.

242.1503 Procedures.

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 252.219–7003 is amended by revising the clause date to read ''(APR 1996)'' and by adding paragraph (g) to read as follows:

252.219–7003 Small, small disadvantaged and women-owned small business subcontracting plan (DoD contracts).

* * * * *

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

12. Section 252.219–7008 is added to read as follows:

252.219–7008 Notice of evaluation preference for small disadvantaged business concerns—construction acquisitions—test program.

As prescribed in 219.7204, use the following clause:

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS—CONSTRUCTION ACQUISITIONS—TEST PROGRAM (APR 1996)

(a) *Definitions.*

As used in this clause—

''Historically black colleges and universities (HBCUs),'' means institutions determined by the secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

''Minority institutions,'' means institutions meeting the requirements of paragraphs (3),

(4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

''Small disadvantaged business (SDB) concern,'' means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *Evaluation preference.*

(1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(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) If the apparently successful offeror is not an SDB concern, offers will be evaluated based on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(i) Offers from SDBs which have not waived the evaluation preference; and

(ii) Offers from HBCUs or minority institutions, which have not waived the evaluation preference.

(c) *Waiver of evaluation preference.*

A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference. The agreements in paragraph (d) of this clause do not apply to offers which waive the preference.

_____Offeror elects to waive the preference.

(d) *Agreements.*

A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(End of clause)

PART 253—FORMS

13. Section 253.204–70 is amended by revising paragraph (e)(3) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(e) * * *

(3) *Block E3, Next Low Offer.*

(i) Complete Block E3 only if Block E2 is completed, or the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in subpart 219.72 is applied. Otherwise, leave Block E3 blank.

(ii) If Block E2 is completed, enter the offered price from the small business firm that would have been the low offeror if qualified nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition. In the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in subpart 219.72 is applied, enter the offered price from the non-SDB concern that would have been the successful offeror if the evaluation preference had not been applied. Enter the amount in whole dollars.

* * * * *

[FR Doc. 96–10541 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Rules and Regulations

Federal Register
Vol. 61, No. 83
Monday, April 29, 1996

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–246–AD; Amendment 39–9574; AD 96–08–08]

Airworthiness Directives; Airbus Model A300 Series Airplanes (Excluding Model A300 B4–600 and Model A300 F4–600 Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 series airplanes (excluding Model A300 B4–600 series airplanes), that currently requires certain structural inspections and modifications. This amendment requires additional structural inspections and modifications that have been identified as necessary to ensure the structural integrity of these airplanes as they approach their economic design goal. This amendment also excludes additional airplanes from the applicability of the AD. The actions specified by this AD are intended to prevent degradation of the structural capability of the affected airplanes.

DATES: Effective May 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1996.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of April 13, 1992 (57 FR 8257, March 3, 1992).

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

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–02–09, amendment 39–8145 (57 FR 8257, March 9, 1992), which is applicable to all Airbus Model A300 series airplanes (excluding Model A300 B4–600 series airplanes), was published in the Federal Register on January 22, 1996 (61 FR 1528). The action proposed to continue to require certain structural inspections and modifications specified in AD 92–02–09, and to require other additional structural inspections and modifications, as well.

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

The commenters support the proposed rule.

Since the issuance of the proposed rule, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that it has revised the French airworthiness directive (CN) that was parallel in its requirements to those of the notice for this AD rulemaking action. The revised CN is CN 90–22–116(B)R2, dated July 6, 1994; it was issued to exclude Airbus Model A300 C4–600 and A300 F4–600 series airplanes from the list of airplanes subject to the requirements of that CN.

The FAA has examined the findings of the DGAC, reviewed all available information, and determined that similar action is necessary for products of this type design that are certificated for operation in the United States. Accordingly, the final rule for this AD action has been revised to exclude the Model A300 F4–600 series airplanes from the applicability of the rule. (Model A300 C4–600 series airplanes are not typed certificated for operation in the U.S.; therefore, the FAA finds that no change to the final rule is necessary to exclude those airplanes from the applicability of the AD.)

The revised French CN also specifies the latest revisions of various referenced service bulletins. These latest revisions were cited correctly in the proposed rule. Therefore, no change to the final rule is necessary in this regard.

The date of issuance for Revision 2 of Airbus Service Bulletin A300–53–196 was specified incorrectly in paragraph (a)(5) of the proposed rule. That paragraph of the final rule has been revised to specify the correct date of March 17, 1994. Additionally, that paragraph has been revised to indicate that Service Bulletin Change Notice 1.A. amends Revision 1 of the service bulletin, rather than Revision 2.

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

There are approximately 4 Model A300 series airplanes of U.S. registry that will be affected by this proposed AD.

The recurring inspections, which were required by AD 92–02–09 and continue to be required by this AD, take approximately 196 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $2,000. Based on these figures, the cost impact on U.S. operators of the recurring inspections is estimated to be $13,760 per airplane, or $55,040 for the affected U.S. fleet.

The new recurring inspection procedures that are added by this new AD will take approximately 196 additional work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,000. Based on these figures, the added recurring inspection cost impact of this AD on U.S. operators is estimated to be $13,760 per airplane, or $55,040 for the affected U.S. fleet.

The modifications required by AD 92–02–09, which continue to be required by

this AD, take approximately 316 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost for required parts is $72,000. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $90,960 per airplane, or $363,840 for the affected U.S. fleet.

The modifications that are added by this new AD action will require approximately 1,599 additional work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost for required parts is $145,000. Based on these figures, the added modification cost impact of this AD on U.S. operators is estimated to be $240,940 per airplane, or $963,760 for the affected U.S. fleet.

Based on the figures discussed above, the cost impact of all of the requirements of this AD is estimated to be $418,880 for the recurring inspections and modifications required by AD 92–02–09, plus $1,018,800 for the additional inspections and modifications required by this AD. These cost impact figures assume that no operator has yet accomplished any of the requirements of this AD. However, it can be reasonably assumed that the majority of affected operators have already initiated the inspections and modifications required by AD 92–02–09, and many may have already initiated the additional inspections and modifications that are proposed by this new AD action.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8145 (57 FR 8257, March 9, 1992), and by adding a new airworthiness directive (AD), amendment 39–9574, to read as follows:

96–08–08 Airbus Industrie: Amendment 39–9574. Docket 94–NM–246–AD. Supersedes AD 92–02–09, Amendment 39–8145.

Applicability: All Model A300 series airplanes, excluding Model A300 B4–600 and Model A300 F4–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the airplane, accomplish the following:

(a) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after April 13, 1992 (the effective date of AD 92–02–09, amendment 39–8145), whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection. After the effective date of this AD, the actions shall only be accomplished in accordance with the latest revision of the service bulletins specified.

(1) Airbus Service Bulletin A300–53–103, Revision 4, dated June 30, 1983; or Revision 5, dated February 23, 1994;

(2) Airbus Service Bulletin A300–53–126, Revision 7, dated November 11, 1990; or Revision 8, dated September 18, 1991;

(3) Airbus Service Bulletin A300–53–146, Revision 7, dated April 26, 1991;

Note 2: Airbus Service Bulletin A300–53–146 provides for a compliance threshold of within 5 years after the date of issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990, the accomplishment of which is required by AD 85–07–09, amendment 39–5033.

(4) Airbus Service Bulletin A300–53–162, Revision 4, dated November 12, 1990; or Revision 5, dated March 17, 1994;

(5) Airbus Service Bulletin A300–53–196, Revision 1, dated November 12, 1990; as amended by Service Bulletin Change Notice 1.A., dated February 4, 1991, or Revision 2, dated March 17, 1994.

Note 3: Airbus Service Bulletin A300–53–196 provides for a compliance threshold of within 6,000 landings after accomplishment of Airbus Service Bulletin A300–53–194,

accomplishment of which is required by AD 87–04–12, amendment 39–5536.

(6) Airbus Service Bulletin A300–53–225, Revision 2, dated May 30, 1990;

(7) Airbus Service Bulletin A300–53–226, Revision 4, dated November 12, 1990; or Revision 5, dated September 7, 1991;

Note 4: Airbus Service Bulletin A300–53–226 provides for a compliance threshold of within 5 years after the issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990; but not later than 20 years after first delivery; the accomplishment of which is required by AD 90–03–08, amendment 39–6481.

(8) Airbus Service Bulletin A300–53–278, dated November 12, 1990; or Revision 1, dated March 17, 1994;

(9) Airbus Service Bulletin A300–54–045, Revision 4, dated January 31, 1990; or Revision 6, dated February 25, 1994;

(10) Airbus Service Bulletin A300–54–060, Revision 2, dated September 7, 1988, and Change Notice 2.A., dated February 13, 1990; or Revision 3, dated February 25, 1994;

(11) Airbus Service Bulletin A300–54–063, Revision 1, dated April 22, 1987, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994; and

(12) Airbus Service Bulletin A300–54–066, Revision 1, dated February 15, 1989, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994.

(b) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection.

(1) Airbus Service Bulletin A300–57–0194, Revision 2, including Appendix 1, dated August 19, 1993;

Note 5: Airbus Service Bulletin A300–57–0194 provides for a compliance threshold of prior to the accumulation of 36,000 landings for Model A300 B2 series airplanes on which the modification described in Airbus Service Bulletin A300–57–165 has not been accomplished and for Model A300 B2 series airplanes on which that modification has been accomplished prior to the accumulation of 24,000 landings on the airplane. Airbus Service Bulletin A300–57–0194 also provides for a compliance threshold of prior to the accumulation of 12,000 landings after the accomplishment of Airbus Service Bulletin A300–57–165 (for Model A300 B2 series airplanes on which the modification described in Airbus Service Bulletin A300–57–165 has been accomplished on or after the accumulation of 24,000 landings on the airplane).

(2) Airbus Service Bulletin A300–57–166, Revision 3, including Appendix 1, dated July 12, 1993;

(3) Airbus Service Bulletin A300–57–0167, Revision 1, including Appendix 1, dated May 25, 1993;

(4) Airbus Service Bulletin A300–57–0168, Revision 3, including Appendix 1, dated November 22, 1993;

(5) Airbus Service Bulletin A300–57–0180, Revision 1, dated March 29, 1993;

(6) Airbus Service Bulletin A300–57–0185, Revision 1, including Appendix 1, dated March 8, 1993; and

Note 6: The Airbus service bulletins specified in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this AD provide for a compliance threshold of prior to the accumulation of 36,000 landings (for Model A300 B2 series airplanes); 30,000 landings (for Model A300 B4–100 series airplanes); and 25,000 landings (for Model A300 B4–200 series airplanes) after the effective date of French airworthiness directive 93–154–149(B), issued on September 15, 1993.

(7) Airbus Service Bulletin A300–54–0084, dated April 21, 1994.

(c) If any discrepant condition identified in any service bulletin referenced in this AD is found during any inspection required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletin.

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

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) The actions shall be done in accordance with the Airbus service bulletins listed in Tables 1 and 2 of this paragraph. The incorporation by reference of the Airbus service bulletins listed in Table 1 were approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of April 13, 1992 (57 FR 8257, March 3, 1992).

TABLE 1

Airbus service bulletin No.	Revision level	Service bulletin date
A300–53–103	4	June 30, 1983.
A300–53–12	7	November 11, 1990.
A300–53–146	7	April 26, 1991.
A300–53–162	4	November 12, 1990.
A300–53–196	1	November 12, 1990.
Service Bulletin Change Notice 1.A. to A300–53–196	(Original)	February 4, 1991.
A300–53–225	2	May 30, 1990.
A300–53–226	4	November 12, 1990.
A300–53–226	5	September 7, 1991.
A300–53–278	(Original)	November 12, 1990.
A300–54–045	4	January 31, 1990.
A300–54–060	2	September 7, 1988.
Change Notice 2.A., to A200–54–060	(Original)	February 13, 1990.
A300–54–063	1	April 22, 1987.
Change Notice 1.A. to A300–54–063	(Original)	February 13, 1990.
A300–54–066	1	February 15, 1989.
Change Notice 1.A. to A300–54–066	(Original)	February 13, 1990.

The incorporation by reference of the Airbus service bulletins listed in Table 2 of this paragraph was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2

Airbus service bulletin and date	Page No.	Revision level shown on page	Date shown on page
A300–53–103, Revision 5, February 23, 1994.			
	1, 2, 4	5	February 23, 1994.
	3	4	June 30, 1983.
	5–36	3	December 21, 1979.
A300–53–126, Revision 8, September 18, 1991.			
	1, 3–5, 7, 8, 10, 22	8	September 18, 1992.
	11–15	7	November 11, 1990.
	2	6	October 3, 1989.
	16, 21	5	June 23, 1988.
	6	3	February 23, 1983.
	9, 19, 20	1	September 3, 1981.
	17, 18	Original	July 28, 1980.
A300–53–162, Revision 5, March 17, 1994.			
	1, 4	5	March 17, 1994.
	2, 3, 10, 11	4	November 12, 1990.
	5, 6	3	May 16, 1983.
	15	2	September 17, 1981.
	7–9, 12–14, 16–21	Original	January 20, 1981.
A300–53–278, Revision 1, March 17, 1994.			
	1, 3	1	March 17, 1994.
	2, 4–15	Original	November 12, 1990.
A300–54–045, Revision 6, February 25, 1994.			
	1, 5, 15	6	February 25, 1994.
	2, 3, 6, 10–12	5	September 30, 1991.
	4, 7–9, 13, 14, 16	4	January 31, 1990.
A300–54–060, Revision 3, February 25, 1994.			
	1–3	3	February 25, 1994.
	4–10, 13, 14, 17	2	September 7, 1988.
	11, 12, 15, 16, 18	Original	May 11, 1987.
A300–54–063, Revision 2, February 25, 1994.			
	1, 2	2	February 25, 1994.
	4, 5, 7, 8, 11, 12,15–17	1	April 22, 1987.
	3, 6, 9, 10, 13, 14	Original	April 7, 1986.
A300–54–066, Revision 2, February 25, 1994.			
	1, 4–8	2	February 25, 1994.
	2, 3, 9–10, 13, 22–24	1	February 15, 1989.
	11–12, 14–21, 25	Original	November 17, 1987.
A300–57–0194, Revision 2, (including Appendix 1), August 19, 1993.			
	1–30; Appendix pages 1, 3, 8, 9, 10	2	August 19, 1993.
	Appendix pages 2, 4, 5, 6, 7, 11	1	June 2, 1993.
A300–57–166, Revision 3, (including Appendix 1), July 12, 1993.			
	1, 2, 5, 8, 10; Appendix pages 3, 4	3	July 12, 1993.
	6, 7, 9, 13–28, 35; Appendix pages 1, 2	2	March 8, 1993.
	3, 4, 11, 12, 29–34	1	August 14, 1992.
A300–57–0167, Revision 1, (including Appendix 1), May 25, 1993.			
	1–6, 8, 9, 11, 15, 16, 19, 20, 23, 24, 27, 28, 31, 32; Appendix pages 1–4.	1	May 25, 1993.
	7, 10, 12–14, 17, 18, 21, 22, 25, 26, 29, 30, 33	Original	October 23, 1991.
A300–57–0168, Revision 3, (including Appendix 1), November 22, 1993.			
	1–5, 9, 10, 16, 20, 24, 28, 33, 34, 36, 40–49; Appendix pages 1–7.	3	November 22, 1993.
	6, 8, 11, 13–15, 17–19, 21–23, 25–27, 29–32, 35, 37–39.	2	March 8, 1993.
	7, 50–53	1	August 14, 1992.
	12	Original	October 24, 1991.
A300–57–0180, Revision 1, March 29, 1993.			
	1–12, 15–26	1	March 29, 1993.
	13, 14	Original	April 22, 1992.
A300–57–0185, Revision 1, (including Appendix 1), March 8, 1993.			
	1, 2, 4, 5, 9, 10, 22; Appendix pages 1, 2, 3	1	March 8, 1993.
	3, 6–8, 11–21	Original	August 14, 1992.
A300–54–0084, April 21, 1994	1–15	Original	April 21, 1994.

Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 29, 1996.

Issued in Renton, Washington, on April 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9336 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–245–AD; Amendment 39–9576; AD 96–09–02]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), that are applicable to Airbus Model A310 and A300–600 series airplanes. One AD currently requires repetitive operational tests of feel and limitation computers (FLC) 1 and 2; the other AD requires replacement of certain FLC's on Model A300–600 series airplanes. Those AD's were prompted by reports indicating that the elevator control operated with stiffness. The actions specified by those AD's are intended to prevent stiff operation of the elevator control and undetected loss of rudder travel limitation function, which could adversely affect the controllability of the airplane. This new amendment requires installation of new FLC's, which terminates the currently required repetitive operational tests. This amendment also revises the applicability of the rule to delete airplanes on which these new FLC's have been installed previously.

DATES: Effective May 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1996.

The incorporation by reference of Airbus All Operator Telex (AOT) 27–14, dated November 3, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 29, 1994 (59 FR 507, January 5 1994).

The incorporation by reference of Airbus Service Bulletin A300–27–6025, dated September 15, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 20, 1994 (59 FR 23133, May 5, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket 94–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1503; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–24–51, amendment 39–8783 (59 FR 507, January 5, 1994); and AD 94–09–16, amendment 39–8905 (59 FR 23133, May 5, 1994); was published in the Federal Register on January 19, 1996 (61 FR 1289). The previously-issued AD's are applicable to Airbus Model A310 and A300–600 series airplanes. The proposal proposed to require installation of new feel and limitation computers (FLC), which terminates the currently required repetitive operational tests of those units. The proposal also proposed to revise the applicability of the rule to delete airplanes on which these new FLC's have been installed previously.

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

Both commenters support the proposal.

Recently, Airbus issued Revision 1 to Service Bulletin A300–27–6026, dated August 31, 1995. This revision is essentially the same as the original release of the service bulletin (dated May 5, 1994), which was cited in the proposal as an appropriate source of service information; Revision 1, however, contains certain editorial revisions and an updated effectivity listing showing the current operators of the affected airplanes. The FAA has revised the final rule to include Revision 1 of this service bulletin as an additional source of service information.

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

The FAA estimates that approximately 55 Airbus Model A300–600 and A310 series airplanes of U.S. registry will be affected by this AD.

The operational tests of the FLC's, which were previously required by AD 93–24–51 and retained in this AD, take approximately .5 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the required operational tests is estimated to be $1,650, or $30 per airplane, per operational test.

Installation of the modified FLC's, as required by this new AD, will take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of this installation action is estimated to be $16,500, or $300 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8783 (59 FR 507, January 5, 1994), and amendment 39–8905 (59 FR 23133, May 5, 1994); and by adding a new airworthiness directive (AD), amendment 39–9576, to read as follows:

96–09–02 Airbus: Amendment 39–9576. Docket 94–NM–245–AD. Supersedes AD 93–24–51, amendment 39–8783; and AD 94–09–16, amendment 39–8905.

Applicability: Model A310 series airplanes on which Modifications 10712 and 10668 were not incorporated during production, or that are equipped with Feel and Limitation Computers (FLC) having the part numbers listed below; and Model A300–600 series airplanes on which Modifications 10713 and 10667 were not incorporated during production, or that are equipped with FLC's having the part numbers listed below; certificated in any category.

Airplane model	FLC part No.
A310	35–900–1008–009
	35–900–1009–011
	35–900–1011–011
	35–900–1011–011–A
A300–600	35–900–2000–200
	35–900–2000–201
	35–900–2002–201
	35–900–2002–201–A
	35–900–3002–302

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stiff operation of the elevator control and undetected loss of rudder travel limitation function, which may adversely affect controllability of the airplane, accomplish the following:

(a) For all airplanes: Within 7 days after January 20, 1994 (the effective date of AD 93–24–51, amendment 39–8783), perform an operational test to verify proper operation of the Feel and Limitation Computers (FLC) 1 and 2, in accordance with Airbus All Operator Telex 27–14, dated November 2, 1993.

(1) If the operational test is successful, repeat the test at intervals not to exceed 7 days until the requirements of paragraph (c) or (d) of this AD, as applicable, are accomplished.

(2) If any FLC fails the operational test, prior to further flight, accomplish the procedures specified in either paragraph (c) or (d) of this AD, as applicable.

(b) Except as provided by paragraphs (c) and (d) of this AD: As of January 20, 1994 (the effective date of AD 93–24–51, amendment 39–8783), no airplane shall be operated with an inoperative pitch feel system or inoperative pitch feel fault lights.

(c) For Model A310 series airplanes: Within 6 months after the effective date of this AD, replace or modify the currently installed FLC's in accordance with paragraphs (c)(1) and (c)(2) of this AD. Installation of FLC's that incorporate both Modifications 10668 and 10712 constitutes terminating action for the repetitive operational tests of the FLC's required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(1) Install Modification 10668 in accordance with Airbus Service Bulletin A310–27–2068, Revision 1, dated March 16, 1994, or Revision 2, dated April 19, 1995. And

(2) Install Modification 10712 in accordance with Airbus Service Bulletin A310–27–2070, dated May 5, 1994.

(d) For Model A300–600 series airplanes: Accomplish the requirements of paragraphs (d)(1), and (d)(2) of this AD. Accomplishment of these actions constitutes terminating action for the operational tests required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(1) Within 45 days after May 20, 1994 (the effective date of AD 94–09–16, amendment 39–8905), replace the FLC's, having part number (P/N) 35–900–2000–200 or 35–900–2000–201, serial numbers 755 and subsequent, with an FLC that has been previously modified, in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993, or Revision 1, dated August 31, 1994.

(2) Within 6 months after the effective date of this AD, replace or modify the FLC's in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of this AD. Installation of FLC's that incorporate both Modifications 10667 and 10713 constitutes terminating action for the repetitive operational tests of the FLC's required by paragraph (a) of this AD, and for the operating limitations required by paragraph (b) of this AD.

(i) Install Modification 10667 in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993; or Revision 1, dated August 31, 1994; or Revision 2, dated April 19, 1995. And Lori Aliment (206) 227–2115.

(ii) Install Modification 10713 in accordance with Airbus Service Bulletin A300–27–6026, dated May 5, 1994, or Revision 1, dated August 31, 1995.

Note 2: The accomplishment of paragraph (d)(1) of this AD entails installing FLC's that incorporate Modification 10667, as does the accomplishment of paragraph (d)(2)(i). Paragraph (d)(2)(i) is included in this AD because the list of part numbers of affected FLC's in paragraph (d)(1), as well as in the parallel requirement of AD 94–09–16, is not comprehensive. Additional affected FLC part numbers were identified subsequent to the issuance of AD 94–09–16; FLC's having those part numbers are subject to the requirements of paragraph (d)(2) of this AD.

(e) As of the effective date of this AD, operational tests in accordance with paragraph (a) of this AD may be discontinued on modified FLC's having the part numbers listed in Table 1 of this AD.

TABLE 1

Airplane model	FLC part No.
A310	35–900–1010–011
	35–900–1012–011
	35–900–1012–011–A
A300–600	35–900–3004–302
	35–900–2001–201
	35–900–2003–201
	35–900–2003–201–A

(f) (1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

(2) Alternative methods of compliance, approved in accordance with AD 93–24–51, amendment 398783; or AD 94–09–16, amendment 39–8905, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(h) The actions shall be done in accordance with the following Airbus Service Bulletins, having the indicated list of effective pages:

Service bulletin and date	Page No.	Revision level shown on page	Date shown on page
All Operator Telex (AOT) 27–14, November 3, 1993.	1–4	(Original)	November 3, 1993.
A310–27–2068, Revision 1, March 16, 1994.	1, 4–5, 7–8, 9–10	1	March 16, 1994.
	2–3, 6, 11	(Original)	December 13, 1993.
A310–27–2068, Revision 2, April 19, 1995.	1–2, 4–5	2	April 19, 1995.
	7–10	1	March 16, 1994.
	3, 6, 11	(Original)	December 13, 1993.
A310–27–2070, May 5, 1994	1–11	(Original)	May 5, 1994.
A300–27–6025, September 15, 1993	1–9	(Original)	September 15, 1993.
A300–27–6025, Revision 1, August 31, 1994.	1–4	1	August 31, 1994.
	5–9	(Original)	September 15, 1993.
A300–27–6025, Revision 2, April 19, 1995.	1, 3	2	April 19, 1995.
	2, 4	1	August 31, 1994.
	5–9	(Original	September 15, 1993.
A300–27–6026, May 5, 1994	1–9	(Original)	May 5, 1994.
A300–27–6026, Revision 1, August 31, 1995.	1–3	1	August 31, 1995.
	4–9	(Original)	May 5, 1994.

The incorporation by reference of Airbus All Operator Telex (AOT) 27–14, dated November 3, 1993, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 29, 1994 (59 FR 507, January 5, 1994). The incorporation by reference of Airbus Service Bulletin A300–27–6025, dated September 15, 1993, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of May 20, 1994 (59 FR 23133, May 5, 1994). The incorporation by reference of the other service bulletins, listed above, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 29, 1996.

Issued in Renton, Washington, on April 17, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9932 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–61–AD; Amendment 39–9580; AD 96–09–06]

RIN 2120–AA64

Airworthiness Directives; Brackett Aircraft Company, Inc. Air Filter Assemblies Installed on Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document supersedes airworthiness directive (AD) 95–03–02, which currently requires repetitively inspecting (visually) the air filter frame for a loose or deteriorating gasket on airplanes incorporating certain Brackett air filter assemblies and replacing any gasket found loose or deteriorated. This action requires retaining the repetitive inspection as contained in AD 95–03–02, and will incorporate additional Brackett air filter assemblies to the ''Applicability'' section of that AD. Additionally, this AD will provide a terminating action for the repetitive inspection. The Federal Aviation Administration's determination that certain additional Bracket air filter assemblies should be inspected and replaced prompted this AD action. The actions specified by this AD are intended to prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power and loss of control of the airplane.

DATES: Effective June 7, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri, 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California, 90712; telephone (310) 627–5265; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to airplanes incorporating certain Brackett air filter assemblies was published in the Federal Register on December 18, 1995 (60 FR 65038). This action would retain the requirement to repetitively inspect (visually) the air filter for a loose or deteriorated gasket and replacing any gasket found loose or deteriorated as contained in AD 95–03–02, and would incorporate additional Brackett air filter assemblies in the ''Applicability'' section of that AD. Additionally, this proposed AD would provide a terminating action for the repetitive inspection by replacing any gasket found loose or deteriorated with a gasket of improved design.

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

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

The FAA estimates that 50,000 airplanes in the U.S. registry will be affected by this AD. To accomplish this repetitive inspection and possible replacement of a damaged air filter will take approximately 1 hour per airplane for each task, and that the average labor rate is approximately $60 an hour. The air filter assembly replacement is estimated to be $40 per airplane. The

total estimated cost for this modification required at 500 hours TIS will be $100 per airplane and the total cost impact of the modification is estimated to be $5,000,000. The FAA knows that each owner/operator will have to repetitively inspect a maximum of four times before the mandatory replacement of the air filter assembly, and based on the assumption that no operator will incorporate the modification prior to the 500 hours TIS, the total cost of four repetitive inspections will be $240 per airplane plus the cost of the terminating action. Based on these figures the total cost impact of this AD on U.S. operators is estimated to be $17,000,000.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95–03–02, Amendment 39–9139, and by adding a new AD to read as follows:

96–09–06. Brackett Aircraft Company: Docket No. 95–CE–61–AD; Supersedes AD 95–03–02, Amendment 39–9139.

Applicability: Air filter assemblies presented in the following chart that utilize a neoprene gasket installed on, but not limited to the following airplanes, certificated in any category:

Note 1: These air filters could be installed as original equipment or in accordance with Supplemental Type Certificate (STC) SA71GL or STC SA693CE.

Air filter assembly	Airplanes installed on
BA–2010	Beechcraft Model 77 Airplanes.
BA–4106	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; American Champion Models Bellanca (Champion) (Aeronca) 7ACA, 7ECA, and 7FC; Aviat, Inc. Models A–1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F; Piper Models PA–22, PA–22–135, PA–22–150, PA–22–160, PA–22–108, PA–20–115, PA–20–135, PA–38–112, J–3, J3C–65, J3C–65S, PA–11, PA–11S, J4A, J4A–S, J4E, J5A, J5A–80, PA–12, PA–12S, PA–16, PA–17, PA–18, PA–18A, PA–18S, PA–18–''125'' (Army L–21A), PA–18AS–''125'', PA–18S–''125'', PA–18AS–''135'', PA–18S–''135'', PA–18–''135'', PA–18–''150'', PA–18A–''150'' (SN 18–1 through 18–6963), PA–18S–''150'', PA–19, PA–18A (Restricted), PA–18A–''135'' (Restricted), and PA–18A–''150'' (Restricted) (SN 18–1 through 18–18–6963); Taylorcraft Models BC65, BCS–65, BC12–65, BCS12–65, BC12–D, BCS12–D1, BC12D85, BCS12D85, BC12D–4–85, BCS12D–4–85, 19, F19, F21, DC–65, DCO–65, F22, F22A, F22B, and F22C; Univair Models (Alon) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC–1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, AND FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S.
BA–4106–1	Aviat, Inc. Model (Christian) A–1.
BA–4210	Gulfstream Models AA–1, AA–1A, AA–1B, AA–1C, and AA–5.
BA–5110	Cessna Models 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; Mooney Mite Model M–18C; Reims Aviation Models (Cessna) F172D, F172E, F172F, F172G, F172H, F172K, F172L, and F172M; Socata-Groupe Aerospatiale Models TB9, TB10, Rallye Series MS892A–150, MS892E–150, MS892E–150T, and MS892E–150ST; Panstwowe Zakolady Kotnicze Model PZL-Koliber 150A; Augustair, Inc. Model Varga (Morrisey) 2180.
BA–5110A	Cessna Models 172N and 172P; Reims Aviation Models (Cessna) F172N and F172P.
BA–6110	Maule Models M–4, M–4C, M–4S, M–4T, M–4–220, M–4–220C, M–4–220S, M–4–220T, M–4–180C, M–4–180S, M–4–180T, M–5–220C, M–5–235C, M–5–180C, M–5–210TC, M–6–180, M–6–235, M–7–235, MX–7–180, MXT–7–160, MXT–7–180, MX–7–160, MX–7–235, and MX–8–235; Mooney Models M20, M20A, M20B, M20C, M20D, and M20G.
BA–8910	Dynac Models (Aero Commander) 100 and 100A.

Air filter assembly	Airplanes installed on
AAF–117	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; American Champion Models Bellanca (Champion) (Aeronca) 7ACA, 7ECA, and 7FC; Aviat, Inc. Models A–1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F; Piper Models PA–22, PA–22–135, PA–22–150, PA–22–160, PA–22–108, PA–20–115, PA–20–135, PA–38–112, J–3, J3C–65, J3C–65S, PA–11, PA–11S, J4A, J4A–S, J4E, J5A, J5A–80, PA–12, PA–12S, PA–16, PA–17, PA–18, PA–18A, PA–185, PA–18–''125'' (Army L–21A), PA–18AS–''125'', PA–185–''125'', PA–18AS–''135'', PA–18S–''135'', PA–18–''135'', PA–18–''150'', PA–18A–''150'' (SN 18–1 through 18–6963), PA–18S–''150'', PA–19, PA–18A (Restricted), PA–18A–''135'' (Restricted), and PA–18A–''150'' (Restricted) (SN 18–1 through 18–6963); Taylorcraft Models BC65, BCS–65, BC12–65, BCS12–65, BC12–D, BCS12–D1, BC12D85, BCS12D85, BC12D–4–85, BCS12D–4–85, 19, F19, F21, DC–65, DCO–65, F22, F22A, F22B, and F22C; Univair Models (Alon) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC–1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, AND FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S, F22B, and F22C; Univair Models (Alon) A–2, A2–A, (Forney) F–1, F–1A, and (Mooney) M10; Swift Museum Models (Globe) GC–1A and GC–1B; Augustair Model Varga (Morrisey) 2150A; Aeronca Model 65–CA; American Champion 7ECA (with Cont. O–200–A engine) and 7ACA; Reims Aviation (Cessna) F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, F152, and FA152; Socata-Groupe Aerospatiale Models Rallye Series MS880B, MS885, and 100S.
AAF–118	Cessna Models 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; Mooney Mite Model M–18C; Reims Aviation Models (Cessna) F172D, F172E, F172F, F172G, F172H, F172K, F172L, and F172M; Socata-Groupe Aerospatiale Models TB9, TB10, Rallye Series MS892A–150, MS892E–150, MS892E–150T, and MS892E–150ST; Panstwowe Zakolady Kotnicze Model PZL-Koliber 150A; Augustair, Inc. Model Varga (Morrisey) 2180.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, or within the next 100 hours (TIS) after the last inspection accomplished in accordance with AD 95–03–02, whichever occurs first, and thereafter as indicated in the body of this AD, unless already accomplished in accordance with paragraph (c) of this AD.

To prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power, accomplish the following:

(a) Inspect (visually) the inside and outside of the air filter frame for gasket looseness, movement, or deterioration in accordance with Brackett Document I–194, dated March 16, 1994. Continue this repetitive inspection at intervals not to exceed 100 hours TIS, until accomplishment of the terminating action required in paragraph (c) of this AD.

(b) If the gasket is found to be damaged, prior to further flight, replace the air filter assembly with one having a retaining lip in accordance with the Brackett INSTALLATION INSTRUCTION SHEET corresponding to the new air filter assembly part number that is applicable to the owner/operator's particular model of airplane:

Air filter assembly	Replace with assembly	Instruction sheet
BA–2010	BA–2010 Revision A	BA–2004, dated 6/6/95.
BA–4106	BA–4106 Revision D	BA–4105, dated 6/15/95.
BA–4106–1	BA–4106–1 Revision A	RM–1, dated 7/6/95.
BA–4210	BA–4210 Revision B	BA–4205, dated 6/14/95.
BA–5110	BA–5110 Revision H	BA–5105, dated 5/8/95.
BA–5110A	BA–5110A Revision D	BA–5111, dated 5/8/95.
BA–6110	BA–6110 Revision C	BA–6105, dated 6/5/95.
BA–8910	BA–8910 Revision B	BA–8910–3, dated 6/6/95.
AAF–117	BA–4106 Revision D	BA–4105, dated 6/15/95.
AAF–118	BA–5110 Revision H	BA–5105, dated 5/8/95.

(c) Within the next 500 hours TIS after the effective date of this AD, replace the air filter assembly as a terminating action to this AD in accordance with the Brackett INSTALLATION INSTRUCTION SHEET corresponding to the new air filter assembly part number that is applicable to the owner/operator's particular model of airplane as specified in paragraph (b) of this AD.

(d) The replacement in paragraphs (b) and (c) is considered terminating action for the repetitive inspection required by this AD.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(g) Alternative methods of compliance approved in accordance with AD 95–03–02 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(h) The inspections and replacements required by this AD shall be done in accordance with Brackett Air Filter Document I–194, dated March 16, 1994 and with the Brackett INSTALLATION INSTRUCTION SHEET corresponding to the new air filter assembly part number that is applicable to the owner/operator's particular model of airplane as specified in paragraph

(b) of this AD. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(i) This amendment supersedes AD 95–03–02, Amendment 39–9139.

(j) This amendment (39–9580) becomes effective on June 7, 1996.

Issued in Kansas City, Missouri, on April 18, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10307 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–CE–21–AD; Amendment 39–9579; AD 96–09–05]

RIN 2120–AA65

Airworthiness Directives; Diamond Aircraft Industries Model DA 20–A1 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Diamond Aircraft Industries (Diamond) Model DA 20–A1 airplanes. This action requires inspecting the aft wing cavities for manufacturing debris, removing any debris found, and modifying the aileron pushrod fairings to allow them to flex. Several reports of the aileron controls becoming blocked because of manufacturing debris getting jammed between the short aileron pushrod and the pushrod exit fairing on both left and right wings prompted this action. The actions specified by this AD are intended to prevent the aileron controls from becoming blocked causing jamming between the short aileron pushrod and the pushrod fairing exit, which, if not detected and corrected, could cause loss of control of the airplane.

DATES: Effective May 17, 1996.

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

Comments for inclusion in the Rules Docket must be received on or before June 17, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Diamond Aircraft Industries, Inc., 690 Crumlin Sideroad, Ontario, Canada N5V 1S2; telephone (519) 457–4000; facsimile (519) 457–4037. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Michalik, Senior Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon, Des Plaines, Illinois 60018; telephone (847) 294–7135; facsimile (847) 294–7834.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on Diamond Model DA 20–A1 airplanes. Transport Canada advises that partial blockage of the aileron controls because of manufacturing debris jamming between the short aileron pushrod and pushrod exit fairing has occurred in several of these airplanes.

Diamond Aircraft Industries has issued service bulletin (SB) No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996, which specifies procedures for inspecting the inside of the wings for debris, removing any debris, and modifying the aileron pushrod fairings.

Transport Canada classified this service bulletin as mandatory and issued Emergency AD CF–96–07, dated March 15, 1996 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

After examining the circumstances and reviewing all available information related to the incidents described above including that received from Transport Canada, the FAA has determined that AD action should be taken in order to prevent the aileron controls from becoming blocked causing jamming between the short aileron pushrod and the pushrod fairing exit, which, if not detected and corrected, could cause loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Diamond Model DA 20–A1 airplanes of the same type design registered for operation in the United States, this AD requires visually inspecting the aft wing cavities (both wings) for any manufacturing debris or foreign objects, removing any debris found, and modifying the aileron pushrod fairings in both wings. The actions are to be accomplished in accordance with the instructions in Diamond SB No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–21–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–09–05 Diamond Aircraft Industries: Amendment 39– 9579 ; Docket No. 96–CE–21–AD.

Applicability: Model DA 20–A1 airplanes (serial numbers 10002 through 10110), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 10 hours time-in-service (TIS), unless already accomplished.

To prevent the aileron controls from becoming blocked causing jamming between the short aileron pushrod and the pushrod fairing exit, which, if not detected and corrected, could cause loss of control of the airplane, accomplish the following:

(a) Visually inspect the aft wing cavities (both wings) for any manufacturing debris or foreign objects and remove any debris found in accordance with the ACCOMPLISHMENT INSTRUCTIONS: ''-Inspection'' section of Diamond Alert Service Bulletin (SB) No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996.

(b) Modify the aileron pushrod fairings (both wings) in accordance with the ACCOMPLISHMENT INSTRUCTIONS: ''-Modification of Fairing'' section of Diamond Alert SB No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago Aircraft Certification Office.

(e) The inspection and modification required by this AD shall be done in accordance with Diamond Aircraft Industries Alert Service Bulletin No. DA20–57–02, Rev. 0, Date Issued: March 7, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Diamond Aircraft Industries, Inc., 690 Crumlin Sideroad, Ontario, Canada N5V 1S2; telephone (519) 457–4000; facsimile (519) 457–4037. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9579) becomes effective on May 17, 1996.

Issued in Kansas City, Missouri, on April 18, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10306 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for approved new animal drug applications (NADA's) from Fisons plc, Pharmaceutical Division to Alstoe, Ltd., Animal Health.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Fisons plc, Pharmaceutical Division, 12 Derby Rd., Loughborough, Leicestershire, LE11 OBB, England, has informed the agency that it has transferred the ownership of, and all rights and interests in, approved NADA's 99–667 (Iron Dextran Complex Injection) and 110–399 (Gleptoferron Injection) to Alstoe, Ltd., Animal Health, 19 Foxhill, Whissendine, Oakham, Rutland, U.K., because the firm is no longer the sponsor of any approved NADA's. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) and the

drug labeler codes in 21 CFR 522.1055 and 522.1182 to reflect those changes.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Fisons, plc, Pharmaceutical Division'' and by alphabetically adding a new entry for ''Alstoe, Ltd., Animal Health'', and in the table in paragraph (c)(2) by removing the entry for ''012525'' and by numerically adding a new entry for ''062408'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Alstoe, Ltd., Animal Health, 19 Foxhill, Whissendine, Oakham, Rutland, U.K.	062408
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
062408	Alstoe, Ltd., Animal Health, 19 Foxhill, Whissendine, Oakham, Rutland, U.K.
* * * * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1055 [Amended]

4. Section 522.1055 *Gleptoferron injection* is amended in paragraph (b) by removing ''012525'' and adding in its place ''062408''.

§ 522.1182 [Amended]

5. Section 522.1182 *Iron dextran complex injection* is amended in paragraph (a)(4)(i) by removing ''012525'' and adding in its place ''062408''.

Dated: April 15, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–10546 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–2905–C–03]

RIN 2506–AB24

Office of the Assistant Secretary for Community Planning and Development; Community Development Block Grant Program; Correction of Identified Deficiencies and Updates; Technical Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Technical correction.

SUMMARY: On November 9, 1995 (60 FR 56892), HUD published in the Federal Register a final rule that corrected identified deficiencies in the Community Development Block (CDBG) program, implemented relevant portions of the Cranston-Gonzalez National Affordable Housing Act, amended the CDBG conflict of interest provisions, implemented statutory changes from the Housing and community Development Act of 1987 and the Appropriations Act of 1989, and provided criteria for performance reviews and timely expenditure of funds under the CDBG program. This document corrects minor errors in that final rule.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Deirdre Maguire-Zinni, Director, Entitlement Communities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–1577. (This telephone number is not toll-free.) Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Corrections to November 9, 1995 Final Rule

On November 9, 1995 (60 FR 56812), HUD published a final rule in the

Federal Register that amended the regulations for the Community Development Block Grant (CDBG) program in 24 CFR part 570. As described in the preamble (60 FR 65892), the November 9, 1995 final rule represented the final rulemaking for several prior rules, and it reflected the President's regulatory reinvention efforts by updating the regulations to conform with significant statutory changes to the CDBG program. More specifically, the November 9, 1995 final rule corrected identified deficiencies in the CDBG program, implemented relevant portions of the Cranston-Gonzalez National Affordable Housing Act, amended the CDBG conflict of interest provisions, implemented statutory changes from the Housing and Community Development Act of 1987 and the Appropriations Act of 1989, and provided criteria for performance reviews and timely expenditure of funds under the CDBG program. In reviewing this final rule in preparation for its codification in the Code of Federal Regulations (CFR), HUD discovered several minor errors.

In the November 9, 1995 final rule (60 FR 56912), HUD amended § 570.208 by adding and redesignating certain paragraphs. However, the rule inadvertently did not make the necessary conforming change to the definition of ''*Income*'' in § 570.3, which contains a reference to the CDBG regulations on resident income surveys (60 FR 56909). The definition incorrectly refers to § 570.208(a)(1)(iv) for those regulations, but the November 9, 1995 rule redesignated this paragraph as paragraph (a)(1)(vi). Therefore, this document corrects the definition of ''*Income*'' in § 570.3 to refer correctly to § 570.208(a)(1)(vi).

Similarly, the first sentence of the newly redesignated § 570.208(a)(1)(vi) contains an internal reference to paragraph (a)(1)(v). However, the November 9, 1995 rule redesignated paragraph (a)(1)(v) as (a)(1)(vii). Therefore, this document corrects § 570.208(a)(1)(vi) to refer correctly to paragraph (a)(1)(vii).

The November 9, 1995 final rule removed the obsolete reference in § 570.200(d)(1) to a compensation level of General Schedule (GS)–18, replacing it with a correct reference to Level IV of the Executive Schedule (60 FR 56910). The General Schedule and the Executive Schedule indicate certain levels of compensation for Federal employees. However, while the November 9, 1995 final rule updated § 570.200(d)(1), it inadvertently failed to update paragraph (d)(2) of that section. Therefore, this document corrects § 570.200(d)(2) regarding the correct level of consultant compensation.

In a proposed rule published on March 28, 1990 (55 FR 11556), HUD proposed to add a new paragraph (f) to § 570.202 that would implement section 510 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988), authorizing the substantial reconstruction of housing owned and occupied by low- and moderate-income persons under certain circumstances. However, in the November 9, 1995 final rule (60 FR 56902), HUD explained that it would not be finalizing the proposed § 570.202(f) at that time due to pending legislative proposals that would make this change unnecessary. Instead, the November 9, 1995 final rule used paragraph (f) to contain the authority for evaluating and reducing lead-based paint hazards. However, HUD failed to remove two incorrect references, in §§ 570.200(e) and 570.506(c), to paragraph (f) as it had been proposed for substantial reconstruction. This document removes those incorrect references.

This document also removes two references to ''enumeration districts,'' replacing them with the correct term ''block numbering areas.'' The Census Bureau now uses the term ''block numbering area,'' and HUD recognized the use of this term in its CDBG economic development final rule (January 5, 1995; 60 FR 1922, 1946) in § 570.208(a)(4)(iv). However, HUD used the incorrect term ''enumeration districts'' in § 570.208(a)(1)(iii) (B) and (D) of its November 9, 1995 final rule. therefore, this document corrects these paragraphs.

The effective date of this correction, December 11, 1995, reflects the effective date of the November 9, 1995 final rule (60 FR 56892).

II. Housing Opportunity Program Extension Act of 1996

The November 9, 1995 final rule updated § 570.201(n), by providing that CDBG funds could be used to provide direct homeownership assistance to low- and moderate-income households until October 1, 1995 (60 FR 56911). Although the eligibility for this activity had expired by the date the Department published the final rule, the Department maintained the provision in § 570.201(n), hoping that Congress would respond to the Department's request to reinstate the activity's eligibility (60 FR 56905).

This document corrects § 570.201(n) by removing the obsolete reference to the expiration date. Section 3(a) of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120; approved March 28, 1996) renewed the eligibility of using CDBG funds to provide direct homeownership assistance during Fiscal Year 1996 (October 1, 1995 through September 30, 1996). However, rather than simply changing the date, which will again become obsolete and require additional regulatory amendments, this document corrects the section to provide that direct homeownership assistance is eligible ''subject to statutory authority.'' In an effort to keep grantees informed, the Department will attempt to publish a notice in the Federal Register as quickly as possible if Congress does not reinstate this authority.

III. Other Corrections and Conforming Changes

The Department has also discovered several technical corrections and changes to other sections of the regulations that it should have included in the November 9, 1995 final rule. The Department will publish a separate technical amendment to correct these sections. The Department cannot include such corrections and changes in this technical correction document, because they involve sections that the Department did not otherwise amend in the November 9, 1995 final rule.

IV. Clarification Regarding ''Extent of Growth Lag''

The November 9, 1995 final rule revised the definition of ''*Extent of growth lag*'' in § 570.3 in an effort to reflect an amendment to section 102(a)(12) of the Housing and Community Development Act of 1974 (the Act). This amendment, in section 904 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), provides instructions on adjusting population in the event of annexation. In the November 9, 1995 final rule, the Department referred to the 1990 Census in the erroneous belief that the Act requires the most recent census data available when adjusting the ''extent of growth lag'' calculation (see 60 FR 56905).

However, the Department has reconsidered its interpretation of the Act and concludes that the Act's definition of ''*Extent of growth lag*'' requires the use of data from the 1980 Census, not the most recent census data available, in cases where boundaries have changed as a result of annexation. No further changes to the regulations are necessary, however, since the Department already removed the incorrect language from the definition in the CDBG Streamlining final rule,

published on March 20, 1996 (61 FR 11474). Section 570.3 now refers directly to section 102(a)(12) of the Act for the definition of ''*Extent of growth lag*''.

Accordingly, FR Doc. 95–27488, a final rule published in the Federal Register on November 9, 1995 (60 FR 56892), is corrected to read as follows:

1. On page 56909, in the third column, in § 570.3, the second sentence of the definition of the term ''*Income*'' is corrected to read as follows.

§ 570.3 Definitions.

* * * * *

Income. * * * The option to choose a definition does not apply to activities that qualify under § 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.208(a)(1)(vi). * * *

* * * * *

2. On page 56910, in the third column, in § 570.200, paragraph (d)(2) is corrected, and the third sentence of paragraph (e) is corrected, to read as follows:

§ 570.200 General policies.

* * * * *

(d) * * *

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36, and are not subject to the compensation limitation of Level IV of the Executive Schedule.

(e) * * * A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, and 570.309.

* * * * *

2a. On page 56911, in the second column, in instruction paragraph 8., the words ''the introductory text of paragraph (n)'' are corrected to read ''paragraph (n)''.

3. On page 56911, in the third column, in § 570.201, paragraph (n) is corrected to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(n) *Homeownership assistance.* Subject to statutory authority, CDBG funds may be used to provide direct homeownership assistance to low- and moderate-income households, as provided in section 105(a)(25) of the Act.

* * * * *

4. On page 56912, in the second and third columns, in § 570.208, the second sentence of paragraph (a)(1)(iii)(B), the second sentence of paragraph (a)(1)(iii)(D), and the first sentence of paragraph (a)(1)(vi) are corrected to read as follows:

§ 570.208 Ineligible activities.

(a) * * *

(1) * * *

(iii) * * *

(B) * * * As available, the recipient must provide information that identifies the total number of calls actually received over the preceding 12-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, block numbering areas, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. * * *

* * * * *

(D) * * * For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or block numbering areas), the total number of persons and the total number of low- and moderate-income persons within each census division, the percentage of low- and moderate-income persons within the service area, and the total cost of the system.

* * * * *

(vi) In determining whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by an activity to qualify under paragraphs (a)(1) (i), (ii), or (vii) of this section, the most recently available decennial census information must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. * * *

* * * * *

5. On page 56916, in the first column, in § 570.506, paragraph (c) is corrected to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(c) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, and 570.309.

* * * * *

Dated: April 18, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96–10240 Filed 4–26–96; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Real Estate Settlement Procedures Act; Streamlining Final Rule; Correction

24 CFR Part 3500

[Docket No. FR–4023–C–02]

RIN 2502–AG69

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Correction to final rule.

SUMMARY: On March 26, 1996 (61 FR 13232), the Department published a final rule streamlining its regulations under the Real Estate Settlement Procedures Act (RESPA). The preamble of the rule explained that, as part of this streamlining, the Department was removing from codification certain appendices. Instead, the material in these appendices would be made available from the Department as Public Guidance Documents. Because of an error in the amendatory instructions, the directions to remove the appendices as specified in the preamble were omitted from the rule text. This correction publishes those instructions.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 5241, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–4560 (this is not a toll-free number); or for legal questions: Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Grant E. Mitchell, Senior Attorney for RESPA, Room 9262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–1550 (this is not a toll-free number). For hearing- or speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 96–6511, Real Estate Settlement Procedures Act; Streamlining Final Rule (FR–4023–F–01), published on March 26, 1996, is corrected by adding on page 13251, in

the first column, a new amendatory instruction 6 to read as follows:

Appendix G (Consisting of Appendices G–1 and G–2), Appendix H (Consisting of Appendices H–1 and H–2), Appendix I (Consisting of Appendices I–1, I–2, I–3, I–4, I–5, I–6, I–7, and I–8), Appendix J (Consisting of Appendices J–1 and J–2), Appendix K (Consisting of Appendices K–1 Through K–4), Appendix L, Appendix M—[Removed]

6. Appendix G (consisting of Appendices G–1 and G–2), Appendix H (consisting of Appendices H–1 and H–2), Appendix I (consisting of Appendices I–1, I–2, I–3, I–4, I–5, I–6, I–7, and I–8), Appendix J (consisting of Appendices J–1 and J–2), Appendix K (consisting of Appendices K–1 through K–4), Appendix L, and Appendix M are removed.

Authority: 12 U.S.C. 2601 *et seq.;* 42 U.S.C. 3535(d).

Dated: April 19, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96–10533 Filed 4–26–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8667]

RIN 1545–AT33

Lease Term; Exchanges of Tax-Exempt Use Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the lease term of tax-exempt use property. The final regulations also provide guidance regarding certain like-kind exchanges among related parties involving tax-exempt use property.

DATES: These regulations are effective April 29, 1996.

For dates of applicability see ''Effective dates'' section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and §§ 1.168(h)–1(e) and 1.168(i)–2(g).

FOR FURTHER INFORMATION CONTACT: John M. Aramburu of the Office of Assistant Chief Counsel (Income Tax and Accounting) at (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under section 168 of the Internal Revenue Code of 1986 (Code). The regulations provide guidance relating to certain exchanges of tax-exempt use property among related parties and the determination of lease term under certain circumstances. Proposed regulations (IA–18–95) were published in the Federal Register on April 21, 1995 (60 FR 19868). The IRS received a number of comments on the proposed regulations. A scheduled public hearing was cancelled because there were no requests to testify. After consideration of all the comments, the regulations proposed by IA–18–95 are adopted as revised by this Treasury decision. The revisions are discussed below.

Overview

Under section 168, property used in a trade or business, or held for the production of income, generally may be depreciated under the general depreciation system (GDS) using accelerated methods over relatively short recovery periods. However, certain property, including ''tax-exempt use property,'' must be depreciated under the alternative depreciation system (ADS) described in section 168(g). Section 168(h)(1)(A) generally defines tax-exempt use property to include tangible property (other than nonresidential real property) leased to a tax-exempt entity. For this purpose, certain foreign entities and persons are considered tax-exempt entities.

Congress subjected tax-exempt use property to a slower depreciation system than GDS to prevent tax-exempt entities from indirectly claiming tax benefits (in the form of reduced rentals) ''from investment incentives for which they [would] not qualify directly, and effectively gain[ing] the advantage of taking income tax deductions and credits while having no corresponding liability to pay any tax on income from the property.'' S. Rep. No. 169 (Vol. 1), 98th Cong., 2d Sess. 123 (1984).

In particular, section 168(g)(3)(A) provides that tax-exempt use property subject to a lease must be depreciated using the straight-line method over a period equal to the greater of the property's class life or 125 percent of the lease term. Under section 168(i)(3), options to renew generally must be taken into account in determining the lease term and the periods of certain successive leases must be aggregated with the period of an original lease.

Lease Term

The proposed regulations generally include an additional period of time during which a lessee may not continue to be the lessee in the lease term if the lessee (or a related person) has agreed that one or both of them will or could be obligated to make a payment of rent, or a payment in the nature of rent, with respect to such period. The arrangements described in the proposed regulations are frequently referred to as ''replacement leases.'' One commentator requested that the portion of the proposed regulations dealing with replacement leases be withdrawn. The commentator argued that Congress would not have intended that the term of the replacement lease be taken into account in determining lease term. The IRS and Treasury believe that the proposed regulations are consistent with Congressional intent, and thus the final regulations retain this portion of the proposed regulations.

Another commentator indicated that application of the proposed regulations was unclear where property is subject to multiple leases, possibly involving multiple parties. The final regulations clarify that if property is subject to more than one lease (including any sublease) entered into as part of a single transaction (or a series of related transactions), the lease term shall include all periods described in one or more of such leases. Thus, for example, if one taxable corporation leases property to another taxable corporation for a 20-year term and, as part of the same transaction, the lessee subleases the property to a tax-exempt entity for a 10-year term, then the lease term of the property is 20 years, and during the period of tax-exempt use it must be depreciated using the straight line method over the greater of its class life or 25 years.

Finally, the final regulations provide that lease term also includes any period during which the lessee (or a related party) has assumed or retained any risk of loss with respect to the property (including, for example, by holding a note secured by the property). The IRS and Treasury believe that such an arrangement is generally similar to the replacement leases described in the proposed regulations. As in the case of a replacement lease, the lessee is assuming risk with respect to the value of the property at the termination of the initial lease term. In addition, the term of the debt provides an objective indication that the useful life of the property exceeds the original term of the lease, in which case failure to include the term of the debt in the lease term

could allow a tax-exempt lessee to benefit from depreciation deductions that exceed economic depreciation, which would be contrary to Congressional intent.

Like-kind Exchanges

The proposed regulations also address certain transactions between related persons that are designed to circumvent the tax-exempt use property rules through the use of a like-kind exchange described in section 1031. The proposed regulations provide that property (tainted property) transferred directly or indirectly to the taxpayer by a related person (the related party) as part of, or in connection with, a transaction described in section 1031 where the related party receives tax-exempt use property (related tax-exempt use property) will, if the tainted property is subject to an allowance for depreciation, be treated in the same manner as the related tax-exempt use property for purposes of determining the allowable depreciation deduction under section 167(a). Under this rule, the tainted property is depreciated by the taxpayer over the remaining recovery period of, and using the same depreciation method and convention as that of, the related tax-exempt use property.

The rule applies only with respect to direct or indirect transfers of property involving related persons where (1) section 1031 applies to any party, and (2) a principal purpose of the transfer is to avoid or limit the application of ADS. For purposes of this rule, a person is related to another person if they bear a relationship specified in section 267(b) or section 707(b)(1). An exchange between members of a consolidated group in a taxable year beginning on or after July 12, 1995, will not be subject to this provision because section 1031 does not apply to intercompany transactions. See § 1.1502–80(f).

No comments were received with respect to the treatment of like-kind exchanges under the proposed regulations. Accordingly, these provisions of the proposed regulations are adopted without modification by this Treasury decision.

Effective Dates

The definition of lease term is generally applicable to leases entered into on or after April 20, 1995. The changes made by the final regulations apply to leases entered into after April 26, 1996. The treatment of like-kind exchanges is applicable to transfers made on or after April 20, 1995. No inference is intended by these effective dates as to the treatment of any transaction under prior law. The regulations do not preclude the application of common law doctrines (such as the substance over form or step transaction doctrines) and other authorities to transactions described in the regulations (e.g., as to whether a particular transaction should be characterized as a lease or a conditional sale for federal income tax purposes).

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 John M. Aramburu of the Office of Assistant Chief Counsel (Income Tax and Accounting). 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 is amended by adding entries in numerical order to read as follows:

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

Section 1.168(h)–1 also issued under 26 U.S.C. 168. * * *

Section 1.168(i)–2 also issued under 26 U.S.C. 168. * * *

Par. 2. Sections 1.168(h)–1 and 1.168(i)–2 are added to read as follows:

§ 1.168(h)–1 Like-kind exchanges involving tax-exempt use property.

(a) *Scope.* (1) This section applies with respect to a direct or indirect transfer of property among related persons, including transfers made through a qualified intermediary (as defined in § 1.1031(k)–1(g)(4)) or other unrelated person, (a transfer) if—

(i) Section 1031 applies to any party to the transfer or to any related transaction; and

(ii) A principal purpose of the transfer or any related transaction is to avoid or limit the application of the alternative depreciation system (within the meaning of section 168(g)).

(2) For purposes of this section, a person is related to another person if they bear a relationship specified in section 267(b) or section 707(b)(1).

(b) *Allowable depreciation deduction for property subject to this section*—(1) *In general.* Property (tainted property) transferred directly or indirectly to a taxpayer by a related person (related party) as part of, or in connection with, a transaction in which the related party receives tax-exempt use property (related tax-exempt use property) will, if the tainted property is subject to an allowance for depreciation, be treated in the same manner as the related tax-exempt use property for purposes of determining the allowable depreciation deduction under section 167(a). Under this paragraph (b), the tainted property is depreciated by the taxpayer over the remaining recovery period of, and using the same depreciation method and convention as that of, the related tax-exempt use property.

(2) *Limitations*—(i) *Taxpayer's basis in related tax-exempt use property.* The rules of this paragraph (b) apply only with respect to so much of the taxpayer's basis in the tainted property as does not exceed the taxpayer's adjusted basis in the related tax-exempt use property prior to the transfer. Any excess of the taxpayer's basis in the tainted property over its adjusted basis in the related tax-exempt use property prior to the transfer is treated as property to which this section does not apply. This paragraph (b)(2)(i) does not apply if the related tax-exempt use property is not acquired from the taxpayer (e.g., if the taxpayer acquires the tainted property for cash but section 1031 nevertheless applies to the related party because the transfer involves a qualified intermediary).

(ii) *Application of section 168(i)(7).* This section does not apply to so much of the taxpayer's basis in the tainted property as is subject to section 168(i)(7).

(c) *Related tax-exempt use property.* (1) For purposes of paragraph (b) of this section, related tax-exempt use property includes—

(i) Property that is tax-exempt use property (as defined in section 168(h)) at the time of the transfer; and

(ii) Property that does not become tax-exempt use property until after the transfer if, at the time of the transfer, it

was intended that the property become tax-exempt use property.

(2) For purposes of determining the remaining recovery period of the related tax-exempt use property in the circumstances described in paragraph (c)(1)(ii) of this section, the related tax-exempt use property will be treated as having, prior to the transfer, a lease term equal to the term of any lease that causes such property to become tax-exempt use property.

(d) *Examples.* The following examples illustrate the application of this section. The examples do not address common law doctrines or other authorities that may apply to recharacterize or alter the effects of the transactions described therein. Unless otherwise indicated, parties to the transactions are not related to one another.

Example 1. (i) X owns all of the stock of two subsidiaries, B and Z. X, B and Z do not file a consolidated federal income tax return. On May 5, 1995, B purchases an aircraft (*FA*) for $1 million and leases it to a foreign airline whose income is not subject to United States taxation and which is a tax-exempt entity as defined in section 168(h)(2). On the same date, Z owns an aircraft (*DA*) with a fair market value of $1 million, which has been, and continues to be, leased to an airline that is a United States taxpayer. Z's adjusted basis in DA is $0. The next day, at a time when each aircraft is still worth $1 million, B transfers FA to Z (subject to the lease to the foreign airline) in exchange for DA (subject to the lease to the airline that is a United States taxpayer). Z realizes gain of $1 million on the exchange, but that gain is not recognized pursuant to section 1031(a) because the exchange is of like-kind properties. Assume that a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system. Following the exchange, Z has a $0 basis in FA pursuant to section 1031(d). B has a $1 million basis in DA.

(ii) B has acquired property from Z, a related person; Z's gain is not recognized pursuant to section 1031(a); Z has received tax-exempt use property as part of the transaction; and a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system. Accordingly, the transaction is within the scope of this section. Pursuant to paragraph (b) of this section, B must recover its $1 million basis in DA over the remaining recovery period of, and using the same depreciation method and convention as that of, FA, the related tax-exempt use property.

(iii) If FA did not become tax-exempt use property until after the exchange, it would still be related tax-exempt use property and paragraph (b) of this section would apply if, at the time of the exchange, it was intended that FA become tax-exempt use property.

Example 2. (i) X owns all of the stock of two subsidiaries, B and Z. X, B and Z do not file a consolidated federal income tax return. B and Z each own identical aircraft. B's aircraft (*FA*) is leased to a tax-exempt entity as defined in section 168(h)(2) and has a fair market value of $1 million and an adjusted basis of $500,000. Z's aircraft (*DA*) is leased to a United States taxpayer and has a fair market value of $1 million and an adjusted basis of $10,000. On May 1, 1995, B and Z exchange aircraft, subject to their respective leases. B realizes gain of $500,000 and Z realizes gain of $990,000, but neither person recognizes gain because of the operation of section 1031(a). Moreover, assume that a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system.

(ii) As in *Example 1,* B has acquired property from Z, a related person; Z's gain is not recognized pursuant to section 1031(a); Z has received tax-exempt use property as part of the transaction; and a principal purpose of the transfer of DA to B or of FA to Z is to avoid the application of the alternative depreciation system. Thus, the transaction is within the scope of this section even though B has held tax-exempt use property for a period of time and, during that time, has used the alternative depreciation system with respect to such property. Pursuant to paragraph (b) of this section, B, which has a substituted basis determined pursuant to section 1031(d) of $500,000 in DA, must depreciate the aircraft over the remaining recovery period of FA, using the same depreciation method and convention. Z holds tax-exempt use property with a basis of $10,000, which must be depreciated under the alternative depreciation system.

(iii) Assume the same facts as in paragraph (i) of this *Example 2,* except that B and Z are members of an affiliated group that files a consolidated federal income tax return. Of B's $500,000 basis in DA, $10,000 is subject to section 168(i)(7) and therefore not subject to this section. The remaining $490,000 of basis is subject to this section. But see § 1.1502–80(f) making section 1031 inapplicable to intercompany transactions occurring in consolidated return years beginning on or after July 12, 1995.

(e) *Effective date.* This section applies to transfers made on or after April 20, 1995.

§ 1.168(i)–2 Lease term.

(a) *In general.* For purposes of section 168, a lease term is determined under all the facts and circumstances. Paragraph (b) of this section and § 1.168(j)–1T, Q&A 17, describe certain circumstances that will result in a period of time not included in the stated duration of an original lease (additional period) nevertheless being included in the lease term. These rules do not prevent the inclusion of an additional period in the lease term in other circumstances.

(b) *Lessee retains financial obligation*—(1) *In general.* An additional period of time during which a lessee may not continue to be the lessee will nevertheless be included in the lease term if the lessee (or a related person)—

(i) Has agreed that one or both of them will or could be obligated to make a payment of rent or a payment in the nature of rent with respect to such period; or

(ii) Has assumed or retained any risk of loss with respect to the property for such period (including, for example, by holding a note secured by the property).

(2) *Payments in the nature of rent.* For purposes of paragraph (b)(1)(i) of this section, a payment in the nature of rent includes a payment intended to substitute for rent or to fund or supplement the rental payments of another. For example, a payment in the nature of rent includes a payment of any kind (whether denominated as supplemental rent, as liquidated damages, or otherwise) that is required to be made in the event that—

(i) The leased property is not leased for the additional period;

(ii) The leased property is leased for the additional period under terms that do not satisfy specified terms and conditions;

(iii) There is a failure to make a payment of rent with respect to such additional period; or

(iv) Circumstances similar to those described in paragraph (b)(2) (i), (ii), or (iii) of this section occur.

(3) *De minimis rule.* For the purposes of this paragraph (b), obligations to make de minimis payments will be disregarded.

(c) *Multiple leases or subleases.* If property is subject to more than one lease (including any sublease) entered into as part of a single transaction (or a series of related transactions), the lease term includes all periods described in one or more of such leases. For example, if one taxable corporation leases property to another taxable corporation for a 20-year term and, as part of the same transaction, the lessee subleases the property to a tax-exempt entity for a 10-year term, then the lease term of the property for purposes of section 168 is 20 years. During the period of tax-exempt use, the property must be depreciated under the alternative depreciation system using the straight line method over the greater of its class life or 25 years (125 percent of the 20-year lease term).

(d) *Related person.* For purposes of paragraph (b) of this section, a person is related to the lessee if such person is described in section 168(h)(4).

(e) *Changes in status.* Section 168(i)(5) (changes in status) applies if an additional period is included in a lease term under this section and the leased property ceases to be tax-exempt use property for such additional period.

(f) *Example.* The following example illustrates the principles of this section. The example does not address common law doctrines or other authorities that may apply to cause an additional period to be included in the lease term or to recharacterize a lease as a conditional sale or otherwise for federal income tax purposes. Unless otherwise indicated, parties to the transactions are not related to one another.

Example. Financial obligation with respect to an additional period—(i) *Facts.* X, a taxable corporation, and Y, a foreign airline whose income is not subject to United States taxation, enter into a lease agreement under which X agrees to lease an aircraft to Y for a period of 10 years. The lease agreement provides that, at the end of the lease period, Y is obligated to find a subsequent lessee (replacement lessee) to enter into a subsequent lease (replacement lease) of the aircraft from X for an additional 10-year period. The provisions of the lease agreement require that any replacement lessee be unrelated to Y and that it not be a tax-exempt entity as defined in section 168(h)(2). The provisions of the lease agreement also set forth the basic terms and conditions of the replacement lease, including its duration and the required rental payments. In the event Y fails to secure a replacement lease, the lease agreement requires Y to make a payment to X in an amount determined under the lease agreement.

(ii) *Application of this section.* The lease agreement between X and Y obligates Y to make a payment in the event the aircraft is not leased for the period commencing after the initial 10-year lease period and ending on the date the replacement lease is scheduled to end. Accordingly, pursuant to paragraph (b) of this section, the term of the lease between X and Y includes such additional period, and the lease term is 20 years for purposes of section 168.

(iii) *Facts modified.* Assume the same facts as in paragraph (i) of this *Example,* except that Y is required to guarantee the payment of rentals under the 10-year replacement lease and to make a payment to X equal to the present value of any excess of the replacement lease rental payments specified in the lease agreement between X and Y, over the rental payments actually agreed to be paid by the replacement lessee. Pursuant to paragraph (b) of this section, the term of the lease between X and Y includes the additional period, and the lease term is 20 years for purposes of section 168.

(iv) *Changes in status.* If, upon the conclusion of the stated duration of the lease between X and Y, the aircraft either is returned to X or leased to a replacement lessee that is not a tax-exempt entity as defined in section 168(h)(2), the subsequent method of depreciation will be determined pursuant to section 168(i)(5).

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to leases entered into on or after April 20, 1995.

(2) *Special rules.* Paragraphs (b)(1)(ii) and (c) of this section apply to leases entered into after April 26, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: March 26, 1996.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 96–10395 Filed 4–26–96; 8:45 am]
BILLING CODE 4830–01–U

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[Notice No. 821]

Removal of Certain Restrictions on Importation of Defense Articles and Defense Services From the Russian Federation

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Statement of policy.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is announcing (1) that it will remove the Russian Federation from the list of countries from which defense articles and defense services may not be imported and (2) implementation of restrictions on the importation of certain firearms and ammunition located or manufactured in the Russian Federation or previously manufactured in the Soviet Union in accordance with an agreement between the United States and the Russian Federation and the guidance of the Secretary of State regarding matters affecting world peace and the external security and foreign policy of the United States as expressed in a letter dated April 5, 1996.

DATES: Removal of the Russian Federation from the list of proscribed countries was effective April 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Jo Hughes, Chief, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8320).

SUPPLEMENTARY INFORMATION: By letter dated April 5, 1996, the Secretary of State advised the Director, ATF, that, under the authority of Section 38 of the Arms Export Control Act (AECA), 22 U.S.C. § 2778, it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services destined for or originating in the Russian Federation (Russia). The State Department has requested that the Director implement this decision immediately with respect to his authority over imports under Section 38 of the AECA and amend the regulation at 27 CFR 47.52(a) to reflect this change in foreign policy.

The State Department also advised that the President decided to negotiate an agreement with Russia concerning the export of munitions. Carrying out such an agreement and keeping out unacceptable types of munitions from the United States are U.S. foreign policy concerns. In addition, the State Department informed ATF that an Agreement between the Government of the United States of America and the Government of the Russian Federation on exports of firearms and ammunition from the Russian Federation to the United States of America (the Agreement) was signed on April 3, 1996, and entered into force on that date. On this basis, the State Department advised the Department of the Treasury that Treasury should exercise the authority delegated to it under Section 38 of the AECA by denying applications to import firearms and ammunition located or manufactured in Russia or previously manufactured in the Soviet Union that would be inconsistent with the Agreement. The State Department advised Treasury that the foregoing did not apply to conditional imports of firearms and ammunition which would serve as samples for purposes of determining whether the items are of a type authorized for importation under the Agreement.

The Agreement provides that Russia shall not allow the exportation to the United States of (1) firearms other than those specified on Annex A to the Agreement; and (2) ammunition specified in Annex B to the Agreement. Nine handguns and 29 rifles are listed in Annex A. One type of ammunition is listed in Annex B. The Agreement also provides that new types of firearms and ammunition manufactured after February 9, 1996, may not be exported by Russia under the Agreement unless the parties agree in writing to amend the Agreement accordingly. The Agreement is published in its entirety at the end of this notice.

ATF has taken or will take the following actions to implement the above:

(1) ATF will remove Russia from the list of countries from which defense articles and defense services may not be imported into the United States. A Treasury Decision amending § 47.52(a) to reflect this action will be published in the near future.

(2) ATF will approve applications to import defense articles and defense services from Russia in accordance with the guidance contained in the April 5, 1996, letter from the Department of State. Consistent with that letter, only firearms listed in Annex A of the Agreement will be approved for importation from Russia. Surplus military curio or relic firearms manufactured or located in Russia or previously manufactured in the Soviet Union will not be approved for importation under 27 CFR 47.52(d) unless the firearms are listed in Annex A of the Agreement. Applications to import from Russia ammunition listed in Annex B will not be approved.

(3) ATF will not approve applications to import from any country or territory firearms and ammunition manufactured in Russia or previously manufactured in the Soviet Union that would be inconsistent with the the Agreement.

(4) Firearms that are subject to the AECA and the Agreement include any nonautomatic, semiautomatic, or automatic firearm to caliber .50 (12.7mm) inclusive, other than a sporting shotgun, and any component or part for such firearms.

(5) Prior to approval of an application to import firearms and ammunition located or manufactured in Russia or previously manufactured in the Soviet Union, ATF may require the conditional importation of a sample of the firearm or ammunition for examination to determine whether it is of a type that may be approved for importation consistent with the Agreement.

(6) For purposes of the AECA, the term ''United States'' is defined in 27 CFR 47.11 and includes Customs bonded warehouses (CBWs) and foreign trade zones (FTZs). Article 8 of the Agreement provides that the Agreement shall not affect the fulfillment of contracts with respect to firearms or ammunition entered or withdrawn from warehouse for consumption in the United States on or before February 9, 1996. This means that firearms and ammunition entered into a CBW or FTZ prior to February 9, 1996, that otherwise could not be imported under the restrictions set out above have been imported within the meaning of Section 38 of the AECA and are not subject to such restrictions.

(7) Permits authorizing the importation of firearms and ammunition whose exportation to the United States is prohibited under the Agreement, with the exception of those to which paragraph (6) are applicable, are hereby revoked. As required by 27 CFR 47.44(d), the revoked import permits must be returned to the Firearms and Explosives Imports Branch, ATF, immediately. Pursuant to 27 CFR 47.44(c), holders of such permits may, within 30 days of the date of publication of this notice in the Federal Register, make a written request for an opportunity to present additional information and to have a full review by the Director. Any such requests will be referred to the Department of State, as appropriate, for its guidance on matters affecting world peace and the external security and foreign policy of the United States.

Compliance With 5 U.S.C. Chapter 8

In accordance with 5 U.S.C. 808(2), ATF has found that, consistent with guidance from the Department of State and for reasons of the foreign policy of the United States, notice and public procedure under 5 U.S.C. 801 are unnecessary, impracticable, and contrary to the public interest.

Text of Agreement; Agreement Between the Government of the United States of America and the Government of the Russian Federation on Exports of Firearms and Ammunition From the Russian Federation to the United States of America

The Government of the United States of America and the Government of the Russian Federation, hereinafter referred to as the ''Parties,''

In the context of removing a number of existing restrictions on the importation into the United States of firearms and ammunition from the Russian Federation;

Recognizing the foreign policy interest of the Parties in expanding trade in firearms and ammunition between the United States and the Russian Federation in a manner compatible with domestic security;

Recognizing the intention of the United States of America that United States policy with respect to access to the United States market for firearms and ammunition be applied in a nondiscriminatory manner to all of its trading partners;

Wishing to promote trade and cooperation on an equal and mutually beneficial basis between the United States and the Russian Federation and to expand economic opportunities in the two countries;

Have agreed as follows:

Article 1: Definitions

The following definitions apply to this Agreement:

(a) ''Ammunition'' means any ammunition, cartridge case, primer, bullet, or propellent powder designed for use in any firearm.

(b) ''Firearm'' means any nonautomatic, semiautomatic, or automatic firearm, to caliber .50 (12.7 mm) inclusive other than a shotgun, or any component or part for such firearm.

(c) ''New model ammunition'' means a type of ammunition the manufacture of which began after February 9, 1996.

(d) ''New model firearm'' means a type of firearm the manufacture of which began after February 9, 1996.

Article 2: Firearms and Ammunition Export Prohibitions

The Government of the Russian Federation shall not allow the exportation from the Russian Federation, destined to the United States, of the following firearms and ammunition:

(a) any firearm, including any new model firearm, except a firearm described in Annex A to this Agreement;

(b) ammunition described in Annex B to this Agreement; and

(c) new model ammunition.

Article 3: Consultations

(a) Each Party shall provide to the other Party, on request, information necessary for the implementation and enforcement of this Agreement. A Party shall keep confidential all information received from the other Party that is designated by the providing Party as confidential and shall not provide it to any other government or any private person without the providing Party's written consent.

(b) The Parties agree to consult promptly, not later than 30 days after receipt of a request from either Party, regarding any matter concerning this Agreement.

(c) At any time, either Party may propose that a firearm be added to or deleted from Annex A or that ammunition be added to or deleted from Annex B. The Parties shall consult promptly regarding such a proposal and may amend either Annex by written agreement of the Parties.

(d) Where a question arises as to whether a particular firearm or ammunition is subject to the export prohibition in Article 2, the Parties shall consult promptly. The firearm or ammunition shall be subject to the export prohibition pending resolution of the matter.

Article 4: Construction

Nothing in this Agreement shall be construed to affect the applicability to firearms, ammunition, or other products of the laws and regulations of the United States or the Russian Federation imposing restrictions or requirements on importation.

Article 5: Actions To Ensure the Effectiveness of this Agreement

Either Party may take any action, as provided in its laws and regulations, necessary to ensure the effectiveness of this Agreement.

Article 6: Emergency Actions

If the Government of the United States determines that the actual or prospective importation of any firearm described in Annex A or ammunition other than that described in Annex B is causing or threatens to cause damage to the domestic security of the United States, the Government of the United States reserves the right to take any measure it deems appropriate consistent with the Agreement on Trade Relations, signed between the Union of Soviet Socialist Republics and the United States of America at Washington on June 1, 1990, as amended, brought into force between the United States of America and the Russian Federation pursuant to an exchange of notes on June 17, 1992. The Government of the United States shall consult with the Government of the

Russian Federation prior to taking any such measure. If prior and prompt consultations are not possible because of an emergency situation, the Government of the United States shall consult with the Government of the Russian Federation as soon as possible after taking the measure.

Article 7: Amendments

This Agreement may be amended by written agreement of the Parties.

Article 8: No Effect on Articles in U.S. Customs Territory

This Agreement shall not affect the fulfillment of contracts with respect to firearms or ammunition entered or withdrawn from warehouse for consumption in the United States on or before February 9, 1996.

Article 9: Annexes; Entry into Force; Termination

(a) The Annexes to this Agreement are an integral part of this Agreement.

(b) This Agreement shall enter into force upon the date of its signature by both Parties.

(c) Either Party may terminate this Agreement by providing written notification to the other Party at least twelve months prior to the date of termination.

Done at Washington on April 3, 1996, in duplicate, in the English and Russian languages, both texts being equally authentic.

signature

Ira Shapiro,

Ambassador, Senior Counsel, Negotiator, Office of the U.S. Trade Representative.

For the Government of the United States of America.

signature

Gennadiy Yanpolsky,

Deputy Chairman, State Committee on Defense Industry Branches.

For the Government of the Russian Federation.

Annex A

Firearms Permitted to Be Imported into the United States from the Russian Federation

Pistols/Revolvers

1. German Model P08 Pistol
2. IZH 34M, .22 caliber Target Pistol
3. IZH 35M, .22 caliber Target Pistol
4. Mauser Model 1896 Pistol
5. MC–57–1 Pistol
6. MC–1–5 Pistol
7. Polish Vis Model 35 Pistol
8. Soviet Nagant Revolver
9. TOZ 35, .22 caliber Target Pistol

Rifles

1. BARS–4 Bolt Action Carbine
2. Biathlon Target Rifle, .22LR caliber
3. British Enfield Rifle
4. CM2, .22 caliber Target Rifle (also known as SM2, .22 caliber)
5. German Model 98K Rifle
6. German Model G41 Rifle
7. German Model G43 Rifle
8. IZH–94
9. LOS–7 Bolt Action Rifle
10. MC–7–07
11. MC–18–3
12. MC–19–07
13. MC–105–01
14. MC–112–02
15. MC–113–02
16. MC–115–1
17. MC–125/127
18. MC–126
19. MC–128
20. Saiga Rifle
21. Soviet Model 38 Carbine
22. Soviet Model 44 Carbine
23. Soviet Model 91/30 Rifle
24. TOZ 18, .22 caliber Bolt Action Rifle
25. TOZ 55
26. TOZ 78
27. Ural Target Rifle, .22LR caliber
28. VEPR Rifle
29. Winchester Model 1895, Russian Model Rifle

Annex B

Ammunition Prohibited from Being Imported into the United States from the Russian Federation

1. 7.62X25mm caliber (also known as 7.63X25mm caliber or .30 Mauser)

Authority and Issuance

This notice is issued under the authority in 22 U.S.C. 2778.

Approved: April 19, 1996.

John W. Magaw,

Director.

[FR Doc. 96–10361 Filed 4–24–96; 4:32 pm]

BILLING CODE 4810–31–U

DEPARTMENT OF EDUCATION

34 CFR Parts 11, 50, 302, 358, 631, 632, 633, 634, 635, 653, 769, 770, 771, 772, 776, 777, 785, 786, 787, 788, 789, and 791

Removal of Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Code of Federal Regulations (CFR) to remove unnecessary and obsolete regulations. As a result of new legislation, absence of funding, and review in accordance with the President's regulatory reinvention initiative, the Secretary has determined that these regulations are no longer needed or will become unnecessary in the future. The Secretary takes this action to remove the regulations from the CFR.

EFFECTIVE DATE: Parts 11, 302, 358, 631, 632, 633, 634, 635, 653, 785, 786, 787, 788, 789, and 791 are removed effective May 29, 1996. Parts 50, 769, 771, 772, and 777 are removed effective October 1, 1996. Parts 770 and 776 are removed effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, Room 5112, FB–10, 600 Independence Avenue, SW., Washington, DC 20202–2241. Telephone: (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: President Clinton's memorandum of March 4, 1995, titled ''Regulatory Reinvention Initiative,'' directed heads of departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. The Department has undertaken a thorough review of its existing regulations and has identified the regulations removed by this document as obsolete or unnecessary. Additional obsolete and unnecessary regulations were previously removed on May 23, 1995 (60 FR 27223) as part of the Regulatory Reinvention Initiative. Based on this review, the Secretary also withdraws the notice of proposed rulemaking issued for 34 CFR Part 50 on March 1, 1993 (58 FR 11924).

The regulations being removed are no longer necessary to administer the program, have been superseded by new legislation, or were issued to implement a program that is no longer funded. To the extent that regulations are needed to implement new legislation, they will be issued separately from this document. Any determination to issue new regulations will be carefully considered to ensure that it is consistent with the President's regulatory reform efforts and the principles in Executive Order 12866.

The Department is continuing to review its other existing regulations thoroughly in consultation with its customers and partners. To the extent the Secretary can identify further opportunities for regulatory reinvention, the Secretary will propose appropriate amendments to revise or eliminate outdated provisions, reduce burden, and increase flexibility.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes and remove unnecessary and obsolete regulatory provisions. Removal of the regulations does not establish or affect substantive policy. Therefore, the

Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment is unnecessary and contrary to the public interest.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 11

Administrative practice and procedure, Advisory committees.

34 CFR Part 50

Cultural exchange programs, Foreign residence requirements, Reporting and recordkeeping requirements.

34 CFR Part 302

Education of handicapped, Elementary and secondary education, Grant programs-education.

34 CFR Part 358

Education of handicapped, Educational research, Grant programs-education.

34 CFR Part 631

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 632

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 633

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 634

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 635

Colleges and universities, Grant programs-education, Student aid.

34 CFR Part 653

Grant programs-education, Student aid, Teachers.

34 CFR Part 769

Grant programs-education, Libraries.

34 CFR Part 770

Grant programs-education, Libraries.

34 CFR Part 771

Grant programs-education, Libraries.

34 CFR Part 772

Grant programs-education, Libraries.

34 CFR Part 776

Grant programs-education, Libraries.

34 CFR Part 777

Grant programs-education, Libraries.

34 CFR Part 785

Educational research, Grant programs-education.

34 CFR Part 786

Adult education, Colleges and universities, Educational research, Grant programs-education, Elementary and secondary education.

34 CFR Part 787

Educational research, Grant-programs education, Teachers.

34 CFR Part 788

Educational research, Grant programs-education, States.

34 CFR Part 789

Educational research, Elementary and secondary education, Grant programs-education, Private schools.

34 CFR Part 791

Elementary and secondary education, Grant programs-education, Students.

Dated: April 23, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance numbers do not apply.)

For reasons stated in the preamble, under the authority at 20 U.S.C. 1221e–3, the Secretary amends Title 34 of the Code of Federal Regulations by removing Parts 11, 50, 302, 358, 631, 632, 633, 634, 635, 653, 769, 770, 771, 772, 776, 777, 785, 786, 787, 788, 789, and 791.

[FR Doc. 96–10473 Filed 4–26–96; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI57–01–7105a, WI58–01–7106a, WI59–01–7107a; FRL–5424–2]

Approval and Promulgation of State Implementation Plan; Wisconsin; Gasoline Storage Tank Vent Pipe, Traffic Marking Materials, and Solvent Metal Cleaning SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, through the direct final procedure, revisions to the Wisconsin State Implementation Plan (SIP) for ozone that were submitted on February 17, 1995 and April 12, 1995. These revisions require the control of volatile organic compound (VOC) emissions from the following sources: gasoline storage tanks, the application of traffic marking materials, and solvent metal cleaning operations. These regulations were submitted to generate reductions in VOC emissions, which the State will use to fulfill the 15 percent requirement of the amended Clean Air Act. In the proposed rules section of this Federal Register, the EPA is proposing approval of, and soliciting comments on, these requested SIP revisions. If adverse comments are received on this action, the EPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this Federal Register. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes federally enforceable the State's rules that have been incorporated by reference.

DATES: This action will be effective June 28, 1996, unless adverse comments are received by May 29, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson

Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b) of the Clean Air Act, as amended on November 15, 1990, sets forth the requirements for ozone nonattainment areas that have been classified as moderate or above. Section 182(b)(1)(A) requires those States with ozone nonattainment areas classified as moderate or above to submit plans to reduce VOC emissions by at least 15 percent from the 1990 baseline emissions. The 1990 baseline, as described by EPA's emission inventory guidance, is the amount of anthropogenic VOC emissions emitted on a typical summer day. As a part of its 15 percent plan, the State of Wisconsin has developed and adopted rules to reduce the VOC emissions from gasoline storage tanks, the application of traffic marking materials, and solvent metal cleaning operations in those areas of the State that are classified as moderate or higher.

II. Evaluation of State Submittal

On November 15, 1993, the State of Wisconsin submitted its proposed 15 percent plan. The 15 percent plan submittal was followed by several submittals that are the actual regulations that will achieve the reductions required by the 15 percent plan. The State's regulations are summarized below.

A. Gasoline Storage Tank Vent Pipe Rule—NR 420.035

Wisconsin submitted this regulation to the EPA on February 17, 1995 and supplemented it on June 14, 1995, as a SIP revision under the signature of the Governor's designee. The EPA found this rule to be complete in a letter to Donald Theiler, Director of WDNR's Bureau of Air Management, dated June 29, 1995. The WDNR followed the required legal procedures for adopting this rule which are prerequisites for EPA to consider including this rule in Wisconsin's federally enforceable ozone SIP. A public hearing for this rule was held on January 12, 1994.

Wisconsin has adopted a rule that requires gasoline storage tanks with a storage capacity of 2,000 gallons, or greater, to install pressure vacuum valves on the vent pipes. Evaporative emissions will readily escape through the gasoline storage tank vent pipe if the pipe has no control device to prevent this. These pressure vacuum valves will control evaporative VOC emissions from the storage tanks.

B. Traffic Marking Materials Rule—NR 422.17

Wisconsin submitted this regulation to EPA on April 12, 1995 and supplemented it on June 14, 1995, as a SIP revision under the signature of the Governor's designee. The EPA found this rule to be complete in a letter to Donald Theiler, Director of WDNR's Bureau of Air Management, dated June 29, 1995. The WDNR followed the required legal procedures for adopting this rule, which are prerequisites for EPA to consider including this rule in Wisconsin's federally enforceable ozone SIP. A public hearing for this rule was held on January 12, 1994.

The emission of VOCs from the application of traffic marking materials onto paved surfaces occurs during the drying of the markings themselves or from the drying of the adhesives used to affix the traffic markings. The State of Wisconsin has adopted a rule that will limit the VOC content of the traffic marking materials that are liquid or limit the amount of VOCs that can be emitted per mile of traffic marking applied for solid materials.

C. Solvent Metal Cleaning Rule—NR 423.03

Wisconsin submitted this regulation to EPA on April 12, 1995 and supplemented it on June 14, 1995, as a SIP revision under the signature of the Governor's designee. The EPA found this rule to be complete in a letter to Donald Theiler, Director of WDNR's Bureau of Air Management, dated June 29, 1995. The WDNR followed the required legal procedures for adopting this rule which are prerequisites for EPA to consider including this rule in Wisconsin's federally enforceable ozone SIP. A public hearing for this rule was held on January 12, 1994.

The State of Wisconsin currently has a solvent metal cleaning rule in place and this rule has been approved into the State's SIP as representing reasonably available control technology (RACT) for this source category. In order to obtain additional reductions that would be creditable towards the State's 15 percent plan, the State has: Added the category of wipe cleaning to the types of actions that require control under this rule (NR 423.02(10), NR 423.03(7)); established control technique requirements beyond those considered to be RACT (NR 423.03(3) (h) to (j), NR 423.03(4) (n) to (r), NR 423.03 (h) to (j), NR 423.03(6)(a) 8 and 9); added a provision that requires sources to also consider throughput on the applicability of size exemption cutoffs (NR 423.03(2) (c) to (f)); established more extensive recordkeeping requirements (NR 423.03(10)); and established a revised compliance schedule (NR 423.03(8)).

More detailed analyses of the State's submittals are available at the Regional Office listed above. In determining the approvability of these VOC rules, EPA evaluated the rules for consistency with Federal requirements, including Section 110 and Part D of the Clean Air Act.

III. Final Rulemaking Action

The EPA approves Wisconsin's rules for Gasoline Storage Tank Vent Pipes, the Application of Traffic Marking Materials, and Solvent Metal Cleaning thereby making these rules federally enforceable.

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on June 28, 1996. However, if we receive adverse comments by May 29, 1996. EPA will publish a document that withdraws this action.

IV. Miscellaneous

A. Applicability To Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

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), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 28, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*See* Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 6, 1995.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart YY—Wisconsin

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.2570 is amended by adding paragraphs (c) (84), (85), and (86) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(84) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on February 17, 1995, and supplemented on June 14, 1995. This revision consists of a volatile organic compound regulation that requires controls for gasoline storate tank vent pipes.

(i) Incorporation by reference. The following section of the Wisconsin Administrative Code is incorporated by reference.

(A) NR 420.035 as created and published in the (Wisconsin) Register, July, 1994, No. 463, effective August 1, 1994.

(85) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on April 12, 1995, and supplemented on June 14, 1995, and January 19, 1996. This revision consists of a volatile organic compound regulation that requires the control of emissions from traffic markings.

(i) Incorporation by reference. The following section of the Wisconsin Administrative Code is incorporated by reference.

(A) NR 422.02(16e), (42q), (42s) and (47m) as created and published in the (Wisconsin) Register, July, 1994, No. 463, effective August 1, 1994.

(B) NR 422.17 as created and published in the (Wisconsin) Register, July, 1994, No. 463, effective August 1, 1994.

(86) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on April 12, 1995, and supplemented on June 14, 1995, and January 19, 1996. This revision consists of a volatile organic compound regulation that requires additional controls on solvent metal cleaning operations. This rule is more stringent than the RACT rule it is replacing.

(i) Incorporation by reference. The following section of the Wisconsin Administrative Code is incorporated by reference.

(A) NR 423.02(10) as renumbered from NR 423.02(9), amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994. NR 423.02(11) as renumbered from NR 423.02(10) and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994. NR 423.02(9) and (12) as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(B) NR 423.03 as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(C) NR 425.03(12)(a)7. as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

* * * * *

[FR Doc. 96–10451 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5461–4]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion Gallaway Pits Superfund Site, in Fayette County, Tennessee from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Gallaway Pits Site from the National Priorities List (NPL), (Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)). EPA and the State have determined that all appropriate Fund-

financed responses under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, have been implemented and that no further cleanup is appropriate. Moveover, EPA and the State have determined that remedial actions conducted at the site to date have been protective of public health, welfare and the environment. This deletion does not preclude future action under Superfund.

EFFECTIVE DATE: May 15, 1996.

FOR FURTHER INFORMATION CONTACT: Robert West, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Superfund Remedial Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 347–7791, extension 2033.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is: Gallaway Pits Superfund Site, in Fayette County, Tennessee.

A Notice of Intent to Delete for this site was published on February 22, 1996, (FR–5428–2). The closing date for comments on the Notice of Intent to Delete was March 22, 1996. EPA received no comments.

EPA identifies sites that appear to present a significant risk to the public health, welfare and the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the future. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: April 4, 1996.

Phyllis P. Harris,

Acting Deputy Regional Administrator, U.S. EPA Region 4.

For reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Gallaway Pits Superfund Site, in Fayette County, Tennessee.

[FR Doc. 96–10105 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5463–9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the 29th and Mead Ground Water Contamination Site located in Wichita, Kansas, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300. Part 300 is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. In light of the planned State action in this case, EPA finds that no further response under CERCLA is appropriate. The Site is instead, in a pilot project, deferred to the State of Kansas and will be addressed by the Kansas Department of Health and Environment (KDHE). Deletion under this approach does not indicate that the cleanup has been completed, but rather that no further Superfund involvement is necessary, and that the Agency expects the response at the Site will be completed under an Agreement between the City of Wichita and KDHE. EPA will consider the effectiveness and efficiency of the Site cleanup as well as the likelihood that a similarly favorable outcome could be reproduced elsewhere in deciding whether such a policy will be considered for other sites.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: William Bunn, Remedial Project Manager; Superfund Division, U.S. Environmental Protection Agency, Region 7; 726 Minnesota Avenue; Kansas City, Kansas 66101. Phone: (913) 551–7792.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the 29th and Mead Ground Water Contamination Site in Wichita, Kansas. A Notice of Intent to Delete was published January 31, 1996 (61 FR 3365). The closing date for comments on the Notice of Intent to Delete was March 1, 1996.

EPA received comment favoring this proposed action from Mr. Robert Knight, Mayor of Wichita, on behalf of the Wichita City Council.

Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial action. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 40 CFR 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

An explanation of the criteria for deleting this site from the NPL was presented in Section II of the January 31, 1996, Notice of Intent to Delete (FR 61 3365). A description of the site and how it meets the criteria for deletion was presented in Section IV of that Notice. The reasoning in the Notice of Intent is adapted as EPA's reasoning for this final deletion.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: April 23, 1996.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(C)(2); 42 U.S.C. 9601–9657; E.O. 1277, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the 29th and Mead Ground Water Contamination Site, Wichita, Kansas.

[FR Doc. 96–10537 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–115; RM–8508, RM–8562]

Radio Broadcasting Services; Woodville and Liberty, MS; Clayton and Jena, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gary P. Albarez (RM–8562), allots Channel 299C3 to Liberty, Mississippi, and delet Channel 299A from Woodville, Mississippi. Channel 299C3 can be allotted to Liberty in compliance with the Commission's distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) northwest. The coordinates for Channel 299C3 at Liberty are 31–10–44 and 90–49–51. The proposal filed by PDB Broadcasting (RM–8508), *see* 59 FR 51153, October 7, 1994, requesting the substitution of Channel 299C3 for Channel 299A at Woodville, Mississippi, is denied. With this action, this proceeding is terminated.

DATES: Effective June 7, 1996. The window period for filing applications will open on June 7, 1996, and close on July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–115, adopted April 5, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 299A at Woodville; and by adding Liberty, Channel 299C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10439 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 93–65; RM–6869, RM–8271, RM–8272, RM–8273]

Radio Broadcasting Services; New Port Richey, Naples Park, Sarasota and Sebring, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 288C1 for Channel 288A at New Port Richey, Florida, and modifies the license for Station WGUL-FM to specify operation on Channel 288C2 in response to a proposal filed by WGUL-FM, Inc. *See* 58 FR 19395, April 14, 1993. The coordinates for Channel 288C1 at New Port Richey are 28–11–04 and 82–45–39. To accommodate the upgrade at New Port Richey, we shall substitute Channel 282A for Channel 288A at Sarasota, Florida, and modify the license for Station WKZM(FM) accordingly. The coordinates for Channel 282A at Sarasota are 27–16–30 and 82–28–54. In response to a counterproposal filed by Roper Broadcasting, Inc., we shall substitute Channel 289C3 for Channel 288A at Sebring, Florida, and modify the license for Station WCAC(FM). The coordinates for Channel 289C3 at Sebring are 27–20–30 and 81–28–05. In response to a counterproposal filed by Wodlinger Broadcasting Company of Naples, Inc., we shall substitute Channel 288C2 for Channel 288A at Naples Park, Florida, and modify the license for Station WIXI. The coordinates for Channel 288C2 at Naples Park are 26–19–00 and 81–47–13. With this action this proceeding is terminated.

EFFECTIVE DATE: June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 93–65, adopted March 29, 1996, and released April 19, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 288A and adding Channel 288C1 at New Port Richey, removing Channel 288A and adding Channel 288C2 at Naples Park, removing Channel 288A and adding Channel 282A at Sarasota, removing Channel 288A and adding Channel 289C3 at Sebring.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10438 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–75; RM–8615, RM–8686]

Radio Broadcasting Services; Blossom, TX, DeQueen, AR, and Coalgate, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Coalgate Broadcasters, allots Channel 288C2 to Coalgate, Oklahoma, as the community's first local FM service. At the request of Red River Wireless Communications, the Commission allots Channel 224C2 to Blossom, Texas. To accommodate the allotment at Blossom, the Commission also substitutes Channel 227A for Channel 224A at DeQueen, Arkansas, and modifies the license of Station KDQN(FM) to specify the alternate Class A channel. *See* 60 FR 39819, June 12,

1995, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

DATES: Effective June 7, 1996. The window period for filing applications will open on June 7, 1996, and close on July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–75, adopted April 5, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

All channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 224C2 can be allotted to Blossom, Texas with a site restriction of 11.0 kilometers (6.8 miles) east to avoid a short-spacing conflict with the allotment of Channel 225A at Bells, Texas. The coordinates for Channel 224C2 at Blossom are 33–40–07 and 95–16–13. As noted, the allotment of Channel 224C2 at Blossom requires the substitution of Channel 227A for 224A at DeQueen, Arkansas, Channel 227A can be allotted to DeQueen and can be used at the site specified in Station KDQN(FM)'s license. The coordinates for Channel 227A at DeQueen are 34–01–57 and 94–19–43. Channel 288C2 can be allotted to Coalgate, Oklahoma, with a site restriction of 13.4 kilometers (8,3 miles) east to avoid short-spacing conflicts with the licensed site of Station KXXK(FM), Channel 288A, Chickasha, Oklahoma, and with Station KSTV(FM)'s pending application to upgrade from Channel 289C1 to Channel 289C at Decatur, Texas. The coordinates for Channel 288C2 at Coalgate are 34–32–20 and 96–04–20.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, Arkansas and Oklahoma, is amended by adding Blossom, Channel 224C2; by removing Channel 224A and adding Channel 227A at DeQueen; and by adding Coalgate, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10437 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–156; RM–8701]

Radio Broadcasting Services; Shelton, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sound Broadcasting, Inc., allots Channel 233A at Shelton, Washington, as the community's first local FM transmission service. *See* 60 FR 53892, October 18, 1995. Channel 233A can be allotted to Shelton in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) northwest to avoid short-spacings to the licensed sites of Station KMPS-FM, Channel 231C, Seattle, Washington, and Station KUKN(FM), Channel 233A, Kelso, Washington. The coordinates for Channel 233A at Shelton are North Latitude 47–14–43 and West Longitude 123–10–25. *See* Supplementary Information, *infra.*

DATES: Effective June 7, 1996. The window period for filing applications will open on June 7, 1996 and close on July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–156, adopted April 5, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Recognizing that the allotment of Channel 233A would be short-spaced to the proposed allotment of Channel 233C at Vancouver, British Columbia, we have determined that no potential interference would result from this allotment. Therefore, since the Shelton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government for the allotment of Channel 233A has been obtained as a specially-negotiated allotment. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Shelton, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10440 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 219, 236, 242, 252, and 253

[DFARS Case 95–D039]

Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense suspended the sections of the Defense Federal Acquisition Regulation Supplement (DFARS) that prescribe the set-aside of acquisitions for small disadvantaged businesses (SDBs). The Department is issuing this final rule to implement initiatives designed to limit the adverse impact of this suspension. The efforts of a government-wide group

to reform affirmative action programs in procurement continue. This action was reviewed by the Office of Management and Budget under Executive Order 12866.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement initiatives designed to facilitate awards to SDBs while taking account of the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena,* 115 S.Ct. 2097 (1995). This DFARS rule includes contracting procedures that: (1) expand the use of the evaluation factor for SDBs to include competitive awards based on other than price or price-related factors; (2) consider small, small disadvantaged, and women-owned small business subcontracting as a factor in the evaluation of past performance; (3) clarify that the contracting officer will weigh enforceable commitments to use small businesses, SDBs, women-owned small businesses, historically black colleges and universities, and minority institutions more heavily than non-enforceable ones, if the commitment to use such firms is included in the solicitation as a source selection criterion; (4) require prime contractors to notify the contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan; and (5) establish a test program of an SDB evaluation preference that would remove bond cost differentials between SDBs and other businesses as a factor in most source selections for construction acquisitions.

A proposed rule was published in the Federal Register on December 14, 1995 (60 FR 64135), with a correction published on December 21, 1995 (60 FR 66246). DoD considered all comments received in response to the proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies. A final regulatory flexibility analysis has been performed and is available by writing the Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies. OMB has approved the information collection requirement under OMB Control Number 0704–0386.

List of Subjects in 48 CFR Parts 215, 219, 236, 242, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215, 219, 236, 242, 252, and 253 are amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Parts 215, 219, 236, 242, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 215.605 is amended by revising the section title and paragraphs (b)(ii)(B) and (b)(ii)(E), and by adding paragraph (b)(iv) to read as follows:

215.605 Evaluation factors and subfactors.

(b) * * *

(ii) * * *

(B) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

* * * * *

(E) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

* * * * *

(iv) When an evaluation includes the criterion in paragraph (b)(ii)(A) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

* * * * *

3. Section 215.608 is amended by redesignating existing paragraph (a) as paragraph (a)(1) and by adding paragraph (a)(2) to read as follows:

215.608 Proposal evaluation.

(a) * * *

(2) When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

4. The heading of Part 219 is revised to read as set forth above.

5. Section 219.704 is amended by adding paragraph (a)(4) to read as follows:

219.704 Subcontracting plan requirements.

(a) * * *

(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

6. Section 219.1006 is amended by revising paragraph (b)(1)(B) to read as follows:

219.1006 Procedures.

(b)(1) * * *

(B) The evaluation preference at 219.70 shall not be used. However, note the test program at 219.72 for construction acquisitions.

* * * * *

7. Section 219.7001 is amended by revising paragraph (a) to read as follows:

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions except as provided in paragraph (b) of this section and in 219.1006(b)(1)(B).

* * * * *

8. Subpart 219.72 is added to read as follows:

Subpart 219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program

Sec.
219.7200 Policy.
219.7201 Administration of the test program.
219.7202 Applicability.
219.7203 Procedures.
219.7204 Contract clause.

219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program

219.7200 Policy.

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SDB) concerns shall be given an evaluation preference in construction acquisitions.

219.7201 Administration of the test program.

The test program will be conducted over a 36-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology (Director, SADBU). The military departments and defense agencies shall submit status reports to the Director, SADBU. The first status report shall be submitted 18 months after initiation of the test program; the second status report shall be submitted 36 months after initiation of the test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which—

(1) Are less than or equal to the simplified acquisition threshold;

(2) Are set aside for small businesses; or

(3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or nondisadvantaged small business concerns.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(1) Offers from SDBs which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303–70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219–7204 Contract clause.

Use the clause at 252.219–7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns—Construction Acquisitions—Test Program, in all solicitations—

(1) That involve the evaluation preference of this subpart; and

(2) Where work is to be performed inside the United States, 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

9. Section 236.303–70 is amended by revising the introductory text of paragraph (c)(2) 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 242—CONTRACT ADMINISTRATION

10. Subpart 242.15 is added to read as follows:

Subpart 242.15—Contractor Performance Information

Sec.
242.1503 Procedures.

242.1503 Procedures.

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 252.219–7003 is amended by revising the clause date to read ''(APR 1996)'' and by adding paragraph (g) to read as follows:

252.219–7003 Small, small disadvantaged and women-owned small business subcontracting plan (DoD contracts).

* * * * *

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

12. Section 252.219–7008 is added to read as follows:

252.219–7008 Notice of evaluation preference for small disadvantaged business concerns—construction acquisitions—test program.

As prescribed in 219.7204, use the following clause:

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS—CONSTRUCTION ACQUISITIONS—TEST PROGRAM (APR 1996)

(a) *Definitions.*

As used in this clause—

''Historically black colleges and universities (HBCUs),'' means institutions determined by the secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

''Minority institutions,'' means institutions meeting the requirements of paragraphs (3),

(4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

''Small disadvantaged business (SDB) concern,'' means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *Evaluation preference.*

(1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(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) If the apparently successful offeror is not an SDB concern, offers will be evaluated based on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(i) Offers from SDBs which have not waived the evaluation preference; and

(ii) Offers from HBCUs or minority institutions, which have not waived the evaluation preference.

(c) *Waiver of evaluation preference.*

A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference. The agreements in paragraph (d) of this clause do not apply to offers which waive the preference.

_____Offeror elects to waive the preference.

(d) *Agreements.*

A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(End of clause)

PART 253—FORMS

13. Section 253.204–70 is amended by revising paragraph (e)(3) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(e) * * *

(3) *Block E3, Next Low Offer.*

(i) Complete Block E3 only if Block E2 is completed, or the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in subpart 219.72 is applied. Otherwise, leave Block E3 blank.

(ii) If Block E2 is completed, enter the offered price from the small business firm that would have been the low offeror if qualified nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition. In the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in subpart 219.72 is applied, enter the offered price from the non-SDB concern that would have been the successful offeror if the evaluation preference had not been applied. Enter the amount in whole dollars.

* * * * *

[FR Doc. 96–10541 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 61, No. 83
Monday, April 29, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 95–068–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow, under certain conditions, the cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. We have determined that there are biological barriers at these ports that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruit before undergoing cold treatment. We are also proposing to require that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours. These actions would facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

DATES: Consideration will be given only to comments received on or before June 28, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–068–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–068–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56–8 (referred to below as ''the regulations''), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and time requirements vary according to the type of fruit and the pests involved. Detailed cold treatment procedures may be found in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1.

Most imported fruit that requires cold treatment undergoes cold treatment in transit to the United States. However, APHIS also allows imported fruit to undergo cold treatment at an approved cold treatment facility in either the country of origin or after arrival in the United States at certain ports designated by APHIS in § 319.56–2d(b)(1) of the regulations.

Currently, cold treatment in the United States is limited to the following ports: the port of Wilmington, NC; Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC, at Baltimore-Washington International and Dulles International airports.

Imported fruit may undergo cold treatment at the listed ports other than Wilmington, NC, because biological barriers, including climatic conditions, exist to prevent the introduction and establishment of fruit flies and other insect pests that could escape from shipments of imported fruit after arrival in the United States. Imported fruit may also undergo cold treatment at the port of Wilmington, NC, because APHIS has imposed special conditions regarding cold treatment to mitigate the risk of the introduction of fruit flies and other insect pests into the United States (see § 319.56–2d(b)(5)(iv)).

Recently, we received formal requests from the Taiwanese Government, the City of Atlanta Airport Authority, and the Mississippi State Port Authority to authorize the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, respectively, as approved locations for cold treatment of imported fruit.

Previously Published Notices and Regulations

On November 12, 1993, in response to earlier petitions from individuals at the ports of Wilmington, NC, and Gulfport, MS, we published in the Federal Register (58 FR 59953, Docket No. 93–121–1) an advance notice of proposed rulemaking requesting public comment on whether we should allow cold treatment at ports in the Southern United States and in California.

We solicited comments concerning this notice for a 45-day period ending December 27, 1993. During that period, we received four comments, three from State governments and one from a grower organization. Two commenters opposed allowing cold treatment at ports in the Southern United States and California, arguing that allowing such treatments would place California and Florida citrus crops at too great a risk of fruit fly infestation. Another commenter requested that we perform a detailed pest risk analysis before deciding whether to allow cold treatment at southern and California ports. Another commenter supported cold treatment at the port of Wilmington, NC.

We subsequently published a proposed rule in the Federal Register on May 13, 1994 (59 FR 24968–24971, Docket No. 93–121–2) in which we proposed to allow imported fruit to be cold treated at the port of Wilmington, NC, after arrival in the United States. At that time, we decided to give further consideration to allowing cold treatment at other ports in the Southern United States and California. In a final rule published in the Federal Register on August 10, 1994 (59 FR 40794–40797,

Docket No 93–121–3), we approved cold treatment, under certain conditions, at the port of Wilmington, NC.

Proposal of Additional Ports

After performing extensive risk analyses, we are proposing to add the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, to the list of ports in § 319.56–2d that are authorized as approved locations for cold treatment of imported fruit. This proposal to allow cold treatment of fruit under certain conditions at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, is based, in part, on a document prepared by APHIS assessing the pest risks associated with allowing cold treatment of tropical fruit fly host materials at certain United States ports. The risk mitigation measures discussed in the document are included in this proposal as requirements for the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. (Copies of this document may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.) We have determined that in the areas of these ports proposed for cold treatment, there are biological barriers that, along with certain safeguards, would prevent the introduction and establishment of fruit flies and other insect pests in the unlikely event that they escape from shipments of fruit before undergoing cold treatment.

Risk Groups

Plant Protection and Quarantine (PPQ), APHIS, has established risk groups for many ports in the United States. These risk groups characterize the relative risk, without consideration for mitigating factors, associated with the movement of tropical fruit fly host material for cold treatment at these ports in the United States. The ports have been assigned to one of five risk groups based on a number of criteria, including the individual port's latitude, microclimate, immediate host availability, and past fruit fly infestations. The risk groups are assigned numbers I through V; this number scale represents an ascending level of risk based on the criteria listed above. Group I ports consist of East Coast ports north of, and including, Baltimore, MD. Group II ports consist of the ports of Wilmington, NC, Seattle, WA, Portland, OR, Atlanta, GA, and Norfolk, VA. Group III ports consist of the ports of Charleston, SC, Savannah, GA, Port Arthur, TX, and Galveston/Houston, TX. Group IV ports consist of the ports of Gulfport, MS, Mobile, AL, New Orleans, LA, Corpus Christi, TX, and Pensacola, FL. Group V ports consist of the ports of San Diego, CA, San Pedro/Long Beach, CA, San Francisco, CA, Oakland, CA, Tampa, FL, Miami, FL, West Palm/Ft. Lauderdale, FL, Cape Canaveral, FL, Jacksonville, FL, Ft. Meyers, FL, Ft. Pierce, FL, Brownsville, TX, and all Hawaiian ports.

The general requirements for cold treatment found in § 319.56–2d are designed to mitigate the risk of infestation due to fruit fly escape from shipments intended for cold treatment at Group I ports. These requirements include delivering, under the supervision of an inspector of PPQ, shipments of fruit that require cold treatment to an approved cold storage warehouse where the shipments will be cold treated; precooling and refrigerating the shipments of fruit intended for cold treatment promptly upon arrival at the cold treatment facility; allowing shipments of fruit that require cold treatment to leave U.S. Customs custody only under a redelivery bond for cold treatment; and allowing shipments of fruit that require cold treatment final release from the U.S. Collector of Customs only after official notification has been received by the Customs officer that the required cold treatment has been completed.

For shipments of fruit arriving for cold treatment at the port of Wilmington, NC, a Group II port, the regulations at § 319.56–2d(b)(5)(iv) also require that bulk shipments of fruit must arrive in fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies; bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force; and advance reservations for cold treatment must be made prior to the departure of a shipment from its port of origin.

Each of the ports proposed as an approved location for cold treatment in this document, the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, has been assigned to a risk group other than Group I; consequently, additional mitigating factors need to be put in place before cold treatment can occur at any of these ports.

Proposal of Special Conditions for the Ports of Seattle, WA, Atlanta, GA, and Gulfport, MS

We are proposing to impose additional special conditions regarding cold treatment at each of the ports proposed as an approved location for cold treatment that mitigate the risk of the introduction and establishment of fruit flies and other insect pests. The special conditions that would be assigned to each port are listed below by port.

Special Conditions for the Maritime Port of Seattle, WA

The maritime port of Seattle has biological barriers to fruit fly introduction and establishment in that the port is not in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, the maritime port of Seattle, WA, belongs to the Group II list of ports because the area surrounding this port contains a small variety of fruit-fly host material and has a longer growing season than Group I ports. Therefore, in addition to the requirements in § 319.56–2d (b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the maritime port of Seattle, WA:

1. Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

This condition would ensure that shipments that arrive at the maritime port of Seattle, WA, in cases or bins would not be exposed in such a manner as to allow fruit flies or other insect pests to escape from the shipment.

2. Bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

3. Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

4. The cold treatment facility must remained locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

We believe that the biological barriers and these additional conditions established for cold treatment at the maritime port of Seattle, WA, would be adequate to prevent the introduction and establishment of fruit flies and other insect pests.

Special Conditions for the Airports of Atlanta, GA, and Seattle, WA

The airports of Atlanta, GA, and Seattle, WA, each have biological barriers to fruit fly introduction and establishment in that neither port is in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, both the airports of Atlanta, GA, and Seattle, WA, belong to the Group II list of ports because the areas surrounding these airports contain a small variety of fruit-fly host material and have longer growing seasons than Group I ports. Additionally, although fruit that travels to the United States by ship for cold treatment is regularly chilled during transit, fruit imported into the United States by aircraft for cold treatment is not. Therefore, the mitigation measures for the Group II airports of Atlanta, GA, and Seattle, WA, would be more extensive than the mitigation measures for Group II maritime ports. As such, in addition to the requirements in § 319.56–2d(b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the airports of Atlanta, GA, and Seattle, WA:

1. Bulk and containerized shipments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

This condition would ensure that all shipments, including those that that arrive at these airports in cases or bins, would not be exposed in such a manner as to allow fruit flies or other insect pests to escape from the shipment.

2. Bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

3. The cold treatment facility and PPQ must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the port and the cold treatment facility. The movement of shipments from aircraft to cold treatment facility would not be allowed until an acceptable route has been agreed upon.

In most instances, the route would be determined by establishing the shortest route between the aircraft and the cold treatment facility that does not include an area that contains host material for fruit flies during the time of year that the region experiences its most abundant amount of host material for fruit flies. Then, that route would be used throughout the year to convey shipments from aircraft to cold treatment facility. This predetermined route would reduce the amount of time that a shipment would have to wait before undergoing cold treatment and would reduce the risk that any fruit flies in the shipments would come into contact with host material en route to cold treatment.

4. Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

5. The cold treatment facility must remained locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

6. Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

This condition would act as a general safeguard. We propose this condition as an extra layer of defense that would trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages to survive past the stage of pupation in the cold treatment facility.

7. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of PPQ, for handling fruit, including the ability to destroy or dispose of fruit safely.

This condition would ensure that, in the event that a shipment cannot be cold treated promptly or properly, the contents of the shipment could be safely treated by alternative means, destroyed, or disposed of so that fruit flies and other insect pests would not have the opportunity to escape. Examples of adequate contingency plans would include the ability to incinerate fruit, to bury fruit, or to re-export fruit.

We believe that the biological barriers and these additional conditions established for cold treatment at the airports of Atlanta, GA, and Seattle, WA, would be adequate to prevent the introduction and establishment of fruit flies and other plant pests.

Special Conditions for the Port of Gulfport, MS

The maritime port of Gulfport, MS, has biological barriers to fruit fly introduction and establishment in that it is not in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, the port of Gulfport belongs to the Group IV list of ports because the area surrounding this port, among other things, contains a wider variety and greater quantity of fruit-fly host material than Group I, II, or III ports and has a lengthy growing season due to its southern location. Therefore, in addition to the requirements in § 319.56–2d(b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the maritime port of Gulfport, MS:

1. All fruit entering the port for cold treatment must move in maritime containers. No bulk shipments (those shipments which are stowed and unloaded by the case or bin) would be allowed at the port of Gulfport, MS.

This condition would ensure that imported fruit arriving at the port of Gulfport, MS, for cold treatment would not be exposed to the outdoors. The shipping container would insulate the fruit, thereby helping to keep the fruit chilled during unloading, would prevent leakage of the shipment, and would serve as a barrier to fruit fly escape from shipments of untreated fruit.

2. Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

This condition would ensure that containerized shipments would be packaged in such a manner as to prevent fruit flies or other insect pests from escaping from the shipment when the container is opened. This condition would provide an extra barrier to fruit fly escape from a shipment of untreated fruit.

3. Containerized shipments of fruit arriving at the port must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

4. The cold treatment facility and PPQ must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of shipments from vessel to cold treatment facility would not be allowed until an acceptable route has been agreed upon.

In most instances, the route would be determined by establishing the shortest route between the vessel and the cold treatment facility that does not include an area that contains host material for fruit flies during the time of year that the region experiences its most abundant amount of host material for fruit flies. Then, that route would be used throughout the year to convey shipments from vessel to cold treatment facility. This predetermined route would reduce the amount of time that a shipment would have to wait before undergoing cold treatment and would reduce the risk that any fruit flies in the shipments would come into contact with host material en route to cold treatment.

5. Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

6. Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements: (1) All containers must be unloaded within the cold treatment facility; and (2) untreated fruit may not be exposed to the outdoors under any circumstances.

Because of the southern location of the port of Gulfport, MS, we believe that this condition would be a necessary mitigating factor at this port. This condition would eliminate the possibility of untreated fruit being unloaded and waiting for cold treatment outside of the cold treatment facility itself.

If fruit intended for cold treatment was removed from its shipping container outside of the cold treatment facility, there would be an increased risk of fruit fly escape due to untreated fruit warming up to temperatures that would allow the insect pests that may be in the fruit to become more active and possibly to escape when the fly-proof packaging is removed from the shipment. Our proposal to require devanning inside of the cold treatment facility would ensure that all fruit that requires cold treatment remains in a cool environment.

7. The cold treatment facility must remained locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

8. Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

This condition would act as a general safeguard. We propose this condition as an extra layer of defense that would trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages to survive past the stage of pupation in the cold treatment facility.

9. During cold treatment, a backup system must be available to cold treat the shipments of fruit should the primary cold room malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruit.

This condition would ensure that, in the event that the primary cold treatment system fails, additional equipment is on hand at the cold treatment facility to perform cold treatments on shipments of fruit. Cold holding rooms would be necessary to ensure that shipments of fruit remain cool during any waiting period that may ensue from a malfunction of the primary cold room. The identification of shipments to determine which lots have been treated and which lots need to be treated would eliminate the possibility of treated fruit being commingled with untreated fruit and thereby further reduce the possibility of fruit flies or other insect pests escaping from the cold treatment facility.

10. The cold treatment facility must have the ability to conduct methyl bromide fumigations on site. Therefore, the cold treatment facility must have fumigation equipment approved by the Deputy Administrator of PPQ and a site for conducting fumigation on the premises.

This condition would act as an additional contingency plan to treat fruit entering the port of Gulfport, MS. As the risk of fruit fly infestation is greater at Gulfport, MS, than at the other ports proposed for cold treatment, we have determined that an extra layer of protection should be provided by requiring methyl bromide fumigation capabilities as an alternative means of eliminating pests from shipments of fruit. The criteria for the approval of fumigation equipment can be found in the PPQ Treatment Manual.

With respect to methyl bromide fumigation, the Environmental Protection Agency published a notice of final rulemaking in the Federal Register on December 10, 1993 (58 FR 65018–65082) which freezes the production of methyl bromide at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

11. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of PPQ, for safely destroying or disposing of fruit.

This condition would ensure that, in the event a shipment cannot be cold treated promptly or properly, the contents of the shipment could be safely destroyed or disposed of so that fruit flies and other plant pests would not have the opportunity to escape. Examples of adequate contingency plans would include the ability to incinerate fruit, to bury fruit, or to re-export fruit.

We believe that the biological barriers and these additional conditions

established for cold treatment at the port of Gulfport, MS, would be adequate to prevent the introduction and establishment of fruit flies and other plant pests.

Proposal of Special Condition for the Port of Wilmington, NC

We are also proposing to require that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours as another special condition to cold treatment at the port of Wilmington, NC. We have determined that this safeguard, without interfering with daily operations at the port, would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

Miscellaneous

We are also proposing to make minor editorial changes for clarity and consistency. We propose to amend the language in § 319.56–2d(b)(5)(iv)(B) to clarify that shipments coming in for cold treatment currently consist only of fruit. Section 319.56–2d(b)(5)(iv)(B) states that the shipments intended for cold treatment consist of fruits and vegetables, but, presently, only certain fruits from certain countries are approved for cold treatment.

We also propose to revise § 319.56–2x(b) to update the list of ports that are approved as locations for cold treatment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the cold treatment of imported fruits upon arrival at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. Modern cold treatment facilities have been or are in the process of being constructed at each of these ports.

Approximately 585.4 million kilograms of fresh fruits and vegetables were imported into the United States through the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA, during fiscal year 1994. The port of Gulfport, MS, handled about 98 percent of the total fresh fruit and vegetable imports for these ports. The ports of Atlanta, GA, and Seattle, WA, handled 0.25 and 1.75 percent, respectively, of the total fresh fruit and vegetable imports for these three ports. During fiscal year 1994, approximately 550,330 kilograms (less than one-tenth of one percent) of the total fresh fruit imports for these ports were cold treated in the country of origin or in transit to the United States and, if these ports had been approved for cold treatment, would have been eligible for cold treatment upon arrival in the United States. Should these ports be approved for cold treatment, we expect that an additional 20 million kilograms of new and rerouted fresh fruits would be imported through and cold treated at these ports each year.

According to the Small Business Administration, a ''small'' entity involved in the wholesale trade of fresh fruits is one that employs no more than 100 people. Currently, there are 4,388 ''small'' wholesale importers of fresh fruits in the United States. Use of on-site cold treatment facilities at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, may slightly reduce transportation costs for foreign fruit exporters, which, in turn, may slightly reduce transportation costs for domestic importers and, ultimately, may slightly reduce the cost of certain fruits for U.S. consumers. We expect, however, that these reductions in costs would be insignificant.

The alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative because it appears that, with the safeguards proposed, the cold treatment of fruit may be conducted at any of the ports proposed in this document without significant risk of introducing fruit flies or other injurious plant pests.

Executive Order 12778

This proposed rule would allow cold treatment of certain imported fruits to be conducted at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits under this rule would be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

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

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 319.56–2d would be amended as follows:

a. In paragraph (b)(1), by revising the second sentence to read as set forth below.

b. By revising paragraph (b)(5)(iv) to read as set forth below.

c. By adding new paragraphs (b)(5)(v) and (b)(5)(vi) to read as set forth below.

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

(b) * * *

(1) * * * If not so refrigerated, the fruit must be both precooled and refrigerated after arrival only in cold storage warehouses approved by the Deputy Administrator and located at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the

North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

* * * * *

(5) * * *

(iv) *Special requirements for the maritime ports of Wilmington, NC, and Seattle, WA.* Shipments of fruit arriving at the maritime ports of Wilmington, NC, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit must be cold-treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(D) The cold treatment facility must remained locked during non-working hours.

(v) *Special requirements for the airports of Atlanta, GA, and Seattle, WA.* Shipments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk and containerized shipments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit arriving for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of shipments from aircraft to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(D) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(E) The cold treatment facility must remained locked during non-working hours.

(F) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(G) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

(vi) *Special requirements for the port of Gulfport, MS.* Shipments of fruit arriving at the port of Gulfport, MS, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) All fruit entering the port for cold treatment must move in maritime containers. No bulk shipments (those shipments which are stowed and unloaded by the case or bin) are permitted at the port of Gulfport, MS.

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(C) All shipments of fruit arriving at the port for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(D) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of shipments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) Advance reservations for cold treatment space at the port must be made prior to the departure of a shipment from its port of origin.

(F) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(1) All containers must be unloaded within the cold treatment facility; and

(2) Untreated fruit may not be exposed to the outdoors under any circumstances.

(G) The cold treatment facility must remained locked during non-working hours.

(H) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(I) During cold treatment, a backup system must be available to cold treat the shipments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(J) The cold treatment facility must have the ability to conduct methyl bromide fumigations on-site.

(K) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

* * * * *

3. In § 319.56–2x(b), the first sentence would be revised to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

(b) If treatment has not been completed before the fruits and vegetables arrive in the United States, fruits and vegetables listed above and requiring treatment for fruit flies may arrive in the United States only at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

Done in Washington, DC, this 23rd day of April 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–10461 Filed 4–26–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–78–AD]

[RIN 2120–AA64]

Airworthiness Directives; I.A.M. Rinaldo Piaggio S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain I.A.M. Rinaldo Piaggio S.p.A. (Piaggio) Model P–180 airplanes. The proposed action would require modifying the passenger seat cushion next to the emergency exit door handle. Reports of interference with the passenger seat cushion and the emergency exit door handle preventing the door from opening from the outside prompted this proposed AD action. The actions specified by the proposed AD are intended to prevent the possibility of not being able to open the emergency exit door during an emergency evacuation of the airplane, which could result in injury to the passengers.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–78–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Edward S. Chalpin, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830, ext. 2716; facsimile (322) 230.6899; or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–78–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–78–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on certain Piaggio Model P–180 airplanes. The RAI has advised that the emergency exit door handle next to the passenger seat is getting caught on the passenger seat cushion when attempting to open the door from the outside. The outside door handle is connected to the inside door handle, which, if caught on the passenger seat cushion, prevents the door from opening.

Piaggio has issued Service Bulletin (SB) 80–0043; Original Issue July 28, 1993, which specifies procedures for modifying the passenger seat cushion to keep the emergency exit door handle from interfering with the seat cushion. The RAI classified this service bulletin as mandatory and issued RAI AD 93–302, dated September 30, 1993, in order to assure the continued airworthiness of these airplanes in Italy.

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

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio Models P–180 airplanes of the same type design registered in the United States, the proposed AD would require modifying the passenger seat cushion to keep the emergency exit door handle from interfering with the seat cushion in accordance with Piaggio SB 80–0043; Original Issue: September 30, 1993.

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be furnished by the manufacturer at no cost to the owner/operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $960. This figure is based on the assumption that none of the owner/operators of the affected airplanes have modified the airplanes. Piaggo has informed the FAA that all 4 of the Model P–180 airplanes registered for operation in the United States have performed this action, consequently, there is no further cost to U.S. operators for this proposed AD.

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

For the reasons discussed above, I certify that this action (1) is not a

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

I. A. M. Rinaldo Piaggio S.P.A: Docket No. 95–CE–78-AD.

Applicability: Model P–180 (serial numbers 1002 and 1004 through 1022), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent the possibility of not getting the emergency exit door open during an emergency evacuation of the airplane, which, if not detected and corrected, could result in injury to the passengers., accomplish the following:

(a) Modify the passenger seat cushion in accordance with Piaggio Service Bulletin (SB) 80–0043; Original Issue: September 30, 1993.

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

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 19, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10453 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–CE–55–AD]

RIN 2120–AA64

Airworthiness Directives; the New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA31, PA31P, and PA31T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 75–26–18, which currently requires modifying the landing gear selector cable forward attachment pin assembly by installing a safety lock wire on certain The New Piper Aircraft Inc., (Piper) PA31, PA31P and PA31T series airplanes. The proposed action would require the same action as AD 75–26–18. An incorrect designation of Piper Model PA31 airplanes as Piper Model PA31–310 airplanes in AD 75–26–18 prompted the proposed AD action. The actions specified by the proposed AD are intended to prevent the landing gear selector cable forward attachment pin assembly from becoming separated from the powerpack control arm, which, if not corrected, could cause loss of landing gear retraction or extension.

DATES: Comments must be received on or before June 28, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia, 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket No. 95–CE–55–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

It has been brought to the attention of the FAA that AD 75–26–18, which is applicable to Piper PA31 series airplanes, should not have listed a Piper Model PA31–310 airplane. The Piper Model PA31–310 airplane is not a recognized model on the Type Certificate Data Sheet No. A20SO and the airplane's data plate for the airplane subject to the AD states Model PA31, not Model PA31–310. The concern was raised that some owners/operators of Model PA31 airplanes may not have complied with AD 75–26–18, since the AD currently describes the airplane as a Piper Model PA31–310, even though their serial number falls within the serial number range in the current AD. For this reason, the FAA is proposing to supersede the current AD to change the model designation in the Applicability section of the AD from a Piper Model PA31–310 airplane to Piper Model PA31 airplane.

Piper has issued service bulletin (SB) No. 488, dated October 24, 1975, which specifies procedures for modifying the landing gear selector cable forward attachment pin assembly.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the landing gear selector cable forward attachment pin assembly from becoming separated from the powerpack control arm.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA31, PA31P, and PA31T series airplanes of the same type design, the proposed AD would supersede AD 75–26–18 with a new AD that would retain the same requirement as AD 75–26–18 which is modifying the landing gear selector cable forward attachment pin assembly, part number (P/N) 53599–00, by installing 3 inches of safety lock wire (MS20995C41) onto the attachment pin assembly, and the proposed action requires changing the Applicability section for the model designations from Piper Model PA31–310 airplanes to Piper Model PA31 airplanes.

The FAA estimates that 875 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately 25 cents per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $52,718.75.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD), 75–26–18, Amendment 39–2504, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 95–CE–55–AD; Supersedes AD 75–26–18, Amendment 39–2504.

Applicability: PA31, PA31P, and PA31T series airplanes with the following Model and serial numbers, certificated in any category.

Models	Serial Nos.
PA–31 and PA–31–325.	31–7300950 through 31–7612017
PA–31–350	31–7305048, 31–7305049, and 31–7305052 through 31–7652032
PA–31P	31P–7300128 through 31P–7630005
PA–31T	31T–7400002 through 31T–7620013.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 50 hours time-in-service (TIS) after February 9, 1976 (effective date of AD 75–26–18) or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent the landing gear selector cable forward attachment pin assembly from becoming separated from the powerpack control arm, which if not corrected could cause loss of landing gear retraction or extension, accomplish the following:

(a) Modify the landing gear selector cable forward attachment pin assembly by installing a safety lock wire in accordance with the *Instructions* section of Piper service bulletin No. 488, dated October 24, 1975.

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

(c) An alternative method of compliance or adjustment of compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Alternative methods of compliance approved in accordance with AD 75–26–18 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 75–26–18, Amendment 39–2504. Issued in Kansas City, Missouri, on April 19, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10452 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 Series Airplanes Equipped With General Electric Model CF6–80 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes. This proposal would require an inspection to detect defects of the directional pilot valves (DPV); and replacement of any defective DPV with a new DPV, or deactivation of the thrust reverser system, if necessary. This proposal is prompted by a report indicating that, during a maintenance check, an uncommanded deployment and stowage of the thrust reverser occurred due to improperly modified DPV's. The actions specified by the proposed AD are intended to prevent uncommanded deployment and stowage of the thrust reverser during maintenance activities, as a result of improperly modified DPV's, which could result in injury to maintenance personnel or other people on the ground.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–175–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–175–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–175–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 and A310 series airplanes, equipped with General Electric Model CF6–80 engines. The DGAC advises that it has received a report indicating that, during a maintenance check, an uncommanded deployment and stowage of the thrust reverser occurred.

Investigation of this incident revealed that, when the thrust reverser handle was moved from the ''stow'' position to the thrust reverser test point, the directional pilot valve (DPV) stuck in the ''open'' (''deploy'') position. The air supply first caused the thrust reverser to deploy, and then caused the DPV solenoid to move the DPV to the ''stow'' direction, which resulted in the thrust reverser stowing. This same sequence of events happened when the opposite engine was tested. When both DPV's were replaced and a functional test carried out, no anomaly was found. This indicated that the originally-installed DPV's apparently were faulty.

Further tests carried out at the Airbus flight line on a General Electric CF6–80C2 engine with the faulty DPV's installed, demonstrated that deployment of the thrust reverser could not be reproduced with the engine running. The thrust reverser deployment could be recreated only with a progressive increase of ground air supply at low pressure (approximately 10 to 15 psi) to the ground test point on the airplane. When direct test pressure of 28 psi was applied to the DPV, the valve reseated to the ''stow'' position. (This same scenario was confirmed by bench testing performed by both General Electric and Allied Signal.)

Further investigation of the two faulty DPV's revealed that the valves had been improperly modified when procedures specified in General Electric Service Bulletin 78–031 had been accomplished on the engine. The DPV armature spring had not been replaced with a new stronger spring in accordance with the service bulletin instructions.

Accordingly, such an improperly modified DPV, if not corrected, could result in uncommanded deployment and stowage of the thrust reverser during maintenance activities, which consequently could cause injury to maintenance personnel or other people on the ground.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 78–05, Revision 01, dated February 8, 1995, which describes procedures for a one-time inspection to detect defects of the DPV; and replacement of the defective DPV with a new DPV, or deactivation of the thrust reverser system, if necessary. The DGAC classified this AOT as mandatory and issued French airworthiness directive 95–052–176(B), dated March 15, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time inspection to detect defects of the DPV. If a defective DPV is detected, it would be required to be replaced with a new DPV, or thrust reverser system would be required to be deactivated until the DPV is replaced. The inspection and replacement actions would be required to be accomplished in accordance with the AOT described previously.

Cost Impact

The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed one-time inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $25,800, or $600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 95–NM–175–AD.

Applicability: Model A300B4–601, –603, –605R, A300–F4–605R, and A310–203, –203C, –204, –304, –308 series airplanes, equipped with General Electric Model CF6–80 engines; on which General Electric Service Bulletin 78–031 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded deployment and stowage of the thrust reverser during maintenance activities, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform an inspection to detect defects of the directional pilot valves (DPV) in accordance with Airbus All Operators Telex (AOT) 78–05, Revision 01, February 8, 1995.

(1) If no defects are detected, no further action is required by this AD.

(2) If any defect is detected, prior to further flight, either replace the defective DPV with a new DPV in accordance with the AOT; or deactivate the thrust reverser system in accordance with approved procedures of the Minimum Equipment List (MEL) until the DPV is replaced

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

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

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

Issued in Renton, Washington, on April 23, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10509 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, that currently requires inspection for cracks of the fuselage, wings, and vertical stabilizer structures; and repairs or modifications, if necessary. That AD was prompted by reports of cracking in several areas of the fuselage, wings, and vertical stabilizer structure due to fatigue-related stress. The actions specified by that AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the fuselage, wing, and vertical stabilizer. This action would provide for a new optional terminating action, for certain airplanes, and would expand the applicability of the existing AD to include additional airplanes.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–109–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–109–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–109–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On August 13, 1986, the FAA issued AD 86–19–02, amendment 39–5396 (51 FR 29910, August 21, 1986), applicable to certain Airbus Model A300 B2 and B4 series airplanes. That AD requires inspections for cracks of the fuselage, wings, and vertical stabilizer structures; and repairs or modifications, if necessary. That action was prompted by reports that, during fatigue tests conducted by the manufacturer, cracks were detected in several areas of the fuselage, wings, and vertical stabilizer structure. The requirements of that AD are intended to prevent reduced structural integrity of the fuselage, wing, and vertical stabilizer.

Explanation of New Relevant Service Information

Since the issuance of that AD, Airbus has issued Revision 3 of Service Bulletin A300–53–182, dated March 16, 1994. The inspection procedures described in this revision are identical to those described in the original version of the service bulletin, which was referenced in AD 86–19–02 as the appropriate source of service information. However, this new revision of the service bulletin differs in two ways from the original version:

1. The effectivity listing in the revised bulletin includes additional airplanes that are subject to the addressed unsafe condition.

2. For certain airplanes, the revised service bulletin provides procedures for replacement of the web plate and support fitting at the level of stringer 18 (left- and right-hand) with a new web plate and support fitting. Accomplishment of the replacement would eliminate the need for the repetitive inspections in the web plate between frame 30A and frame 32 at stringer 18.

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French airworthiness directive (CN) 83–102–053(B)R2, dated March 2, 1994, in order to assure the continued airworthiness of these airplanes in France.

Explanation of the Provisions of the Proposed Rule

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 86–19–02 to continue to require inspections for cracks of the fuselage, wings, and vertical stabilizer structures; and repairs or modifications, if necessary. However, the applicability of the rule would be expanded to include additional airplanes that have been identified as subject to the addressed unsafe condition.

For certain airplanes, the proposed AD would provide for a new optional replacement action, which would constitute terminating action for certain repetitive inspection requirements. These actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators who previously elected to accomplish Airbus Modification 1691 to terminate the repetitive inspections at stringers 18 and 22, as was provided by paragraph D. of AD 86–19–02, should note that, under the provisions of paragraph (d)(4) of this proposal, accomplishment of that modification

would constitute terminating action for the repetitive inspections only at stringer 22.

Additionally, operators should note that paragraph G. of AD 86–19–02 has not been retained in this proposal. That paragraph required ultrasonic inspections of the longitudinal lap joints at stringer 29 between frames 72 and 73, and eddy current inspections of the longitudinal skin splices of the top fuselage joint between frames 72 and 80. The FAA has issued a separate rulemaking action to address those requirements (reference notice of proposed rulemaking, Docket No. 94–NM–246–AD).

Cost Impact

Approximately 7 Airbus Model A300 B2 and B4 series airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 86–19–02 take approximately 919 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $385,980, or $55,140 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $1,260, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5396 (51 FR 29910, August 21, 1986), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 95–NM–109–AD. Supersedes AD 86–19–02, Amendment 39–5396.

Applicability: All Model A300 B2 and B4 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Airbus Model A300–600 series airplanes are not subject to this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking, which could result in reduced structural integrity of the fuselage, wing, and vertical stabilizer, accomplish the following:

(a) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–127, Revision 4, dated May 10, 1984: Perform a visual inspection to detect cracks in the upper fuselage skin at frame 58 between stringer 5 left and stringer 5 right, in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 18,000 total landings or 18,000 total flight hours, whichever occurs earlier; or

(ii) Within one year after September 26, 1986 (the effective date of AD 86–19–02, amendment 39–5396).

(2) If no crack is detected, repeat this inspection thereafter at intervals not to exceed 3,000 flight hours.

(3) If any crack is detected, prior to further flight, repair it in accordance with Figure 2, ''Inspection and Repair Alternative Chart,'' of the service bulletin.

(4) Installation of Airbus Modification 2147 (reference Airbus Service Bulletin A300–53–110, Revision 10, dated April 7, 1986) or Airbus Modification 2526/1693 (reference Airbus Service Bulletin A300–53–128, Revision 5, dated May 10, 1984) constitutes terminating action for the repetitive inspection requirements of paragraph (a)(2) of this AD.

(b) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–101, Revision 7, dated May 10, 1984: Perform a radiographic and ultrasonic inspection to detect cracks in the circumferential fuselage splice plates and stringer couplings, in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspections at the applicable time specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) For airplanes on which the actions specified in Airbus Service Bulletin A300–53–053, Revision 2, dated July 30, 1981, have been accomplished previously: Inspect prior to the accumulation of 20,000 landings since accomplishment of those actions, or within one year after September 26, 1986, whichever occurs later.

(ii) For airplanes on which the actions specified in Airbus Service Bulletin A300–53–053, Revision 2, dated July 30, 1981, have not been accomplished: Inspect prior to the accumulation of 18,000 total landings, or within one year after September 26, 1986, whichever occurs later.

(2) If no crack is detected, repeat the inspections thereafter at intervals not to exceed 3,000 landings.

(3) If any crack is detected, prior to further flight, repair it in accordance with Figures 1 and 2 of the service bulletin.

(4) Installation of Airbus Modification 3760 (reference Airbus Service Bulletin A300–53–170, Revision 1, dated January 25, 1985) constitutes terminating action for the repetitive inspection requirements of paragraph (b)(2) of this AD.

(c) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–143, Revision 3, dated May 10, 1984: Perform a visual inspection to detect cracks in frame

57A between stringers 15 and 16 (left- and right-hand), and the stringer 5 connection angle at frame 65 (left- and right-hand), in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph. .

(1) Perform the initial inspection at the later of the times specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) Prior to the accumulation of 20,000 total landings; or

(ii) Within one year after September 26, 1986.

(2) If no crack is detected, repeat this inspection thereafter at intervals not to exceed 3,000 landings.

(3) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin.

(4) Installation of Airbus Modification 2643 (reference Airbus Service Bulletin A300–53–132, Revision 4, dated May 10, 1984) constitutes terminating action for the repetitive inspection requirement of paragraph (c)(2) of this AD.

(d) For airplanes having serial number 002 through 156 inclusive, on which Airbus Modification 2611 has not been installed: Perform a visual inspection, and liquid penetrant test if applicable, to detect cracks in the web plate and support fitting between frames 30A and 32 at stringer 18, and between stringers 22 and 23 (left- and right-hand), in accordance with Airbus Service Bulletin A300–53–182, Revision 3, dated March 16, 1994, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD:

(i) Prior to the accumulation of 30,000 total landings; or

(ii) Within 1,500 landings after the effective date of this AD.

(2) If no crack is detected, repeat the inspection at the applicable intervals specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD.

(i) If, at the time of the most recent inspection, the airplane has accumulated fewer than 36,000 total landings, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(ii) If, at the time of the most recent inspection, the airplane has accumulated 36,000 or more total landings, repeat the inspection thereafter at intervals not to exceed 2,000 landings.

(3) If any crack is detected in the web plate between frames 30A and 32 at stringer 18, prior to further flight, replace the web plate and support fitting at stringer 18 (left- and right-hand) with a new web plate and support fitting, in accordance with the service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements for stringer 18 as required by paragraph (d)(2) of this AD.

(4) If any crack is detected in the web plate between frame 30A and 32 between stringers 22 and 23, prior to further flight, replace the web plate and support fitting between stringers 22 and 23 (left- and right-hand) with a new web plate and support fitting, in accordance with Airbus Service Bulletin A300–53–182, Revision 3, dated March 16, 1994. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements for the subject area between stringers 22 and 23 as required by paragraph (d)(2) of this AD.

(5) Terminating action for the repetitive inspection requirements of paragraph (d)(2) of this AD is as follows:

(i) Installation of Airbus Modification 1691 (reference Airbus Service Bulletin A300–53–063) between stringers 22 and 23 constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2) of this AD for that area only.

(ii) Replacement of the web plates and support fittings at the level of stringer 18 (left- and right-hand) with a new web plate and support fitting, in accordance with Airbus Service Bulletin A300–53–182, Revision 3, dated March 16, 1994, constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2) of this AD for that stringer only.

(iii) Accomplishment of the actions specified in both paragraph (d)(5)(i) and paragraph (d)(5)(ii) of this AD constitute terminating action for all repetitive inspection requirements required by paragraph (d)(2) of this AD.

(e) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–112, Revision 2, dated July 20, 1981: Perform a visual inspection to detect cracks of the skin from frame 28 to frame 31 between stringers 29 and 31 (left- and right-hand), in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (e)(1)(i) or (e)(1)(ii) of this AD:

(i) Prior to the accumulation of 24,000 total landings; or

(ii) Within one year after September 26, 1986.

(2) If no crack is detected, repeat the inspection at the applicable intervals specified in paragraph (e)(2)(i) or (e)(2)(ii) of this AD:

(i) If, at the time of the most recent inspection, the airplane has accumulated fewer than 36,000 total landings, repeat the inspection thereafter at intervals not to exceed 6,000 landings.

(ii) If, at the time of the most recent inspection, the airplane has accumulated 36,000 or more total landings, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(3) If any crack is found, prior to further flight, install Airbus Modification 1358 in accordance with Airbus Service Bulletin A300–53–027, Revision 4, dated January 4, 1984. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraph (e)(2) of this AD.

(4) Installation of Airbus Modification 1358 (reference Airbus Service Bulletin A300–53–027, Revision 4, dated January 4, 1984) constitutes terminating action for the repetitive inspection requirements of paragraph (e)(2) of this AD.

(f) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–100, Revision 1, dated May 10, 1984: Perform an internal and external visual inspection to detect cracks of the longitudinal joint at stringer 51 (left- and right-hand) between frames 72 and 80, in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD:

(i) Prior to the accumulation of 12,000 total landings or 15,000 total flight hours, whichever occurs earlier; or

(ii) Within one year after September 26, 1986.

(2) If no crack is found, repeat the internal inspection thereafter at intervals not to exceed 1,500 flight hours, and repeat the external inspection thereafter at intervals not to exceed 12,000 flight hours.

(3) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin.

(4) Installation of Airbus Modification 1421 (reference Airbus Service Bulletin A300–53–033, Revision 3, dated May 10, 1984) constitutes terminating action for the repetitive inspection requirements of paragraph (f)(2) of this AD.

(g) For airplanes with serial numbers listed in Airbus Service Bulletin A300–55–026, Revision 3, dated May 10, 1984: Perform a visual inspection of the 6 vertical stabilizer attachment fittings for cracks, which initiate from the rivet holes, in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD:

(i) Prior to the accumulation of 20,000 total landings or 20,000 total flight hours, whichever occurs earlier; or

(ii) Within one year after September 26, 1986, whichever occurs earlier.

(2) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 1,500 landings.

(3) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin.

(4) Installation of Airbus Modification 3172 (reference Airbus Service Bulletin A300–55–024, Revision 4, dated May 25, 1984) constitutes terminating action for the repetitive inspection requirements of paragraph (g)(2) of this AD.

(h) For airplanes with serial numbers listed in Airbus Service Bulletin A300–57–109, Revision 1, dated July 10, 1982: Perform a visual inspection to detect cracks in the landing angle attached to the outboard side of the wing leading edge at nose rib 8 (left- and right-hand), in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspecton at the later of the times specified in paragraph (h)(1)(i) or (h)(1)(ii):

(i) Prior to the accumulation of 15,000 total landings; or

(ii) Within one year after September 26, 1986.

(2) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(3) If any crack is detected, within the next 1,000 landings following crack detection, install Airbus Modification 1307 in accordance with Airbus Service Bulletin A300–57–026, Revision 3, dated October 21, 1982.

(4) Installation of Airbus Modification 1307 (reference Airbus Service Bulletin A300–57–026, Revision 3, dated October 21, 1982) constitutes terminating action for the repetitive inspection requirements of paragraph (h)(2) of this AD.

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

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

Issued in Renton, Washington, on April 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10508 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–200 series airplanes. This proposal would require modification of the shock absorber sub-assembly of the main landing gear (MLG). This proposal is prompted by reports of internal damage to the shock absorber sub-assembly due to loose screws in the upper bearing dowels. The actions specified by the proposed AD are intended to prevent such damage, which could result in the overextension of the shock absorber and failure of the torque link. This situation may lead to the inability of the MLG to retract and subsequent collapse of the MLG.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–267–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; or Dowty Aerospace, Customer Support Center, P.O. Box 49, Sterling, Virginia 20166.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–267–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–267–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–200 series airplanes. The DGAC advises that it has received reports of internal damage to the shock absorber sub-assembly of the main landing gear (MLG). Investigation revealed that, due to an improper fit, the screws in the upper bearing dowels of the shock absorber sub-assembly can become loose and come out of position.

A loose screw in the upper bearing dowels can come out and cause internal damage to the shock absorber tube assembly. If this were to occur, the shock absorber sub-assembly may overextend and the torque link may fail, which could result in the inability of the MLG to retract and the subsequent collapse of the MLG.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–32–1144, dated December 8, 1994, which describes procedures for modification of the shock absorber sub-assembly of the MLG. The modification involves installing new dowels and a retaining ring to the shock absorber assembly. The modification will reduce the possibility of internal damage to the sub-assembly. (The Airbus service bulletin references Dowty Service Bulletin 200–32–215, dated July 7, 1994, and Dowty Service Bulletin 200–32–216, Revision 1, dated August 4, 1994, as additional sources of service information for accomplishment of these procedures.) The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 95–016–063 (B), dated January 18, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require modification of the shock absorber sub-assembly of the MLG. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $165,600, or $1,440 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 95–NM–267–AD.

Applicability: Model A320–200 series airplanes on which Airbus Modification 24594 (reference Airbus Service Bulletin A320–32–1144) has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the internal area of the shock absorber sub-assembly, which could cause an overextension of the shock absorber and failure of the torque link, accomplish the following:

(a) Prior to the accumulation of 6,000 total landings since the shock absorber of the main landing gear (MLG) was removed, built, or overhauled; or within 6 months after the effective date of this AD; whichever occurs later: Modify the shock absorber assembly of the MLG, in accordance with Airbus Service Bulletin A320–32–1144, dated December 8, 1994.

Note 2: Airbus Service Bulletin A320–32–1144 references Dowty Aerospace Service Bulletin 200–32–215, dated July 7, 1994, and Dowty Aerospace Service Bulletin 200–32–216, Revision 1, dated November 18, 1994, as additional sources of service information for modification of the shock absorber.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on April 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10507 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With BFGoodrich Evacuation Slide/Rafts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require modification of door 5 evacuation slide/rafts. This proposal is prompted by reports that the door 5 evacuation slide/raft failed to deploy properly due to adverse loads caused by the geometry of this evacuation slide/raft. The actions specified by the proposed AD are

intended to prevent failure of the door 5 evacuation slide/raft to deploy properly, which could contribute to injury of passengers on the slide and could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–218–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the door 5 evacuation slide/raft installed on Boeing Model 747–400 series airplanes failed to deploy properly. Investigation revealed that the apparent cause of one of these failures has been attributed to the improper gluing method used during the manufacturing process. The FAA finds this situation to be isolated to a specific builder and limited to only seven units in which only one unit failed.

However, further investigation has revealed that, during the initial deployment stages of door 5 evacuation slide/raft, the inflation bottle bag can apply adverse loads to both the forward side bottle hanger strap and the lower girt attachment on the forward side of this evacuation slide/raft. Such adverse loads could pull the center girt attachment partially loose at the forward side, or could tear the lower inflation tube assembly at the forward edge of the center girt. The cause of such adverse loads has been attributed to the geometry of this particular evacuation slide/raft. This condition, if not corrected, could result in failure of door 5 evacuation slide/raft to deploy properly, which could contribute to injury of passengers on the slide, and could delay or impede the evacuation of passengers during an emergency.

Explanation of Relevant Service Information

The FAA has reviewed and approved BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 1995, which describes procedures for modification of door 5 evacuation slide/rafts. The modification involves replacing the bottle support straps of door 5 with new support straps, relocating these straps, and directly lacing them to the center girt attachment. Accomplishment of the modification will eliminate bonded attachments from the load path and prevent damage to the slide/raft fabric.

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the door 5 evacuation slide/rafts. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Explanation of the Applicability of the Proposed Rule

Operators should note that the applicability of this proposed rule affects Boeing Model 747–400 series airplanes that are equipped with certain BFGoodrich escape slide/rafts. The FAA's general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of aircraft, the AD is issued so that it is applicable to the aircraft, rather than the item. The reason is simple: Making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. It is for this reason that this proposed AD would be applicable to Model 747–400's rather than to the BFGoodrich escape slide/rafts. Additionally, calling out the airplane model as the subject of the AD prevent ''unknowing non-compliance'' on the part of the operator.

The FAA recognizes that there are situations when an unsafe condition exists in an item that is installed in many different aircraft. In those cases, the FAA considers it impractical to issue AD's against each aircraft; in fact, many times, the exact models and number of aircraft on which the item is installed may not be known. Therefore, in those situations, the AD is issued so that it is applicable to the item; furthermore, those AD's usually indicate that the item is known to be installed on, but not limited to, various aircraft models.

Cost Impact

The FAA estimates that 150 BFGoodrich evacuation slide/rafts installed on 75 Boeing Model 747–400

series airplanes (2 slides per airplane) of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per slide to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $84 per slide. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,600, or $144 per slide.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 95–NM–218–AD.

Applicability: Model 747–400 series airplanes equipped with BFGoodrich Evacuation Slide/Rafts at door 5; having slide/raft assembly part number 7A1469–1, –2, –3, –4, –7, –8, –9, –10, –11, or –12 (all unit serial numbers); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the door 5 evacuation slide/raft to deploy properly, which could contribute to injury of passengers on the slide and could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the door 5 evacuation slide/raft in accordance with BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 1995.

Note 2: Modification previous to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–25A3096, which references BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 1995, is considered acceptable for compliance with the modification requirements of paragraph (a) of this AD.

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

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

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

Issued in Renton, Washington, on April 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10506 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–49–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. That AD was prompted by a report of failure of a micro-switch in the landing gear control unit. This action would require installation of a new landing gear control unit. This action also would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to prevent uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–49–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 18, 1995, the FAA issued AD 95–09–03, amendment 39–9241 (60 FR 28035, May 30, 1995), applicable to certain Jetstream Model 4101 airplanes, to require inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. That action was prompted by a report of failure of a micro-switch in the landing gear control unit. The requirements of that AD are intended to prevent uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

In the preamble to AD 95–09–03, the FAA indicated that modification (Jetstream Modification JM41490) of the cable (electrical wiring circuit) of the landing gear control unit was considered ''interim action'' and that further rulemaking action was being considered. As a follow-on action from that determination, the FAA is now proposing additional, final action.

Explanation of Relevant Service Information

Since the issuance of AD 95–09–03, Jetstream has issued Service Bulletin J41–32–044, dated September 22, 1995, which describes procedures for installation of a new improved landing gear control unit, identified as Modification JM41501. The procedures involve installing a new landing gear control unit that has revised switching. The new switching will prevent uncommanded landing gear retractions caused by spurious signals from single switch failures.

The installation also involves revising certain wiring, which includes removing cables installed in accordance with Jetstream Modification JM41490. Additionally, the installation involves reallocating a spare pin in the airplane connector to prevent the operation of the old landing gear control unit in the event that one is inadvertently installed.

Accomplishment of Modification JM41501 will positively address the unsafe condition identified as uncommanded retraction of a main landing gear.

In addition, the effectivity listing of this service bulletin includes additional airplanes that were not previously affected by AD 95–09–03, and removes certain others.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–09–03. For those airplanes subject to AD 95–09–03, it would continue to require an inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. For those airplanes and certain others, it would require installation of a new improved landing gear control unit. The actions would be required to be accomplished in accordance with the Jetstream service bulletin described previously.

The applicability of the proposed AD would include additional airplanes that have been identified to be subject to the same unsafe condition (an included in the effectivity listing of the Jetstream service bulletin).

Cost Impact

There are approximately 44 Jetstream Model 4101 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 95–09–03, and retained in this proposed AD, take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The required parts are provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $18,480, or $420 per airplane. The FAA has been advised that all affected U.S. operators have accomplished these requirements; therefore, there is no future cost impact of these requirements on current U.S. operators of these airplanes.

The new installation that would be required by this proposed AD would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $15,840, or $360 per airplane. This cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9241 (60 FR 28035, May 30, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Jetstream Aircraft Limited: Docket 96–NM–49–AD. Supersedes AD 95–09–03, Amendment 39–9241.

Applicability: Model 4101 airplanes, constructor numbers 41001 through 41073 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded retraction of the landing gear, which can adversely affect airplane controllability, accomplish the following:

(a) For airplanes having constructor numbers 41001 through 41046 inclusive, and 41048 through 41052 inclusive; equipped with either landing gear control unit part number 717701–1 or 717701–1 Mod A: Within 8 hours time-in-service after June 14, 1995 (the effective date of AD 95–09–03, amendment 39–9241), perform an inspection to determine the number of hours time-in-service on the landing gear control unit, in accordance with Jetstream Alert Service Bulletin J41–A32–042, dated April 13, 1995.

(1) For those airplanes on which the control unit has accumulated less than 200 hours time-in-service: Prior to further flight, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(2) For those airplanes on which the control unit has accumulated 200 hours or more time-in-service: Within 50 hours time-in-service or within 7 days after June 14, 1995 (the effective date of AD 95–09–03, amendment 39–9241), whichever occurs earlier, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(b) For airplanes having constructor numbers 41001 through 41073 inclusive: Within 6 months after the effective date of this AD, install a new improved landing gear control unit and modify the wiring, in accordance with Jetstream Service Bulletin J41–32–044, dated September 22, 1995.

(c) As of the effective date of this AD, no person shall install a landing gear control unit having part number 717701–1 or 717701–1 Mod A, on any airplane.

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

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

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

Issued in Renton, Washington, on April 23, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10505 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–237–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require an inspection to detect damage to the electrical wiring of the fuel tank of the wings and to verify if the proper P-clip is installed in the electrical wiring. The proposed AD would also require re-fitting any proper P-clip, replacing any improper P-clip with a new P-clip, and repairing damaged electrical wiring. This proposal is prompted by a report that incorrect P-clips were found installed in the electrical wiring of the fuel system on these airplanes. The actions specified by the proposed AD are intended to ensure that the proper P-clips are installed. Improper P-clips could fail to adequately safeguard the fuel tank of the wing against a lightning strike, which could result in electrical arcing and resultant fire.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–237–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Gónórale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report that incorrect P-clips were found installed in the electrical wiring of the fuel system on these airplanes. Investigation revealed that, during production, skydrol-resistant ethylene propylene P-clips were installed instead of fuel-resistant P-clips. Skydrol- resistant ethylene propylene P-clips are not suitable for immersion in fuel. Such immersion causes these clips to swell and lose flexibility. If the skydrol-resistant ethylene propylene P-clips were to bend slightly, they could fracture and deteriorate, which could fail to adequately safeguard the fuel tank of the wing against a lightning strike. This condition, if not corrected, could result in electrical arcing and consequent fire.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–28–1052, Revision 1, dated July 7, 1993, and Revision 2, dated September 8, 1994. The service bulletins describe procedures for a one-time inspection to detect damage to the electrical wiring and to verify if the proper P-clip is installed in the electrical wiring at outboard rib 6 in the inner cell of the fuel tank of the wings. The service bulletins also describe procedures for re-fitting proper P-clips, and replacing improper P-clips with a new fuel-resistant P-clip having P/N NSA5515–03NF or NSA5516–03NV. The DGAC classified the service bulletins as mandatory and issued French airworthiness directive 93–191–047(B), dated October 27, 1993, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time inspection to detect damage to the electrical wiring and to verify if the proper P-clip is installed in the electrical wiring at outboard rib 6 in the inner cell of the fuel tank of the wings. The proposed AD would also require re-fitting proper P-clips, and replacing improper P-clips with certain new fuel-resistant P-clips. The actions would be required to be accomplished in accordance with the service bulletin described previously. If any damage is detected to the electrical wiring, the repair would be required to be done in accordance with the Airplane Wiring Manual.

Cost Impact

The FAA estimates that 44 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,320, or $280 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 95–NM–237–AD.

Applicability: Model A320 series airplanes, manufacturer's serial numbers 129 through 343 inclusive, 345 through 347 inclusive, and 349 through 363 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the proper P-clips are installed, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time inspection to detect damage to the electrical wiring and to verify if the proper P-clip is installed in the electrical wiring at outboard rib 6 in the inner cell of the fuel tank of the wings, in accordance with Airbus Service Bulletin A320–28–1052, Revision 2, dated September 8, 1994.

Note 2: Accomplishment of the actions specified in this paragraph in accordance with Airbus Service Bulletin A320–28–1052, Revision 1, dated July 7, 1993, prior to the effective date of this AD is considered acceptable for compliance with this paragraph.

(1) If any damage is detected to the wiring, prior to further flight, repair it in accordance with the Airplane Wiring Manual.

(2) If a P-clip having P/N NSA5515–03NF or NSA5516–03NV is installed, prior to further flight, re-fit it in accordance with the service bulletin.

(3) If a P-clip having P/N NSA5516–03NJ is installed, prior to further flight, replace it with a new fuel-resistant P-clip having P/N NSA5515–03NF or NSA5516–03NV, in accordance with the service bulletin.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on April 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10504 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI57–01–7105b, WI58–01–7106b, WI59–01–7107b; FRL–5424–3]

Proposed Approval of State Implementation Plan; Wisconsin Gasoline Storage Tank Vent Pipe, Traffic Marking Materials, and Solvent Metal Cleaning SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through the direct final procedure, a revision to the Wisconsin State Implementation Plan (SIP) for ozone that was submitted on June 14, 1995. This revision consists of a volatile organic compound (VOC) regulation to control emissions from the following sources: gasoline storage tanks, traffic marking materials, and solvent metal cleaning operations. These regulations were submitted to generate reductions in VOC emissions, which the State will use to fulfill the 15 percent requirement of the amended Clean Air Act. In the final rules of this Federal Register, the EPA is approving this action as a direct final without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. 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 action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received by May 29, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano (312) 353–6960.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this Federal Register. Copies of the request and the EPA's analysis are available for inspection at the following address: (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 6, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–10450 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–78; RM–8778]

Radio Broadcasting Services; Hicksville, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lake Cities Broadcasting Corporation seeking the allotment of Channel 294A to Hicksville, Ohio, as the community's first local aural transmission service. Channel 294A can be allotted to Hicksville in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) northeast, at coordinates 41–19–35 NL and 84–43–03 WL, to avoid a short-spacing to Station WMRI, Channel 295B, Marion, Indiana. Canadian concurrence in the allotment is required

since Hicksville is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before June 13, 1996, and reply comments on or before June 28, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Esq., 13809 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–78, adopted March 19, 1996, and released April 22, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10442 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–3; RM–8735]

Radio Broadcasting Services; Imboden, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed on behalf of John J. Shields, which requested the allotment of Channel 289A to Imboden, Arkansas, as that community's first local aural transmission service, based upon the lack of an expression of interest in pursuing the proposal by the petitioner or any other party. *See* 61 FR 4393, February 6, 1996. With this action, the proceeeding is terminated.

DATE: This dismissal is made on April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–3, adopted April 4, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10436 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–81; RM–8776]

Radio Broadcasting Services; Rosalia, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Randall L. Hughes requesting the allotment of Channel 234A to Rosalia, Kansas. Channel 234A can be allotted to Rosalia in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 234A at Rosalia are 37–48–54 and 96–37–12.

DATES: Comments must be filed on or before June 13, 1996, and reply comments on or before June 28, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randall L. Hughes, 425 1/2 N. Star, El Dorado, Kansas 67042 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–81, adopted March 20, 1996, and released April 22, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10441 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[OST Docket OST–96–1295] [Notice 96–13]

RIN: 2105–AC49

Update of Drug and Alcohol Procedural Rules

AGENCY: Office of the Secretary, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Department of Transportation is reviewing its procedural rules for drug and alcohol testing. This review is intended to lead to a notice of proposed rulemaking to update and clarify provisions of the rules. This advance notice of proposed rulemaking seeks suggestions for possible changes to the regulation.

DATES: Comments should be received July 29, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket No. OST–96–1295, Department of Transportation, 400 7th Street, S.W., Washington, D.C., Room PL 401, Washington, D.C., 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306.

SUPPLEMENTARY INFORMATION: Six of the Department's operating administrations (the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Railroad Administration (FRA), U.S. Coast Guard (USCG), and Research and Special Programs Administration (RSPA)) have modal-specific drug and/or alcohol testing rules. These rules apply to about 8 million transportation employees who work in safety-sensitive positions (e.g., truck drivers, airline pilots, and railroad engineers). The operating administration rules impose substantive requirements concerning the testing program, on subjects such as which employers must conduct tests, which employees are subject to testing, what kinds of tests are required, when the tests must be administered, the consequences of positive tests and other rule violations, how an employee who has violated the rule can return to duty, and what recordkeeping and reporting requirements apply to employers. These modal rules are not being revisited as part of this rulemaking initiative.

The Office of the Secretary (OST) procedural rule (49 CFR Part 40) that is the subject of this advance notice of proposed rulemaking (ANPRM) applies to regulated parties through each of the operating administration's rules. Part 40 describes, in detail, *how* the required tests must be conducted.

The drug testing portion of Part 40 closely follows the Mandatory Guidelines for Federal Workplace Drug Testing Programs of the Department of Health and Human Services (DHHS). With respect to the four operating administrations covered by the Omnibus Transportation Employee Testing Act of 1991 (FAA, FRA, FHWA, and FTA), the Department is required by statute to have procedures consistent with the DHHS Guidelines. We are committed, as a matter of policy, to consistency with the DHHS Guidelines with respect to the RSPA and Coast Guard drug testing programs as well. Consequently, the Department is not, in this ANPRM, entertaining comments that would require substantive departures from the DHHS Guidelines. Nor is the Department seeking comments on significant substantive issues that have, in recent years, been the subject of completed or pending rulemaking actions (e.g., review of negative drug test results by medical review officers, blood testing for alcohol, ''shy bladder'' procedures).

The Department conceives this ANPRM, then, not as an occasion for suggesting major substantive changes to how we test for drugs and alcohol, but rather as an opportunity to clarify the myriad details of Part 40. We want to make the rule as easy to understand and apply as we can, reduce burdens where feasible, take ''lessons learned'' during the several years of operating the program under Part 40 into account, correct problems that have been identified, clarify areas of uncertainty or ambiguity, and incorporate, where appropriate, the Department's interpretations of Part 40 into the regulatory text. We also anticipate reordering provisions of the rule so that the material flows more smoothly and is easier for readers to follow.

While we are soliciting comments on both the drug and alcohol portions of the regulation, we anticipate that the main focus of this effort will be on drug testing procedures, which are both more complex and older than the alcohol testing procedures. We seek the ideas of everyone involved with the program—employers, employees, consortia and third-party administrators, laboratories, substance abuse professionals, medical review officers, collectors, breath alcohol technicians, and other interested persons—to assist us in this process.

The Department is contemplating hosting one or more public meetings or other forums during which interested persons can discuss potential Part 40 changes with DOT officials and staff. We will issue a notice announcing such events when plans are in place.

Regulatory Analyses and Notices

This ANPRM, which simply requests public input concerning potential changes to the Department's drug and alcohol testing procedures, is not significant for purposes of Executive Order 12866 or Department of Transportation Rulemaking Policies and Procedures.

Issued this 22nd day of April 1996, at Washington, D.C.

Federico Peña,

Secretrary of Transportation.

[FR Doc. 96–10522 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC–93–23]

RIN 2125–AD20

Commercial Driver Physical Qualifications As Part of the Commercial Driver's License Process

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to form a Negotiated Rulemaking Committee on Commercial Driver's License (CDL) and Physical Qualifications Requirements.

SUMMARY: The FHWA proposes to establish a negotiated rulemaking advisory committee (the Committee) under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to consider the relevant issues and attempt to reach a consensus in developing regulations governing the proposed merger of the State-administered commercial driver's license procedures and the driver

physical qualifications requirements of 49 CFR Part 391. The Committee would be composed of people who represent the interests that would be substantially affected by the rule.

The FHWA invites interested parties to comment on the proposal to establish the Committee and on the proposed membership of the Committee, and to submit applications or nominations for membership on the Committee.

DATES: Interested parties may file comments and nominations for committee membership on or before May 29, 1996.

ADDRESSES: Comments and/or nominations should be sent to FHWA Docket No. MC–93–23, Room 4232, HCC–10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Motor Carrier Research and Standards, (202) 366–4001, or Ms. Grace Reidy, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation has authority to establish standards for physical qualifications that must be met by drivers in interstate commerce. 49 U.S.C. 31502 and 49 U.S.C. 31136. This authority is delegated to the Federal Highway Administrator. 49 CFR 1.48. The Federal Motor Carrier Safety Regulations (FMCSRs) set forth the qualifications of drivers who operate commercial motor vehicles (CMV) in interstate commerce. 49 CFR 391.11. The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) provides, in section 12005(a)(8) (49 U.S.C. 31305(a)(8)), that Federal standards *may* be promulgated to require issuance of a certification of fitness to operate a CMV to each person who passes a CDL test and may require such person to have a copy of such certification in his or her possession whenever operating a CMV.

In September 1990, the FHWA explored options for giving responsibility for medical qualification determinations to the State licensing agencies as part of the CDL process. Six States—Alabama, Utah, Arizona, North Carolina, Indiana and Missouri—began pilot programs seeking efficient ways to assure that commercial motor vehicle drivers meet the Federal physical qualifications requirements before they are issued a license. The pilots were developed by the FHWA and its contractors, the Association for the Advancement of Automotive Medicine and the American Association of Motor Vehicle Administrators, in conjunction with a committee of State government licensing officials.

The pilot projects were completed on January 31, 1995, and a final report was submitted to the agency. The report revealed that the State driver licensing agencies demonstrated the potential to assume responsibility for commercial motor vehicle driver medical qualification determinations as part of the CDL process. However, some States indicated they would require enabling legislation and additional funding to administer the process.

Currently, the FMCSRs require that CMV drivers be medically examined and certified as physically qualified once every two years in order to operate in interstate commerce. If the driver meets the Federal physical qualifications requirements, a medical examiner then issues a medical certificate which indicates that the driver is qualified to drive. Drivers must carry this certificate while driving and employers must maintain a copy in the drivers' qualification files. 49 CFR 391.41(a), 391.43, 391.45 and 391.51(b)(1). Enforcement of these requirements is performed primarily through roadside inspections of vehicles and drivers or through Federal or State safety compliance reviews of motor carriers.

In addition, 49 CFR 383.71(a) requires that during the CDL application process a person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR Part 391, shall certify that he or she meets the qualification requirements contained in 49 CFR Part 391. In practice, some States rely solely on the drivers' certifications while other States also require drivers who certify that they meet the qualification requirements of Part 391 to produce the required medical certificate in order to be issued a CDL. Before issuing the CDL, a few States also review the medical ''long form'' that the medical examiner completes to assure that the regulatory requirements are met.

The FHWA issued an advance notice of proposed rulemaking (ANPRM)(copy enclosed in Docket File) on July 15, 1994, requesting comments on merging the CDL and physical qualifications programs. 59 FR 36338. The FHWA stated in the ANPRM that merging the systems would allow the States to make the physical qualification determinations prior to issuing a CDL. Under such an approach, the CDL would then be the sole document a commercial driver would have to carry and would be evidence that a driver is medically qualified to operate the CMV.

The proposal to merge the medical fitness determination into the CDL process has several very strong potential benefits. Drivers would be relieved of the responsibility to carry a medical fitness card, thus eliminating the potential for such cards to be inadvertently lost, damaged or destroyed. Enforcement personnel would also have immediate notice of the medical fitness status of a driver, without the time-consuming need to refer to and authenticate a separate document. Carriers would no longer need to maintain driver medical qualification certificates, as the license document itself would confirm the fitness of the driver.

In addition, States would be better able to identify unqualified drivers that currently operate without medical cards or with forged medical cards. Where questions exist regarding a license applicant, the driver licensing agency could refer the applicant and the medical fitness form to the State medical advisory board for further review. Medical advisory boards are currently in place in many States and are used to review medical qualifications of passenger car drivers and for intrastate CMV operators. The agency understands that forty-seven States currently have either a medical advisory board or some kind of medical review process for the above-described driver licensing determinations. In this rulemaking, the FHWA proposes to include medical determinations involving interstate CMV drivers in existing State medical review infrastructure programs by taking advantage of established working practices that are prevalent within State licensing agencies.

The results of the six-State pilot program provide support for the benefits of this proposal. The final report found that drivers who did not meet current medical standards could be readily detected and could be restricted from driving CMVs entirely or within parameters set by the driver licensing agency and its medical advisory board. Medical examiners would be able to contact the driver licensing agency medical unit or medical advisory board if questions arose during a physical. The

review of the fitness qualifications as part of the licensing process streamlines the procedure and creates a single record for each driver. The pilot found that fraudulent or expired medical certifications and the lack of required medical certifications of drivers did not exist in the six participating States.

In the ANPRM, the FHWA asked interested parties to comment on specific issues including the feasibility of the ''merger'' concept; how best to achieve such a system; how to reconcile the differences between the States' four-year CDL renewal cycle with the FHWA's two-year medical certificate cycle; whether medical examiners should be certified to perform examinations; the degree of flexibility States should have in determining how to implement any new, merged standard; and the types of resources required by States to implement a new, merged standard. Seventy-six parties responded to the notice, including State agencies, for-hire motor carriers, private carriers, safety advocates, and medical groups.

The responses received from commenters to the ANPRM generally involved one of five general issues. Because the parties likely to be interested in this proposed regulation (i.e., State licensing agencies, carriers, drivers, medical professionals) are fairly well defined, and the issues identified through the ANPRM are also well defined, the agency believed that this proposed rulemaking would be a good candidate for negotiated rulemaking. The range of interested parties and issues to be addressed are not the only reasons for the decision to initiate a negotiated rulemaking. The agency is enthusiastic about the opportunity to work cooperatively with partners in the motor carrier community at large to discuss this issue and approaches to resolving it in an open exchange of ideas. The opportunity to engage in face-to-face discussion of concerns and benefits will hopefully allow for a creative, cooperative approach to addressing the merger of medical fitness and licensing decisions.

As referenced earlier, the five general issues identified by the respondents to the ANPRM were: (1) whether States would have statutory authority to verify the physical qualifications of a driver; (2) whether there will be adequate staff available to verify drivers' compliance with physical qualifications requirements at the time a license is issued; (3) the feasibility of merging the two-year medical certificate with the States' four-year licensing cycle; (4) the motor carrier's role in assuring physical qualifications of the driver; and (5) the cost of training licensing examiners and/or staffing medical review boards on the administration of the process.

Comments on the ANPRM included questions on the potential costs to States of assuming responsibility for verifying medical fitness as part of CDL issuance or renewal. Some carriers expressed concern that licensing agencies would be unable to adequately confirm information on the medical form and suggested that the current carrier responsibility for driver fitness be maintained. The agency believes that the results of the six-State pilot program indicate a strong likelihood that States can assume responsibility for the medical fitness determination process. This rulemaking will form the basis for addressing the questions raised by respondents to the ANPRM, as well as other issues that may be identified as this process continues.

Pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561–570, the agency has decided to form a negotiated rulemaking committee. As discussed earlier, the agency believes that this approach is most likely to lead to an efficient and successful transfer of responsibility for medical fitness determinations to State licensing agencies. Unlike traditional, informal notice and comment rulemaking, this process will allow for the open exchange of ideas and information among and between parties with an interest in the outcome of this issue. The agency believes that in adopting this approach, the process will lead to creative, innovative approaches to resolving issues that might not emerge through the individual efforts of commenters to a docket. The process will still result in the promulgation of a notice of proposed rulemaking. This will provide an opportunity for comment by other interested parties and the general public, but the initial proposal that will be published for comment will reflect the exchange of ideas and differing proposals that occur in negotiations. One result of the negotiations will be a better informed commercial motor vehicle safety community with a fuller understanding of the benefits and potential problem areas associated with State verification of medical fitness determinations. This knowledge should help all parties, including the agency, to develop a more practical, effective means of dealing with these medical fitness determinations.

Negotiated Rulemaking Process

Conveners

As provided for in 5 U.S.C. 563(b), a convener assists the agency in identifying the persons or interests that would be significantly affected by the proposed rule. The convener conducts discussions with representatives of such interests to identify the issues of concern to them and to ascertain the feasibility of establishing a negotiated rulemaking committee.

The FHWA retained the services of a contractor to act as a convener and provide advice on the feasibility of using a negotiated rulemaking process for this rule. The convening team met with FHWA officials to review background information on the issues, including the responses to the ANPRM, potential interested parties, and objectives of the agency. Prior to conducting interviews with prospective participants, the convening team analyzed the views of the various respondents to the ANPRM and the level of controversy generated by the issues as outlined in the ANPRM.

The conveners attempted to develop the range of interests that would be affected by the rule and identify individuals who would be able to represent or articulate those interests. The conveners then sought to interview those individuals to determine their views on the issues involved and whether they would be interested in participating in the negotiated rulemaking. The convening team sought to determine whether the negotiated rulemaking process would be effective in developing the rule. Each party was also asked if there were other individuals or groups which should be contacted and these additional parties were also interviewed. Based upon these interviews, the conveners submitted a convening report (copy enclosed in Docket File) in December 1995 to the FHWA, recommending that the agency proceed with the negotiated rulemaking process.

Determination of Need for Negotiated Rulemaking Committee

The purpose of a negotiated rulemaking committee is to develop consensus on a proposed rule. ''Consensus'' means the unanimous concurrence among the interests represented on the negotiated rulemaking committee unless the committee explicitly adopts some other definition. This requirement also means that the agency itself participates in the negotiations in a manner similar to that of any other party.

Before establishing such a negotiated rulemaking committee, the Negotiated Rulemaking Act (5 U.S.C. 563(a)) directs the head of an agency to consider whether:

1. There is a need for the rule;
2. There are a limited number of identifiable interests that will be significantly affected by the rule;
3. There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent those interests and are willing to negotiate in good faith to reach a consensus on a proposed rule;
4. There is a reasonable likelihood that a committee will reach consensus on the proposed rule within a fixed period of time;
5. The negotiated rulemaking will not unreasonably delay the issuance of the notice of proposed rulemaking and the final rule;
6. The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
7. The agency, to the maximum extent possible, consistent with its statutory authority and legal obligations, will use the consensus of the committee as the basis for the rule proposed by the agency for notice and comment.

The FHWA believes that all of the requisite negotiated rulemaking factors are satisfied with regard to the proposal to merge the medical qualification determination and the CDL processes and that the negotiating process could provide significant advantages over conventional informal rulemaking. This determination is based on the review of the comments to the ANPRM and the convener's report submitted by the contractor. There is broad consensus among the parties contacted by the conveners that there are weaknesses in the current medical qualifications system that can be improved. The potentially affected interests are limited in number; there are clearly fewer than 25 distinct interests that would be affected by the rule. A balanced committee representing the various interests at stake in this matter can be empaneled. The parties contacted by the conveners have expressed their interests in discussing the issues and believe that there is a strong likelihood of reaching consensus on the issues within a reasonable period of time. The FHWA believes that these negotiations will not delay, but will expedite the rulemaking process since the negotiations will enable the agency to benefit from the committee members' practical first-hand insights and knowledge into the operation of the physical qualifications determinations and the benefits and costs of integrating those determinations into the licensing process. Gaining those insights and resolving the controversies surrounding the identified issues would otherwise take the agency considerably longer to resolve by using traditional rulemaking. The agency is committed to facilitating the negotiated rulemaking process and will devote the necessary resources, including technical assistance, to the Committee. The member or members of the Committee representing the agency shall participate in the deliberations and activities of the Committee with the same rights and responsibilities as other members of the Committee, and shall be authorized to fully represent the agency in discussions and negotiations of the Committee. The agency, to the maximum extent possible, consistent with its statutory authority and legal obligations, will use the consensus of the Committee as the basis for the rule proposed by the agency for notice and comment.

Therefore, based on this analysis of the seven factors mentioned above, the agency has concluded that the use of the negotiated rulemaking procedure in this case is in the public interest.

Potential Topics for the Negotiated Rulemaking Process

Based on the interviews conducted with potential committee members and the report provided by the convener, the FHWA proposes that the following issues would be considered in the negotiated rulemaking process.

1. Whether the physical qualifications guidelines currently used by the agency should be modified to more effectively implement the current medical standards.
2. The scope of any medical qualifications tracking system which might be used by law enforcement officials, as well as by carriers interested in medical information that is not currently available.
3. What is the status of the various federally-funded State Prototype Medical Review pilot programs which explored the merger of the medical qualifications and licensing processes, and what useful information can be utilized from these efforts in drafting a rule on merging CDL and physical qualifications requirements?
4. How much control should various parties have over the medical review process and should the current commonly-used procedure, in which a company directs its drivers to physicians it selects, be replaced entirely or could it simply be modified? For example, should the agency require drivers to submit a medical long form to employers and the appropriate State licensing agency instead of replacing the current system?
5. How can the current physical examination requirements used by medical providers be clarified? How can these requirements and guidelines be more effectively communicated to the medical provider community?
6. Is there a way to allow merger of the separate requirements without burdening the small operator who moves to another State? In this case, although the driver's medical certification would still be valid, he or she might still be required to be recertified in the new State, thus potentially requiring a new certificate and a corresponding fee (e.g. medical reciprocity of old certificate to new States).

Once the negotiated rulemaking process begins, Committee members may raise other issues necessary for successful completion of the rulemaking.

Potential Participants Who Were Interviewed By Conveners

The following entities were identified as interested parties that should be included in the negotiated rulemaking process either directly as members of the Committee or as a part of a broader caucus of similar or related interests:

Enforcement Groups

Commercial Vehicle Safety Alliance
International Association of Chiefs of Police

State Licensing Agencies

American Association of Motor Vehicle Administrators

Carriers

American Trucking Associations
National Private Truck Council
National School Transportation Association
United Bus Motor Coach Association
American Bus Association
Terra International (Agricultural)
Farmland Industries (Agricultural)

Drivers

Owner-Operators Independent Drivers Association
Independent Truckers and Driver Association
Independent Truck Owner Operator Association
International Brotherhood of Teamsters

Public Interest

Advocates for Highway and Auto Safety
American Automobile Association

Medical

American College of Occupational and Environmental Medicine

Association for the Advancement of Automotive Medicine

American Association of Occupational Health Nurses

Insurance

Lancer Insurance (Busing Interests)

AI Transportation—AIG (Busing and Trucking)

Insurance Institute for Highway Safety

Proposed Agenda and Schedule

The FHWA anticipates that the negotiated rulemaking committee will hold six two-day meetings, approximately once a month. The first committee meeting will focus on such matters as: determining if there are additional interests that should be represented on the Committee; identifying issues to be considered; and setting ground rules, a schedule, and an agenda for future Committee meetings.

Administrative Support

The FHWA's Office of Motor Carrier Research and Standards will supply logistical, technical, and administrative support to the Committee. The meetings will be held at the FHWA headquarters in Washington, D.C. Washington, D.C. is where a majority of the prospective Committee members are located. In general, Committee members will be responsible for their own expenses, but the FHWA will consider requests for compensation in accordance with 5 U.S.C. 568(c).

Applications for Membership on Committee

The FHWA is soliciting comments on this proposal to establish a negotiated rulemaking advisory committee and on the proposed membership of the Committee. Persons may apply or nominate another person for membership on the Committee in accordance with the following procedures:

Persons who will be significantly affected by the proposed rule and who believe that their interests will not be adequately represented by any person on the previously discussed list of potential participants may apply for, or nominate another person for, membership on the negotiated rulemaking committee. Each application or nomination shall include:

1. the name of the applicant or nominee and a description of the interests such person shall represent;

2. evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;

3. a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and

4. the reasons that the persons specified in this notice do not adequately represent the interests of the person submitting the application or nomination.

Announcement of FHWA Public Meeting

In order to identify and select organizations or interests to be represented on the Committee, the FHWA will hold a public meeting on May 14, 1996. The meeting will be held at the Nassif Building, 400 7th Street, SW, Room 9230, Washington, D.C., at 8:30 a.m. e.t. All parties interested in this rulemaking, including the potential participants listed above and parties submitting applications or nominations for membership, are encouraged to attend this meeting. The convener/facilitator will also attend this organizational meeting.

As a general rule, the Federal Advisory Committee Act provides that no advisory committee may meet or take any action until an approved charter has been filed with the appropriate House and Senate committees with jurisdiction over the agency using the committee. Only upon the Secretary of Transportation's approval of the charter and the list of organizations or interests to be represented on the Committee and the filing of the charter will the FHWA form the Committee and begin negotiations.

After review of the comments received in response to this notice and any additional comments received at the organizational meeting, the FHWA will issue a final notice announcing the Committee members and the date of the first Committee meeting.

Authority: [5 U.S.C. 561–570].

Issued on: April 23, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–10548 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 61, No. 83
Monday, April 29, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 95–068–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow, under certain conditions, the cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. We have determined that there are biological barriers at these ports that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruit before undergoing cold treatment. We are also proposing to require that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours. These actions would facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

DATES: Consideration will be given only to comments received on or before June 28, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–068–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–068–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56–8 (referred to below as ''the regulations''), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and time requirements vary according to the type of fruit and the pests involved. Detailed cold treatment procedures may be found in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1.

Most imported fruit that requires cold treatment undergoes cold treatment in transit to the United States. However, APHIS also allows imported fruit to undergo cold treatment at an approved cold treatment facility in either the country of origin or after arrival in the United States at certain ports designated by APHIS in § 319.56–2d(b)(1) of the regulations.

Currently, cold treatment in the United States is limited to the following ports: the port of Wilmington, NC; Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC, at Baltimore-Washington International and Dulles International airports.

Imported fruit may undergo cold treatment at the listed ports other than Wilmington, NC, because biological barriers, including climatic conditions, exist to prevent the introduction and establishment of fruit flies and other insect pests that could escape from shipments of imported fruit after arrival in the United States. Imported fruit may also undergo cold treatment at the port of Wilmington, NC, because APHIS has imposed special conditions regarding cold treatment to mitigate the risk of the introduction of fruit flies and other insect pests into the United States (see § 319.56–2d(b)(5)(iv)).

Recently, we received formal requests from the Taiwanese Government, the City of Atlanta Airport Authority, and the Mississippi State Port Authority to authorize the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, respectively, as approved locations for cold treatment of imported fruit.

Previously Published Notices and Regulations

On November 12, 1993, in response to earlier petitions from individuals at the ports of Wilmington, NC, and Gulfport, MS, we published in the Federal Register (58 FR 59953, Docket No. 93–121–1) an advance notice of proposed rulemaking requesting public comment on whether we should allow cold treatment at ports in the Southern United States and in California.

We solicited comments concerning this notice for a 45-day period ending December 27, 1993. During that period, we received four comments, three from State governments and one from a grower organization. Two commenters opposed allowing cold treatment at ports in the Southern United States and California, arguing that allowing such treatments would place California and Florida citrus crops at too great a risk of fruit fly infestation. Another commenter requested that we perform a detailed pest risk analysis before deciding whether to allow cold treatment at southern and California ports. Another commenter supported cold treatment at the port of Wilmington, NC.

We subsequently published a proposed rule in the Federal Register on May 13, 1994 (59 FR 24968–24971, Docket No. 93–121–2) in which we proposed to allow imported fruit to be cold treated at the port of Wilmington, NC, after arrival in the United States. At that time, we decided to give further consideration to allowing cold treatment at other ports in the Southern United States and California. In a final rule published in the Federal Register on August 10, 1994 (59 FR 40794–40797,

Docket No 93–121–3), we approved cold treatment, under certain conditions, at the port of Wilmington, NC.

Proposal of Additional Ports

After performing extensive risk analyses, we are proposing to add the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, to the list of ports in § 319.56–2d that are authorized as approved locations for cold treatment of imported fruit. This proposal to allow cold treatment of fruit under certain conditions at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, is based, in part, on a document prepared by APHIS assessing the pest risks associated with allowing cold treatment of tropical fruit fly host materials at certain United States ports. The risk mitigation measures discussed in the document are included in this proposal as requirements for the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. (Copies of this document may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.) We have determined that in the areas of these ports proposed for cold treatment, there are biological barriers that, along with certain safeguards, would prevent the introduction and establishment of fruit flies and other insect pests in the unlikely event that they escape from shipments of fruit before undergoing cold treatment.

Risk Groups

Plant Protection and Quarantine (PPQ), APHIS, has established risk groups for many ports in the United States. These risk groups characterize the relative risk, without consideration for mitigating factors, associated with the movement of tropical fruit fly host material for cold treatment at these ports in the United States. The ports have been assigned to one of five risk groups based on a number of criteria, including the individual port's latitude, microclimate, immediate host availability, and past fruit fly infestations. The risk groups are assigned numbers I through V; this number scale represents an ascending level of risk based on the criteria listed above. Group I ports consist of East Coast ports north of, and including, Baltimore, MD. Group II ports consist of the ports of Wilmington, NC, Seattle, WA, Portland, OR, Atlanta, GA, and Norfolk, VA. Group III ports consist of the ports of Charleston, SC, Savannah, GA, Port Arthur, TX, and Galveston/Houston, TX. Group IV ports consist of the ports of Gulfport, MS, Mobile, AL, New Orleans, LA, Corpus Christi, TX, and Pensacola, FL. Group V ports consist of the ports of San Diego, CA, San Pedro/Long Beach, CA, San Francisco, CA, Oakland, CA, Tampa, FL, Miami, FL, West Palm/Ft. Lauderdale, FL, Cape Canaveral, FL, Jacksonville, FL, Ft. Meyers, FL, Ft. Pierce, FL, Brownsville, TX, and all Hawaiian ports.

The general requirements for cold treatment found in § 319.56–2d are designed to mitigate the risk of infestation due to fruit fly escape from shipments intended for cold treatment at Group I ports. These requirements include delivering, under the supervision of an inspector of PPQ, shipments of fruit that require cold treatment to an approved cold storage warehouse where the shipments will be cold treated; precooling and refrigerating the shipments of fruit intended for cold treatment promptly upon arrival at the cold treatment facility; allowing shipments of fruit that require cold treatment to leave U.S. Customs custody only under a redelivery bond for cold treatment; and allowing shipments of fruit that require cold treatment final release from the U.S. Collector of Customs only after official notification has been received by the Customs officer that the required cold treatment has been completed.

For shipments of fruit arriving for cold treatment at the port of Wilmington, NC, a Group II port, the regulations at § 319.56–2d(b)(5)(iv) also require that bulk shipments of fruit must arrive in fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies; bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force; and advance reservations for cold treatment must be made prior to the departure of a shipment from its port of origin.

Each of the ports proposed as an approved location for cold treatment in this document, the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, has been assigned to a risk group other than Group I; consequently, additional mitigating factors need to be put in place before cold treatment can occur at any of these ports.

Proposal of Special Conditions for the Ports of Seattle, WA, Atlanta, GA, and Gulfport, MS

We are proposing to impose additional special conditions regarding cold treatment at each of the ports proposed as an approved location for cold treatment that mitigate the risk of the introduction and establishment of fruit flies and other insect pests. The special conditions that would be assigned to each port are listed below by port.

Special Conditions for the Maritime Port of Seattle, WA

The maritime port of Seattle has biological barriers to fruit fly introduction and establishment in that the port is not in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, the maritime port of Seattle, WA, belongs to the Group II list of ports because the area surrounding this port contains a small variety of fruit-fly host material and has a longer growing season than Group I ports. Therefore, in addition to the requirements in § 319.56–2d (b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the maritime port of Seattle, WA:

1. Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

This condition would ensure that shipments that arrive at the maritime port of Seattle, WA, in cases or bins would not be exposed in such a manner as to allow fruit flies or other insect pests to escape from the shipment.

2. Bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

3. Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

4. The cold treatment facility must remained locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

We believe that the biological barriers and these additional conditions established for cold treatment at the maritime port of Seattle, WA, would be adequate to prevent the introduction and establishment of fruit flies and other insect pests.

Special Conditions for the Airports of Atlanta, GA, and Seattle, WA

The airports of Atlanta, GA, and Seattle, WA, each have biological barriers to fruit fly introduction and establishment in that neither port is in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, both the airports of Atlanta, GA, and Seattle, WA, belong to the Group II list of ports because the areas surrounding these airports contain a small variety of fruit-fly host material and have longer growing seasons than Group I ports. Additionally, although fruit that travels to the United States by ship for cold treatment is regularly chilled during transit, fruit imported into the United States by aircraft for cold treatment is not. Therefore, the mitigation measures for the Group II airports of Atlanta, GA, and Seattle, WA, would be more extensive than the mitigation measures for Group II maritime ports. As such, in addition to the requirements in § 319.56–2d(b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the airports of Atlanta, GA, and Seattle, WA:

1. Bulk and containerized shipments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

This condition would ensure that all shipments, including those that that arrive at these airports in cases or bins, would not be exposed in such a manner as to allow fruit flies or other insect pests to escape from the shipment.

2. Bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

3. The cold treatment facility and PPQ must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the port and the cold treatment facility. The movement of shipments from aircraft to cold treatment facility would not be allowed until an acceptable route has been agreed upon.

In most instances, the route would be determined by establishing the shortest route between the aircraft and the cold treatment facility that does not include an area that contains host material for fruit flies during the time of year that the region experiences its most abundant amount of host material for fruit flies. Then, that route would be used throughout the year to convey shipments from aircraft to cold treatment facility. This predetermined route would reduce the amount of time that a shipment would have to wait before undergoing cold treatment and would reduce the risk that any fruit flies in the shipments would come into contact with host material en route to cold treatment.

4. Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

5. The cold treatment facility must remained locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

6. Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

This condition would act as a general safeguard. We propose this condition as an extra layer of defense that would trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages to survive past the stage of pupation in the cold treatment facility.

7. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of PPQ, for handling fruit, including the ability to destroy or dispose of fruit safely.

This condition would ensure that, in the event that a shipment cannot be cold treated promptly or properly, the contents of the shipment could be safely treated by alternative means, destroyed, or disposed of so that fruit flies and other insect pests would not have the opportunity to escape. Examples of adequate contingency plans would include the ability to incinerate fruit, to bury fruit, or to re-export fruit.

We believe that the biological barriers and these additional conditions established for cold treatment at the airports of Atlanta, GA, and Seattle, WA, would be adequate to prevent the introduction and establishment of fruit flies and other plant pests.

Special Conditions for the Port of Gulfport, MS

The maritime port of Gulfport, MS, has biological barriers to fruit fly introduction and establishment in that it is not in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, the port of Gulfport belongs to the Group IV list of ports because the area surrounding this port, among other things, contains a wider variety and greater quantity of fruit-fly host material than Group I, II, or III ports and has a lengthy growing season due to its southern location. Therefore, in addition to the requirements in § 319.56–2d(b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the maritime port of Gulfport, MS:

1. All fruit entering the port for cold treatment must move in maritime containers. No bulk shipments (those shipments which are stowed and unloaded by the case or bin) would be allowed at the port of Gulfport, MS.

This condition would ensure that imported fruit arriving at the port of Gulfport, MS, for cold treatment would not be exposed to the outdoors. The shipping container would insulate the fruit, thereby helping to keep the fruit chilled during unloading, would prevent leakage of the shipment, and would serve as a barrier to fruit fly escape from shipments of untreated fruit.

2. Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

This condition would ensure that containerized shipments would be packaged in such a manner as to prevent fruit flies or other insect pests from escaping from the shipment when the container is opened. This condition would provide an extra barrier to fruit fly escape from a shipment of untreated fruit.

3. Containerized shipments of fruit arriving at the port must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

4. The cold treatment facility and PPQ must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of shipments from vessel to cold treatment facility would not be allowed until an acceptable route has been agreed upon.

In most instances, the route would be determined by establishing the shortest route between the vessel and the cold treatment facility that does not include an area that contains host material for fruit flies during the time of year that the region experiences its most abundant amount of host material for fruit flies. Then, that route would be used throughout the year to convey shipments from vessel to cold treatment facility. This predetermined route would reduce the amount of time that a shipment would have to wait before undergoing cold treatment and would reduce the risk that any fruit flies in the shipments would come into contact with host material en route to cold treatment.

5. Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

6. Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements: (1) All containers must be unloaded within the cold treatment facility; and (2) untreated fruit may not be exposed to the outdoors under any circumstances.

Because of the southern location of the port of Gulfport, MS, we believe that this condition would be a necessary mitigating factor at this port. This condition would eliminate the possibility of untreated fruit being unloaded and waiting for cold treatment outside of the cold treatment facility itself.

If fruit intended for cold treatment was removed from its shipping container outside of the cold treatment facility, there would be an increased risk of fruit fly escape due to untreated fruit warming up to temperatures that would allow the insect pests that may be in the fruit to become more active and possibly to escape when the fly-proof packaging is removed from the shipment. Our proposal to require devanning inside of the cold treatment facility would ensure that all fruit that requires cold treatment remains in a cool environment.

7. The cold treatment facility must remained locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

8. Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

This condition would act as a general safeguard. We propose this condition as an extra layer of defense that would trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages to survive past the stage of pupation in the cold treatment facility.

9. During cold treatment, a backup system must be available to cold treat the shipments of fruit should the primary cold room malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruit.

This condition would ensure that, in the event that the primary cold treatment system fails, additional equipment is on hand at the cold treatment facility to perform cold treatments on shipments of fruit. Cold holding rooms would be necessary to ensure that shipments of fruit remain cool during any waiting period that may ensue from a malfunction of the primary cold room. The identification of shipments to determine which lots have been treated and which lots need to be treated would eliminate the possibility of treated fruit being commingled with untreated fruit and thereby further reduce the possibility of fruit flies or other insect pests escaping from the cold treatment facility.

10. The cold treatment facility must have the ability to conduct methyl bromide fumigations on site. Therefore, the cold treatment facility must have fumigation equipment approved by the Deputy Administrator of PPQ and a site for conducting fumigation on the premises.

This condition would act as an additional contingency plan to treat fruit entering the port of Gulfport, MS. As the risk of fruit fly infestation is greater at Gulfport, MS, than at the other ports proposed for cold treatment, we have determined that an extra layer of protection should be provided by requiring methyl bromide fumigation capabilities as an alternative means of eliminating pests from shipments of fruit. The criteria for the approval of fumigation equipment can be found in the PPQ Treatment Manual.

With respect to methyl bromide fumigation, the Environmental Protection Agency published a notice of final rulemaking in the Federal Register on December 10, 1993 (58 FR 65018–65082) which freezes the production of methyl bromide at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

11. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of PPQ, for safely destroying or disposing of fruit.

This condition would ensure that, in the event a shipment cannot be cold treated promptly or properly, the contents of the shipment could be safely destroyed or disposed of so that fruit flies and other plant pests would not have the opportunity to escape. Examples of adequate contingency plans would include the ability to incinerate fruit, to bury fruit, or to re-export fruit.

We believe that the biological barriers and these additional conditions

established for cold treatment at the port of Gulfport, MS, would be adequate to prevent the introduction and establishment of fruit flies and other plant pests.

Proposal of Special Condition for the Port of Wilmington, NC

We are also proposing to require that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours as another special condition to cold treatment at the port of Wilmington, NC. We have determined that this safeguard, without interfering with daily operations at the port, would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

Miscellaneous

We are also proposing to make minor editorial changes for clarity and consistency. We propose to amend the language in § 319.56–2d(b)(5)(iv)(B) to clarify that shipments coming in for cold treatment currently consist only of fruit. Section 319.56–2d(b)(5)(iv)(B) states that the shipments intended for cold treatment consist of fruits and vegetables, but, presently, only certain fruits from certain countries are approved for cold treatment.

We also propose to revise § 319.56–2x(b) to update the list of ports that are approved as locations for cold treatment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the cold treatment of imported fruits upon arrival at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. Modern cold treatment facilities have been or are in the process of being constructed at each of these ports.

Approximately 585.4 million kilograms of fresh fruits and vegetables were imported into the United States through the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA, during fiscal year 1994. The port of Gulfport, MS, handled about 98 percent of the total fresh fruit and vegetable imports for these ports. The ports of Atlanta, GA, and Seattle, WA, handled 0.25 and 1.75 percent, respectively, of the total fresh fruit and vegetable imports for these three ports. During fiscal year 1994, approximately 550,330 kilograms (less than one-tenth of one percent) of the total fresh fruit imports for these ports were cold treated in the country of origin or in transit to the United States and, if these ports had been approved for cold treatment, would have been eligible for cold treatment upon arrival in the United States. Should these ports be approved for cold treatment, we expect that an additional 20 million kilograms of new and rerouted fresh fruits would be imported through and cold treated at these ports each year.

According to the Small Business Administration, a ''small'' entity involved in the wholesale trade of fresh fruits is one that employs no more than 100 people. Currently, there are 4,388 ''small'' wholesale importers of fresh fruits in the United States. Use of on-site cold treatment facilities at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, may slightly reduce transportation costs for foreign fruit exporters, which, in turn, may slightly reduce transportation costs for domestic importers and, ultimately, may slightly reduce the cost of certain fruits for U.S. consumers. We expect, however, that these reductions in costs would be insignificant.

The alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative because it appears that, with the safeguards proposed, the cold treatment of fruit may be conducted at any of the ports proposed in this document without significant risk of introducing fruit flies or other injurious plant pests.

Executive Order 12778

This proposed rule would allow cold treatment of certain imported fruits to be conducted at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits under this rule would be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

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

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 319.56–2d would be amended as follows:

a. In paragraph (b)(1), by revising the second sentence to read as set forth below.

b. By revising paragraph (b)(5)(iv) to read as set forth below.

c. By adding new paragraphs (b)(5)(v) and (b)(5)(vi) to read as set forth below.

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

(b) * * *

(1) * * * If not so refrigerated, the fruit must be both precooled and refrigerated after arrival only in cold storage warehouses approved by the Deputy Administrator and located at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the

North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

* * * * *

(5) * * *

(iv) *Special requirements for the maritime ports of Wilmington, NC, and Seattle, WA.* Shipments of fruit arriving at the maritime ports of Wilmington, NC, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit must be cold-treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(D) The cold treatment facility must remained locked during non-working hours.

(v) *Special requirements for the airports of Atlanta, GA, and Seattle, WA.* Shipments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk and containerized shipments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit arriving for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of shipments from aircraft to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(D) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(E) The cold treatment facility must remained locked during non-working hours.

(F) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(G) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

(vi) *Special requirements for the port of Gulfport, MS.* Shipments of fruit arriving at the port of Gulfport, MS, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) All fruit entering the port for cold treatment must move in maritime containers. No bulk shipments (those shipments which are stowed and unloaded by the case or bin) are permitted at the port of Gulfport, MS.

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(C) All shipments of fruit arriving at the port for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(D) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of shipments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) Advance reservations for cold treatment space at the port must be made prior to the departure of a shipment from its port of origin.

(F) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(1) All containers must be unloaded within the cold treatment facility; and

(2) Untreated fruit may not be exposed to the outdoors under any circumstances.

(G) The cold treatment facility must remained locked during non-working hours.

(H) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(I) During cold treatment, a backup system must be available to cold treat the shipments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(J) The cold treatment facility must have the ability to conduct methyl bromide fumigations on-site.

(K) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

* * * * *

3. In § 319.56–2x(b), the first sentence would be revised to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

(b) If treatment has not been completed before the fruits and vegetables arrive in the United States, fruits and vegetables listed above and requiring treatment for fruit flies may arrive in the United States only at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

Done in Washington, DC, this 23rd day of April 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–10461 Filed 4–26–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–78–AD]

[RIN 2120–AA64]

Airworthiness Directives; I.A.M. Rinaldo Piaggio S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain I.A.M. Rinaldo Piaggio S.p.A. (Piaggio) Model P–180 airplanes. The proposed action would require modifying the passenger seat cushion next to the emergency exit door handle. Reports of interference with the passenger seat cushion and the emergency exit door handle preventing the door from opening from the outside prompted this proposed AD action. The actions specified by the proposed AD are intended to prevent the possibility of not being able to open the emergency exit door during an emergency evacuation of the airplane, which could result in injury to the passengers.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–78–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Edward S. Chalpin, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830, ext. 2716; facsimile (322) 230.6899; or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–78–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–78–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on certain Piaggio Model P–180 airplanes. The RAI has advised that the emergency exit door handle next to the passenger seat is getting caught on the passenger seat cushion when attempting to open the door from the outside. The outside door handle is connected to the inside door handle, which, if caught on the passenger seat cushion, prevents the door from opening.

Piaggio has issued Service Bulletin (SB) 80–0043; Original Issue July 28, 1993, which specifies procedures for modifying the passenger seat cushion to keep the emergency exit door handle from interfering with the seat cushion. The RAI classified this service bulletin as mandatory and issued RAI AD 93–302, dated September 30, 1993, in order to assure the continued airworthiness of these airplanes in Italy.

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

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio Models P–180 airplanes of the same type design registered in the United States, the proposed AD would require modifying the passenger seat cushion to keep the emergency exit door handle from interfering with the seat cushion in accordance with Piaggio SB 80–0043; Original Issue: September 30, 1993.

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be furnished by the manufacturer at no cost to the owner/operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $960. This figure is based on the assumption that none of the owner/operators of the affected airplanes have modified the airplanes. Piaggo has informed the FAA that all 4 of the Model P–180 airplanes registered for operation in the United States have performed this action, consequently, there is no further cost to U.S. operators for this proposed AD.

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

For the reasons discussed above, I certify that this action (1) is not a

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

I. A. M. Rinaldo Piaggio S.P.A: Docket No. 95–CE–78-AD.

Applicability: Model P–180 (serial numbers 1002 and 1004 through 1022), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent the possibility of not getting the emergency exit door open during an emergency evacuation of the airplane, which, if not detected and corrected, could result in injury to the passengers., accomplish the following:

(a) Modify the passenger seat cushion in accordance with Piaggio Service Bulletin (SB) 80–0043; Original Issue: September 30, 1993.

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

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 19, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10453 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–CE–55–AD]

RIN 2120–AA64

Airworthiness Directives; the New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA31, PA31P, and PA31T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 75–26–18, which currently requires modifying the landing gear selector cable forward attachment pin assembly by installing a safety lock wire on certain The New Piper Aircraft Inc., (Piper) PA31, PA31P and PA31T series airplanes. The proposed action would require the same action as AD 75–26–18. An incorrect designation of Piper Model PA31 airplanes as Piper Model PA31–310 airplanes in AD 75–26–18 prompted the proposed AD action. The actions specified by the proposed AD are intended to prevent the landing gear selector cable forward attachment pin assembly from becoming separated from the powerpack control arm, which, if not corrected, could cause loss of landing gear retraction or extension.

DATES: Comments must be received on or before June 28, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia, 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket No. 95–CE–55–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

It has been brought to the attention of the FAA that AD 75–26–18, which is applicable to Piper PA31 series airplanes, should not have listed a Piper Model PA31–310 airplane. The Piper Model PA31–310 airplane is not a recognized model on the Type Certificate Data Sheet No. A20SO and the airplane's data plate for the airplane subject to the AD states Model PA31, not Model PA31–310. The concern was raised that some owners/operators of Model PA31 airplanes may not have complied with AD 75–26–18, since the AD currently describes the airplane as a Piper Model PA31–310, even though their serial number falls within the serial number range in the current AD. For this reason, the FAA is proposing to supersede the current AD to change the model designation in the Applicability section of the AD from a Piper Model PA31–310 airplane to Piper Model PA31 airplane.

Piper has issued service bulletin (SB) No. 488, dated October 24, 1975, which specifies procedures for modifying the landing gear selector cable forward attachment pin assembly.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the landing gear selector cable forward attachment pin assembly from becoming separated from the powerpack control arm.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA31, PA31P, and PA31T series airplanes of the same type design, the proposed AD would supersede AD 75–26–18 with a new AD that would retain the same requirement as AD 75–26–18 which is modifying the landing gear selector cable forward attachment pin assembly, part number (P/N) 53599–00, by installing 3 inches of safety lock wire (MS20995C41) onto the attachment pin assembly, and the proposed action requires changing the Applicability section for the model designations from Piper Model PA31–310 airplanes to Piper Model PA31 airplanes.

The FAA estimates that 875 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately 25 cents per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $52,718.75.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD), 75–26–18, Amendment 39–2504, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 95–CE–55–AD; Supersedes AD 75–26–18, Amendment 39–2504.

Applicability: PA31, PA31P, and PA31T series airplanes with the following Model and serial numbers, certificated in any category.

Models	Serial Nos.
PA–31 and PA–31–325.	31–7300950 through 31–7612017
PA–31–350	31–7305048, 31–7305049, and 31–7305052 through 31–7652032
PA–31P	31P–7300128 through 31P–7630005
PA–31T	31T–7400002 through 31T–7620013.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 50 hours time-in-service (TIS) after February 9, 1976 (effective date of AD 75–26–18) or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent the landing gear selector cable forward attachment pin assembly from becoming separated from the powerpack control arm, which if not corrected could cause loss of landing gear retraction or extension, accomplish the following:

(a) Modify the landing gear selector cable forward attachment pin assembly by installing a safety lock wire in accordance with the *Instructions* section of Piper service bulletin No. 488, dated October 24, 1975.

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

(c) An alternative method of compliance or adjustment of compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Alternative methods of compliance approved in accordance with AD 75–26–18 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 75–26–18, Amendment 39–2504. Issued in Kansas City, Missouri, on April 19, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10452 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 Series Airplanes Equipped With General Electric Model CF6–80 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes. This proposal would require an inspection to detect defects of the directional pilot valves (DPV); and replacement of any defective DPV with a new DPV, or deactivation of the thrust reverser system, if necessary. This proposal is prompted by a report indicating that, during a maintenance check, an uncommanded deployment and stowage of the thrust reverser occurred due to improperly modified DPV's. The actions specified by the proposed AD are intended to prevent uncommanded deployment and stowage of the thrust reverser during maintenance activities, as a result of improperly modified DPV's, which could result in injury to maintenance personnel or other people on the ground.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–175–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–175–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–175–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 and A310 series airplanes, equipped with General Electric Model CF6–80 engines. The DGAC advises that it has received a report indicating that, during a maintenance check, an uncommanded deployment and stowage of the thrust reverser occurred.

Investigation of this incident revealed that, when the thrust reverser handle was moved from the ''stow'' position to the thrust reverser test point, the directional pilot valve (DPV) stuck in the ''open'' (''deploy'') position. The air supply first caused the thrust reverser to deploy, and then caused the DPV solenoid to move the DPV to the ''stow'' direction, which resulted in the thrust reverser stowing. This same sequence of events happened when the opposite engine was tested. When both DPV's were replaced and a functional test carried out, no anomaly was found. This indicated that the originally-installed DPV's apparently were faulty.

Further tests carried out at the Airbus flight line on a General Electric CF6–80C2 engine with the faulty DPV's installed, demonstrated that deployment of the thrust reverser could not be reproduced with the engine running. The thrust reverser deployment could be recreated only with a progressive increase of ground air supply at low pressure (approximately 10 to 15 psi) to the ground test point on the airplane. When direct test pressure of 28 psi was applied to the DPV, the valve reseated to the ''stow'' position. (This same scenario was confirmed by bench testing performed by both General Electric and Allied Signal.)

Further investigation of the two faulty DPV's revealed that the valves had been improperly modified when procedures specified in General Electric Service Bulletin 78–031 had been accomplished on the engine. The DPV armature spring had not been replaced with a new stronger spring in accordance with the service bulletin instructions.

Accordingly, such an improperly modified DPV, if not corrected, could result in uncommanded deployment and stowage of the thrust reverser during maintenance activities, which consequently could cause injury to maintenance personnel or other people on the ground.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 78–05, Revision 01, dated February 8, 1995, which describes procedures for a one-time inspection to detect defects of the DPV; and replacement of the defective DPV with a new DPV, or deactivation of the thrust reverser system, if necessary. The DGAC classified this AOT as mandatory and issued French airworthiness directive 95–052–176(B), dated March 15, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time inspection to detect defects of the DPV. If a defective DPV is detected, it would be required to be replaced with a new DPV, or thrust reverser system would be required to be deactivated until the DPV is replaced. The inspection and replacement actions would be required to be accomplished in accordance with the AOT described previously.

Cost Impact

The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed one-time inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $25,800, or $600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 95–NM–175–AD.

Applicability: Model A300B4–601, –603, –605R, A300–F4–605R, and A310–203, –203C, –204, –304, –308 series airplanes, equipped with General Electric Model CF6–80 engines; on which General Electric Service Bulletin 78–031 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded deployment and stowage of the thrust reverser during maintenance activities, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform an inspection to detect defects of the directional pilot valves (DPV) in accordance with Airbus All Operators Telex (AOT) 78–05, Revision 01, February 8, 1995.

(1) If no defects are detected, no further action is required by this AD.

(2) If any defect is detected, prior to further flight, either replace the defective DPV with a new DPV in accordance with the AOT; or deactivate the thrust reverser system in accordance with approved procedures of the Minimum Equipment List (MEL) until the DPV is replaced

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

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

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

Issued in Renton, Washington, on April 23, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10509 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, that currently requires inspection for cracks of the fuselage, wings, and vertical stabilizer structures; and repairs or modifications, if necessary. That AD was prompted by reports of cracking in several areas of the fuselage, wings, and vertical stabilizer structure due to fatigue-related stress. The actions specified by that AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the fuselage, wing, and vertical stabilizer. This action would provide for a new optional terminating action, for certain airplanes, and would expand the applicability of the existing AD to include additional airplanes.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–109–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–109–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–109–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On August 13, 1986, the FAA issued AD 86–19–02, amendment 39–5396 (51 FR 29910, August 21, 1986), applicable to certain Airbus Model A300 B2 and B4 series airplanes. That AD requires inspections for cracks of the fuselage, wings, and vertical stabilizer structures; and repairs or modifications, if necessary. That action was prompted by reports that, during fatigue tests conducted by the manufacturer, cracks were detected in several areas of the fuselage, wings, and vertical stabilizer structure. The requirements of that AD are intended to prevent reduced structural integrity of the fuselage, wing, and vertical stabilizer.

Explanation of New Relevant Service Information

Since the issuance of that AD, Airbus has issued Revision 3 of Service Bulletin A300–53–182, dated March 16, 1994. The inspection procedures described in this revision are identical to those described in the original version of the service bulletin, which was referenced in AD 86–19–02 as the appropriate source of service information. However, this new revision of the service bulletin differs in two ways from the original version:

1. The effectivity listing in the revised bulletin includes additional airplanes that are subject to the addressed unsafe condition.

2. For certain airplanes, the revised service bulletin provides procedures for replacement of the web plate and support fitting at the level of stringer 18 (left- and right-hand) with a new web plate and support fitting. Accomplishment of the replacement would eliminate the need for the repetitive inspections in the web plate between frame 30A and frame 32 at stringer 18.

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French airworthiness directive (CN) 83–102–053(B)R2, dated March 2, 1994, in order to assure the continued airworthiness of these airplanes in France.

Explanation of the Provisions of the Proposed Rule

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 86–19–02 to continue to require inspections for cracks of the fuselage, wings, and vertical stabilizer structures; and repairs or modifications, if necessary. However, the applicability of the rule would be expanded to include additional airplanes that have been identified as subject to the addressed unsafe condition.

For certain airplanes, the proposed AD would provide for a new optional replacement action, which would constitute terminating action for certain repetitive inspection requirements. These actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators who previously elected to accomplish Airbus Modification 1691 to terminate the repetitive inspections at stringers 18 and 22, as was provided by paragraph D. of AD 86–19–02, should note that, under the provisions of paragraph (d)(4) of this proposal, accomplishment of that modification

would constitute terminating action for the repetitive inspections only at stringer 22.

Additionally, operators should note that paragraph G. of AD 86–19–02 has not been retained in this proposal. That paragraph required ultrasonic inspections of the longitudinal lap joints at stringer 29 between frames 72 and 73, and eddy current inspections of the longitudinal skin splices of the top fuselage joint between frames 72 and 80. The FAA has issued a separate rulemaking action to address those requirements (reference notice of proposed rulemaking, Docket No. 94–NM–246–AD).

Cost Impact

Approximately 7 Airbus Model A300 B2 and B4 series airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 86–19–02 take approximately 919 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $385,980, or $55,140 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $1,260, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5396 (51 FR 29910, August 21, 1986), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 95–NM–109–AD. Supersedes AD 86–19–02, Amendment 39–5396.

Applicability: All Model A300 B2 and B4 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Airbus Model A300–600 series airplanes are not subject to this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking, which could result in reduced structural integrity of the fuselage, wing, and vertical stabilizer, accomplish the following:

(a) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–127, Revision 4, dated May 10, 1984: Perform a visual inspection to detect cracks in the upper fuselage skin at frame 58 between stringer 5 left and stringer 5 right, in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 18,000 total landings or 18,000 total flight hours, whichever occurs earlier; or

(ii) Within one year after September 26, 1986 (the effective date of AD 86–19–02, amendment 39–5396).

(2) If no crack is detected, repeat this inspection thereafter at intervals not to exceed 3,000 flight hours.

(3) If any crack is detected, prior to further flight, repair it in accordance with Figure 2, ''Inspection and Repair Alternative Chart,'' of the service bulletin.

(4) Installation of Airbus Modification 2147 (reference Airbus Service Bulletin A300–53–110, Revision 10, dated April 7, 1986) or Airbus Modification 2526/1693 (reference Airbus Service Bulletin A300–53–128, Revision 5, dated May 10, 1984) constitutes terminating action for the repetitive inspection requirements of paragraph (a)(2) of this AD.

(b) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–101, Revision 7, dated May 10, 1984: Perform a radiographic and ultrasonic inspection to detect cracks in the circumferential fuselage splice plates and stringer couplings, in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspections at the applicable time specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) For airplanes on which the actions specified in Airbus Service Bulletin A300–53–053, Revision 2, dated July 30, 1981, have been accomplished previously: Inspect prior to the accumulation of 20,000 landings since accomplishment of those actions, or within one year after September 26, 1986, whichever occurs later.

(ii) For airplanes on which the actions specified in Airbus Service Bulletin A300–53–053, Revision 2, dated July 30, 1981, have not been accomplished: Inspect prior to the accumulation of 18,000 total landings, or within one year after September 26, 1986, whichever occurs later.

(2) If no crack is detected, repeat the inspections thereafter at intervals not to exceed 3,000 landings.

(3) If any crack is detected, prior to further flight, repair it in accordance with Figures 1 and 2 of the service bulletin.

(4) Installation of Airbus Modification 3760 (reference Airbus Service Bulletin A300–53–170, Revision 1, dated January 25, 1985) constitutes terminating action for the repetitive inspection requirements of paragraph (b)(2) of this AD.

(c) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–143, Revision 3, dated May 10, 1984: Perform a visual inspection to detect cracks in frame

57A between stringers 15 and 16 (left- and right-hand), and the stringer 5 connection angle at frame 65 (left- and right-hand), in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph. .

(1) Perform the initial inspection at the later of the times specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) Prior to the accumulation of 20,000 total landings; or

(ii) Within one year after September 26, 1986.

(2) If no crack is detected, repeat this inspection thereafter at intervals not to exceed 3,000 landings.

(3) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin.

(4) Installation of Airbus Modification 2643 (reference Airbus Service Bulletin A300–53–132, Revision 4, dated May 10, 1984) constitutes terminating action for the repetitive inspection requirement of paragraph (c)(2) of this AD.

(d) For airplanes having serial number 002 through 156 inclusive, on which Airbus Modification 2611 has not been installed: Perform a visual inspection, and liquid penetrant test if applicable, to detect cracks in the web plate and support fitting between frames 30A and 32 at stringer 18, and between stringers 22 and 23 (left- and right-hand), in accordance with Airbus Service Bulletin A300–53–182, Revision 3, dated March 16, 1994, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD:

(i) Prior to the accumulation of 30,000 total landings; or

(ii) Within 1,500 landings after the effective date of this AD.

(2) If no crack is detected, repeat the inspection at the applicable intervals specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD.

(i) If, at the time of the most recent inspection, the airplane has accumulated fewer than 36,000 total landings, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(ii) If, at the time of the most recent inspection, the airplane has accumulated 36,000 or more total landings, repeat the inspection thereafter at intervals not to exceed 2,000 landings.

(3) If any crack is detected in the web plate between frames 30A and 32 at stringer 18, prior to further flight, replace the web plate and support fitting at stringer 18 (left- and right-hand) with a new web plate and support fitting, in accordance with the service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements for stringer 18 as required by paragraph (d)(2) of this AD.

(4) If any crack is detected in the web plate between frame 30A and 32 between stringers 22 and 23, prior to further flight, replace the web plate and support fitting between stringers 22 and 23 (left- and right-hand) with a new web plate and support fitting, in accordance with Airbus Service Bulletin A300–53–182, Revision 3, dated March 16, 1994. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements for the subject area between stringers 22 and 23 as required by paragraph (d)(2) of this AD.

(5) Terminating action for the repetitive inspection requirements of paragraph (d)(2) of this AD is as follows:

(i) Installation of Airbus Modification 1691 (reference Airbus Service Bulletin A300–53–063) between stringers 22 and 23 constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2) of this AD for that area only.

(ii) Replacement of the web plates and support fittings at the level of stringer 18 (left- and right-hand) with a new web plate and support fitting, in accordance with Airbus Service Bulletin A300–53–182, Revision 3, dated March 16, 1994, constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2) of this AD for that stringer only.

(iii) Accomplishment of the actions specified in both paragraph (d)(5)(i) and paragraph (d)(5)(ii) of this AD constitute terminating action for all repetitive inspection requirements required by paragraph (d)(2) of this AD.

(e) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–112, Revision 2, dated July 20, 1981: Perform a visual inspection to detect cracks of the skin from frame 28 to frame 31 between stringers 29 and 31 (left- and right-hand), in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (e)(1)(i) or (e)(1)(ii) of this AD:

(i) Prior to the accumulation of 24,000 total landings; or

(ii) Within one year after September 26, 1986.

(2) If no crack is detected, repeat the inspection at the applicable intervals specified in paragraph (e)(2)(i) or (e)(2)(ii) of this AD:

(i) If, at the time of the most recent inspection, the airplane has accumulated fewer than 36,000 total landings, repeat the inspection thereafter at intervals not to exceed 6,000 landings.

(ii) If, at the time of the most recent inspection, the airplane has accumulated 36,000 or more total landings, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(3) If any crack is found, prior to further flight, install Airbus Modification 1358 in accordance with Airbus Service Bulletin A300–53–027, Revision 4, dated January 4, 1984. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraph (e)(2) of this AD.

(4) Installation of Airbus Modification 1358 (reference Airbus Service Bulletin A300–53–027, Revision 4, dated January 4, 1984) constitutes terminating action for the repetitive inspection requirements of paragraph (e)(2) of this AD.

(f) For airplanes with serial numbers listed in Airbus Service Bulletin A300–53–100, Revision 1, dated May 10, 1984: Perform an internal and external visual inspection to detect cracks of the longitudinal joint at stringer 51 (left- and right-hand) between frames 72 and 80, in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD:

(i) Prior to the accumulation of 12,000 total landings or 15,000 total flight hours, whichever occurs earlier; or

(ii) Within one year after September 26, 1986.

(2) If no crack is found, repeat the internal inspection thereafter at intervals not to exceed 1,500 flight hours, and repeat the external inspection thereafter at intervals not to exceed 12,000 flight hours.

(3) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin.

(4) Installation of Airbus Modification 1421 (reference Airbus Service Bulletin A300–53–033, Revision 3, dated May 10, 1984) constitutes terminating action for the repetitive inspection requirements of paragraph (f)(2) of this AD.

(g) For airplanes with serial numbers listed in Airbus Service Bulletin A300–55–026, Revision 3, dated May 10, 1984: Perform a visual inspection of the 6 vertical stabilizer attachment fittings for cracks, which initiate from the rivet holes, in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspection at the later of the times specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD:

(i) Prior to the accumulation of 20,000 total landings or 20,000 total flight hours, whichever occurs earlier; or

(ii) Within one year after September 26, 1986, whichever occurs earlier.

(2) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 1,500 landings.

(3) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin.

(4) Installation of Airbus Modification 3172 (reference Airbus Service Bulletin A300–55–024, Revision 4, dated May 25, 1984) constitutes terminating action for the repetitive inspection requirements of paragraph (g)(2) of this AD.

(h) For airplanes with serial numbers listed in Airbus Service Bulletin A300–57–109, Revision 1, dated July 10, 1982: Perform a visual inspection to detect cracks in the landing angle attached to the outboard side of the wing leading edge at nose rib 8 (left- and right-hand), in accordance with the Accomplishment Instructions of the service bulletin, and in accordance with the times specified in this paragraph.

(1) Perform the initial inspecton at the later of the times specified in paragraph (h)(1)(i) or (h)(1)(ii):

(i) Prior to the accumulation of 15,000 total landings; or

(ii) Within one year after September 26, 1986.

(2) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(3) If any crack is detected, within the next 1,000 landings following crack detection, install Airbus Modification 1307 in accordance with Airbus Service Bulletin A300–57–026, Revision 3, dated October 21, 1982.

(4) Installation of Airbus Modification 1307 (reference Airbus Service Bulletin A300–57–026, Revision 3, dated October 21, 1982) constitutes terminating action for the repetitive inspection requirements of paragraph (h)(2) of this AD.

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

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

Issued in Renton, Washington, on April 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10508 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–200 series airplanes. This proposal would require modification of the shock absorber sub-assembly of the main landing gear (MLG). This proposal is prompted by reports of internal damage to the shock absorber sub-assembly due to loose screws in the upper bearing dowels. The actions specified by the proposed AD are intended to prevent such damage, which could result in the overextension of the shock absorber and failure of the torque link. This situation may lead to the inability of the MLG to retract and subsequent collapse of the MLG.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–267–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; or Dowty Aerospace, Customer Support Center, P.O. Box 49, Sterling, Virginia 20166.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–267–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–267–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–200 series airplanes. The DGAC advises that it has received reports of internal damage to the shock absorber sub-assembly of the main landing gear (MLG). Investigation revealed that, due to an improper fit, the screws in the upper bearing dowels of the shock absorber sub-assembly can become loose and come out of position.

A loose screw in the upper bearing dowels can come out and cause internal damage to the shock absorber tube assembly. If this were to occur, the shock absorber sub-assembly may overextend and the torque link may fail, which could result in the inability of the MLG to retract and the subsequent collapse of the MLG.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–32–1144, dated December 8, 1994, which describes procedures for modification of the shock absorber sub-assembly of the MLG. The modification involves installing new dowels and a retaining ring to the shock absorber assembly. The modification will reduce the possibility of internal damage to the sub-assembly. (The Airbus service bulletin references Dowty Service Bulletin 200–32–215, dated July 7, 1994, and Dowty Service Bulletin 200–32–216, Revision 1, dated August 4, 1994, as additional sources of service information for accomplishment of these procedures.) The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 95–016–063 (B), dated January 18, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require modification of the shock absorber sub-assembly of the MLG. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $165,600, or $1,440 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 95–NM–267–AD.

Applicability: Model A320–200 series airplanes on which Airbus Modification 24594 (reference Airbus Service Bulletin A320–32–1144) has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the internal area of the shock absorber sub-assembly, which could cause an overextension of the shock absorber and failure of the torque link, accomplish the following:

(a) Prior to the accumulation of 6,000 total landings since the shock absorber of the main landing gear (MLG) was removed, built, or overhauled; or within 6 months after the effective date of this AD; whichever occurs later: Modify the shock absorber assembly of the MLG, in accordance with Airbus Service Bulletin A320–32–1144, dated December 8, 1994.

Note 2: Airbus Service Bulletin A320–32–1144 references Dowty Aerospace Service Bulletin 200–32–215, dated July 7, 1994, and Dowty Aerospace Service Bulletin 200–32–216, Revision 1, dated November 18, 1994, as additional sources of service information for modification of the shock absorber.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on April 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10507 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With BFGoodrich Evacuation Slide/Rafts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require modification of door 5 evacuation slide/rafts. This proposal is prompted by reports that the door 5 evacuation slide/raft failed to deploy properly due to adverse loads caused by the geometry of this evacuation slide/raft. The actions specified by the proposed AD are

intended to prevent failure of the door 5 evacuation slide/raft to deploy properly, which could contribute to injury of passengers on the slide and could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–218–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the door 5 evacuation slide/raft installed on Boeing Model 747–400 series airplanes failed to deploy properly. Investigation revealed that the apparent cause of one of these failures has been attributed to the improper gluing method used during the manufacturing process. The FAA finds this situation to be isolated to a specific builder and limited to only seven units in which only one unit failed.

However, further investigation has revealed that, during the initial deployment stages of door 5 evacuation slide/raft, the inflation bottle bag can apply adverse loads to both the forward side bottle hanger strap and the lower girt attachment on the forward side of this evacuation slide/raft. Such adverse loads could pull the center girt attachment partially loose at the forward side, or could tear the lower inflation tube assembly at the forward edge of the center girt. The cause of such adverse loads has been attributed to the geometry of this particular evacuation slide/raft. This condition, if not corrected, could result in failure of door 5 evacuation slide/raft to deploy properly, which could contribute to injury of passengers on the slide, and could delay or impede the evacuation of passengers during an emergency.

Explanation of Relevant Service Information

The FAA has reviewed and approved BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 1995, which describes procedures for modification of door 5 evacuation slide/rafts. The modification involves replacing the bottle support straps of door 5 with new support straps, relocating these straps, and directly lacing them to the center girt attachment. Accomplishment of the modification will eliminate bonded attachments from the load path and prevent damage to the slide/raft fabric.

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the door 5 evacuation slide/rafts. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Explanation of the Applicability of the Proposed Rule

Operators should note that the applicability of this proposed rule affects Boeing Model 747–400 series airplanes that are equipped with certain BFGoodrich escape slide/rafts. The FAA's general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of aircraft, the AD is issued so that it is applicable to the aircraft, rather than the item. The reason is simple: Making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. It is for this reason that this proposed AD would be applicable to Model 747–400's rather than to the BFGoodrich escape slide/rafts. Additionally, calling out the airplane model as the subject of the AD prevent ''unknowing non-compliance'' on the part of the operator.

The FAA recognizes that there are situations when an unsafe condition exists in an item that is installed in many different aircraft. In those cases, the FAA considers it impractical to issue AD's against each aircraft; in fact, many times, the exact models and number of aircraft on which the item is installed may not be known. Therefore, in those situations, the AD is issued so that it is applicable to the item; furthermore, those AD's usually indicate that the item is known to be installed on, but not limited to, various aircraft models.

Cost Impact

The FAA estimates that 150 BFGoodrich evacuation slide/rafts installed on 75 Boeing Model 747–400

series airplanes (2 slides per airplane) of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per slide to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $84 per slide. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,600, or $144 per slide.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 95–NM–218–AD.

Applicability: Model 747–400 series airplanes equipped with BFGoodrich Evacuation Slide/Rafts at door 5; having slide/raft assembly part number 7A1469–1, –2, –3, –4, –7, –8, –9, –10, –11, or –12 (all unit serial numbers); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the door 5 evacuation slide/raft to deploy properly, which could contribute to injury of passengers on the slide and could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the door 5 evacuation slide/raft in accordance with BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 1995.

Note 2: Modification previous to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–25A3096, which references BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 1995, is considered acceptable for compliance with the modification requirements of paragraph (a) of this AD.

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

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

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

Issued in Renton, Washington, on April 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10506 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–49–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. That AD was prompted by a report of failure of a micro-switch in the landing gear control unit. This action would require installation of a new landing gear control unit. This action also would expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to prevent uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–49–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 18, 1995, the FAA issued AD 95–09–03, amendment 39–9241 (60 FR 28035, May 30, 1995), applicable to certain Jetstream Model 4101 airplanes, to require inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. That action was prompted by a report of failure of a micro-switch in the landing gear control unit. The requirements of that AD are intended to prevent uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

In the preamble to AD 95–09–03, the FAA indicated that modification (Jetstream Modification JM41490) of the cable (electrical wiring circuit) of the landing gear control unit was considered ''interim action'' and that further rulemaking action was being considered. As a follow-on action from that determination, the FAA is now proposing additional, final action.

Explanation of Relevant Service Information

Since the issuance of AD 95–09–03, Jetstream has issued Service Bulletin J41–32–044, dated September 22, 1995, which describes procedures for installation of a new improved landing gear control unit, identified as Modification JM41501. The procedures involve installing a new landing gear control unit that has revised switching. The new switching will prevent uncommanded landing gear retractions caused by spurious signals from single switch failures.

The installation also involves revising certain wiring, which includes removing cables installed in accordance with Jetstream Modification JM41490. Additionally, the installation involves reallocating a spare pin in the airplane connector to prevent the operation of the old landing gear control unit in the event that one is inadvertently installed.

Accomplishment of Modification JM41501 will positively address the unsafe condition identified as uncommanded retraction of a main landing gear.

In addition, the effectivity listing of this service bulletin includes additional airplanes that were not previously affected by AD 95–09–03, and removes certain others.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–09–03. For those airplanes subject to AD 95–09–03, it would continue to require an inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. For those airplanes and certain others, it would require installation of a new improved landing gear control unit. The actions would be required to be accomplished in accordance with the Jetstream service bulletin described previously.

The applicability of the proposed AD would include additional airplanes that have been identified to be subject to the same unsafe condition (an included in the effectivity listing of the Jetstream service bulletin).

Cost Impact

There are approximately 44 Jetstream Model 4101 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 95–09–03, and retained in this proposed AD, take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The required parts are provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $18,480, or $420 per airplane. The FAA has been advised that all affected U.S. operators have accomplished these requirements; therefore, there is no future cost impact of these requirements on current U.S. operators of these airplanes.

The new installation that would be required by this proposed AD would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $15,840, or $360 per airplane. This cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9241 (60 FR 28035, May 30, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Jetstream Aircraft Limited: Docket 96–NM–49–AD. Supersedes AD 95–09–03, Amendment 39–9241.

Applicability: Model 4101 airplanes, constructor numbers 41001 through 41073 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded retraction of the landing gear, which can adversely affect airplane controllability, accomplish the following:

(a) For airplanes having constructor numbers 41001 through 41046 inclusive, and 41048 through 41052 inclusive; equipped with either landing gear control unit part number 717701–1 or 717701–1 Mod A: Within 8 hours time-in-service after June 14, 1995 (the effective date of AD 95–09–03, amendment 39–9241), perform an inspection to determine the number of hours time-in-service on the landing gear control unit, in accordance with Jetstream Alert Service Bulletin J41–A32–042, dated April 13, 1995.

(1) For those airplanes on which the control unit has accumulated less than 200 hours time-in-service: Prior to further flight, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(2) For those airplanes on which the control unit has accumulated 200 hours or more time-in-service: Within 50 hours time-in-service or within 7 days after June 14, 1995 (the effective date of AD 95–09–03, amendment 39–9241), whichever occurs earlier, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(b) For airplanes having constructor numbers 41001 through 41073 inclusive: Within 6 months after the effective date of this AD, install a new improved landing gear control unit and modify the wiring, in accordance with Jetstream Service Bulletin J41–32–044, dated September 22, 1995.

(c) As of the effective date of this AD, no person shall install a landing gear control unit having part number 717701–1 or 717701–1 Mod A, on any airplane.

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

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

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

Issued in Renton, Washington, on April 23, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10505 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–237–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require an inspection to detect damage to the electrical wiring of the fuel tank of the wings and to verify if the proper P-clip is installed in the electrical wiring. The proposed AD would also require re-fitting any proper P-clip, replacing any improper P-clip with a new P-clip, and repairing damaged electrical wiring. This proposal is prompted by a report that incorrect P-clips were found installed in the electrical wiring of the fuel system on these airplanes. The actions specified by the proposed AD are intended to ensure that the proper P-clips are installed. Improper P-clips could fail to adequately safeguard the fuel tank of the wing against a lightning strike, which could result in electrical arcing and resultant fire.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–237–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Gónórale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report that incorrect P-clips were found installed in the electrical wiring of the fuel system on these airplanes. Investigation revealed that, during production, skydrol-resistant ethylene propylene P-clips were installed instead of fuel-resistant P-clips. Skydrol- resistant ethylene propylene P-clips are not suitable for immersion in fuel. Such immersion causes these clips to swell and lose flexibility. If the skydrol-resistant ethylene propylene P-clips were to bend slightly, they could fracture and deteriorate, which could fail to adequately safeguard the fuel tank of the wing against a lightning strike. This condition, if not corrected, could result in electrical arcing and consequent fire.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–28–1052, Revision 1, dated July 7, 1993, and Revision 2, dated September 8, 1994. The service bulletins describe procedures for a one-time inspection to detect damage to the electrical wiring and to verify if the proper P-clip is installed in the electrical wiring at outboard rib 6 in the inner cell of the fuel tank of the wings. The service bulletins also describe procedures for re-fitting proper P-clips, and replacing improper P-clips with a new fuel-resistant P-clip having P/N NSA5515–03NF or NSA5516–03NV. The DGAC classified the service bulletins as mandatory and issued French airworthiness directive 93–191–047(B), dated October 27, 1993, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time inspection to detect damage to the electrical wiring and to verify if the proper P-clip is installed in the electrical wiring at outboard rib 6 in the inner cell of the fuel tank of the wings. The proposed AD would also require re-fitting proper P-clips, and replacing improper P-clips with certain new fuel-resistant P-clips. The actions would be required to be accomplished in accordance with the service bulletin described previously. If any damage is detected to the electrical wiring, the repair would be required to be done in accordance with the Airplane Wiring Manual.

Cost Impact

The FAA estimates that 44 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,320, or $280 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 95–NM–237–AD.

Applicability: Model A320 series airplanes, manufacturer's serial numbers 129 through 343 inclusive, 345 through 347 inclusive, and 349 through 363 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the proper P-clips are installed, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time inspection to detect damage to the electrical wiring and to verify if the proper P-clip is installed in the electrical wiring at outboard rib 6 in the inner cell of the fuel tank of the wings, in accordance with Airbus Service Bulletin A320–28–1052, Revision 2, dated September 8, 1994.

Note 2: Accomplishment of the actions specified in this paragraph in accordance with Airbus Service Bulletin A320–28–1052, Revision 1, dated July 7, 1993, prior to the effective date of this AD is considered acceptable for compliance with this paragraph.

(1) If any damage is detected to the wiring, prior to further flight, repair it in accordance with the Airplane Wiring Manual.

(2) If a P-clip having P/N NSA5515–03NF or NSA5516–03NV is installed, prior to further flight, re-fit it in accordance with the service bulletin.

(3) If a P-clip having P/N NSA5516–03NJ is installed, prior to further flight, replace it with a new fuel-resistant P-clip having P/N NSA5515–03NF or NSA5516–03NV, in accordance with the service bulletin.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on April 23, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10504 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI57–01–7105b, WI58–01–7106b, WI59–01–7107b; FRL–5424–3]

Proposed Approval of State Implementation Plan; Wisconsin Gasoline Storage Tank Vent Pipe, Traffic Marking Materials, and Solvent Metal Cleaning SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through the direct final procedure, a revision to the Wisconsin State Implementation Plan (SIP) for ozone that was submitted on June 14, 1995. This revision consists of a volatile organic compound (VOC) regulation to control emissions from the following sources: gasoline storage tanks, traffic marking materials, and solvent metal cleaning operations. These regulations were submitted to generate reductions in VOC emissions, which the State will use to fulfill the 15 percent requirement of the amended Clean Air Act. In the final rules of this Federal Register, the EPA is approving this action as a direct final without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. 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 action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received by May 29, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano (312) 353–6960.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this Federal Register. Copies of the request and the EPA's analysis are available for inspection at the following address: (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 6, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–10450 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–78; RM–8778]

Radio Broadcasting Services; Hicksville, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lake Cities Broadcasting Corporation seeking the allotment of Channel 294A to Hicksville, Ohio, as the community's first local aural transmission service. Channel 294A can be allotted to Hicksville in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) northeast, at coordinates 41–19–35 NL and 84–43–03 WL, to avoid a short-spacing to Station WMRI, Channel 295B, Marion, Indiana. Canadian concurrence in the allotment is required

since Hicksville is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before June 13, 1996, and reply comments on or before June 28, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Esq., 13809 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–78, adopted March 19, 1996, and released April 22, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10442 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–3; RM–8735]

Radio Broadcasting Services; Imboden, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed on behalf of John J. Shields, which requested the allotment of Channel 289A to Imboden, Arkansas, as that community's first local aural transmission service, based upon the lack of an expression of interest in pursuing the proposal by the petitioner or any other party. *See* 61 FR 4393, February 6, 1996. With this action, the proceeeding is terminated.

DATE: This dismissal is made on April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–3, adopted April 4, 1996, and released April 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10436 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–81; RM–8776]

Radio Broadcasting Services; Rosalia, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Randall L. Hughes requesting the allotment of Channel 234A to Rosalia, Kansas. Channel 234A can be allotted to Rosalia in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 234A at Rosalia are 37–48–54 and 96–37–12.

DATES: Comments must be filed on or before June 13, 1996, and reply comments on or before June 28, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randall L. Hughes, 425 1/2 N. Star, El Dorado, Kansas 67042 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–81, adopted March 20, 1996, and released April 22, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–10441 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[OST Docket OST–96–1295] [Notice 96–13]

RIN: 2105–AC49

Update of Drug and Alcohol Procedural Rules

AGENCY: Office of the Secretary, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Department of Transportation is reviewing its procedural rules for drug and alcohol testing. This review is intended to lead to a notice of proposed rulemaking to update and clarify provisions of the rules. This advance notice of proposed rulemaking seeks suggestions for possible changes to the regulation.

DATES: Comments should be received July 29, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket No. OST–96–1295, Department of Transportation, 400 7th Street, S.W., Washington, D.C., Room PL 401, Washington, D.C., 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306.

SUPPLEMENTARY INFORMATION: Six of the Department's operating administrations (the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Railroad Administration (FRA), U.S. Coast Guard (USCG), and Research and Special Programs Administration (RSPA)) have modal-specific drug and/or alcohol testing rules. These rules apply to about 8 million transportation employees who work in safety-sensitive positions (e.g., truck drivers, airline pilots, and railroad engineers). The operating administration rules impose substantive requirements concerning the testing program, on subjects such as which employers must conduct tests, which employees are subject to testing, what kinds of tests are required, when the tests must be administered, the consequences of positive tests and other rule violations, how an employee who has violated the rule can return to duty, and what recordkeeping and reporting requirements apply to employers. These modal rules are not being revisited as part of this rulemaking initiative.

The Office of the Secretary (OST) procedural rule (49 CFR Part 40) that is the subject of this advance notice of proposed rulemaking (ANPRM) applies to regulated parties through each of the operating administration's rules. Part 40 describes, in detail, *how* the required tests must be conducted.

The drug testing portion of Part 40 closely follows the Mandatory Guidelines for Federal Workplace Drug Testing Programs of the Department of Health and Human Services (DHHS). With respect to the four operating administrations covered by the Omnibus Transportation Employee Testing Act of 1991 (FAA, FRA, FHWA, and FTA), the Department is required by statute to have procedures consistent with the DHHS Guidelines. We are committed, as a matter of policy, to consistency with the DHHS Guidelines with respect to the RSPA and Coast Guard drug testing programs as well. Consequently, the Department is not, in this ANPRM, entertaining comments that would require substantive departures from the DHHS Guidelines. Nor is the Department seeking comments on significant substantive issues that have, in recent years, been the subject of completed or pending rulemaking actions (e.g., review of negative drug test results by medical review officers, blood testing for alcohol, ''shy bladder'' procedures).

The Department conceives this ANPRM, then, not as an occasion for suggesting major substantive changes to how we test for drugs and alcohol, but rather as an opportunity to clarify the myriad details of Part 40. We want to make the rule as easy to understand and apply as we can, reduce burdens where feasible, take ''lessons learned'' during the several years of operating the program under Part 40 into account, correct problems that have been identified, clarify areas of uncertainty or ambiguity, and incorporate, where appropriate, the Department's interpretations of Part 40 into the regulatory text. We also anticipate reordering provisions of the rule so that the material flows more smoothly and is easier for readers to follow.

While we are soliciting comments on both the drug and alcohol portions of the regulation, we anticipate that the main focus of this effort will be on drug testing procedures, which are both more complex and older than the alcohol testing procedures. We seek the ideas of everyone involved with the program—employers, employees, consortia and third-party administrators, laboratories, substance abuse professionals, medical review officers, collectors, breath alcohol technicians, and other interested persons—to assist us in this process.

The Department is contemplating hosting one or more public meetings or other forums during which interested persons can discuss potential Part 40 changes with DOT officials and staff. We will issue a notice announcing such events when plans are in place.

Regulatory Analyses and Notices

This ANPRM, which simply requests public input concerning potential changes to the Department's drug and alcohol testing procedures, is not significant for purposes of Executive Order 12866 or Department of Transportation Rulemaking Policies and Procedures.

Issued this 22nd day of April 1996, at Washington, D.C.

Federico Peña,

Secretrary of Transportation.

[FR Doc. 96–10522 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC–93–23]

RIN 2125–AD20

Commercial Driver Physical Qualifications As Part of the Commercial Driver's License Process

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to form a Negotiated Rulemaking Committee on Commercial Driver's License (CDL) and Physical Qualifications Requirements.

SUMMARY: The FHWA proposes to establish a negotiated rulemaking advisory committee (the Committee) under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to consider the relevant issues and attempt to reach a consensus in developing regulations governing the proposed merger of the State-administered commercial driver's license procedures and the driver

physical qualifications requirements of 49 CFR Part 391. The Committee would be composed of people who represent the interests that would be substantially affected by the rule.

The FHWA invites interested parties to comment on the proposal to establish the Committee and on the proposed membership of the Committee, and to submit applications or nominations for membership on the Committee.

DATES: Interested parties may file comments and nominations for committee membership on or before May 29, 1996.

ADDRESSES: Comments and/or nominations should be sent to FHWA Docket No. MC–93–23, Room 4232, HCC–10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Motor Carrier Research and Standards, (202) 366–4001, or Ms. Grace Reidy, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation has authority to establish standards for physical qualifications that must be met by drivers in interstate commerce. 49 U.S.C. 31502 and 49 U.S.C. 31136. This authority is delegated to the Federal Highway Administrator. 49 CFR 1.48. The Federal Motor Carrier Safety Regulations (FMCSRs) set forth the qualifications of drivers who operate commercial motor vehicles (CMV) in interstate commerce. 49 CFR 391.11. The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) provides, in section 12005(a)(8) (49 U.S.C. 31305(a)(8)), that Federal standards *may* be promulgated to require issuance of a certification of fitness to operate a CMV to each person who passes a CDL test and may require such person to have a copy of such certification in his or her possession whenever operating a CMV.

In September 1990, the FHWA explored options for giving responsibility for medical qualification determinations to the State licensing agencies as part of the CDL process. Six States—Alabama, Utah, Arizona, North Carolina, Indiana and Missouri—began pilot programs seeking efficient ways to assure that commercial motor vehicle drivers meet the Federal physical qualifications requirements before they are issued a license. The pilots were developed by the FHWA and its contractors, the Association for the Advancement of Automotive Medicine and the American Association of Motor Vehicle Administrators, in conjunction with a committee of State government licensing officials.

The pilot projects were completed on January 31, 1995, and a final report was submitted to the agency. The report revealed that the State driver licensing agencies demonstrated the potential to assume responsibility for commercial motor vehicle driver medical qualification determinations as part of the CDL process. However, some States indicated they would require enabling legislation and additional funding to administer the process.

Currently, the FMCSRs require that CMV drivers be medically examined and certified as physically qualified once every two years in order to operate in interstate commerce. If the driver meets the Federal physical qualifications requirements, a medical examiner then issues a medical certificate which indicates that the driver is qualified to drive. Drivers must carry this certificate while driving and employers must maintain a copy in the drivers' qualification files. 49 CFR 391.41(a), 391.43, 391.45 and 391.51(b)(1). Enforcement of these requirements is performed primarily through roadside inspections of vehicles and drivers or through Federal or State safety compliance reviews of motor carriers.

In addition, 49 CFR 383.71(a) requires that during the CDL application process a person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR Part 391, shall certify that he or she meets the qualification requirements contained in 49 CFR Part 391. In practice, some States rely solely on the drivers' certifications while other States also require drivers who certify that they meet the qualification requirements of Part 391 to produce the required medical certificate in order to be issued a CDL. Before issuing the CDL, a few States also review the medical ''long form'' that the medical examiner completes to assure that the regulatory requirements are met.

The FHWA issued an advance notice of proposed rulemaking (ANPRM)(copy enclosed in Docket File) on July 15, 1994, requesting comments on merging the CDL and physical qualifications programs. 59 FR 36338. The FHWA stated in the ANPRM that merging the systems would allow the States to make the physical qualification determinations prior to issuing a CDL. Under such an approach, the CDL would then be the sole document a commercial driver would have to carry and would be evidence that a driver is medically qualified to operate the CMV.

The proposal to merge the medical fitness determination into the CDL process has several very strong potential benefits. Drivers would be relieved of the responsibility to carry a medical fitness card, thus eliminating the potential for such cards to be inadvertently lost, damaged or destroyed. Enforcement personnel would also have immediate notice of the medical fitness status of a driver, without the time-consuming need to refer to and authenticate a separate document. Carriers would no longer need to maintain driver medical qualification certificates, as the license document itself would confirm the fitness of the driver.

In addition, States would be better able to identify unqualified drivers that currently operate without medical cards or with forged medical cards. Where questions exist regarding a license applicant, the driver licensing agency could refer the applicant and the medical fitness form to the State medical advisory board for further review. Medical advisory boards are currently in place in many States and are used to review medical qualifications of passenger car drivers and for intrastate CMV operators. The agency understands that forty-seven States currently have either a medical advisory board or some kind of medical review process for the above-described driver licensing determinations. In this rulemaking, the FHWA proposes to include medical determinations involving interstate CMV drivers in existing State medical review infrastructure programs by taking advantage of established working practices that are prevalent within State licensing agencies.

The results of the six-State pilot program provide support for the benefits of this proposal. The final report found that drivers who did not meet current medical standards could be readily detected and could be restricted from driving CMVs entirely or within parameters set by the driver licensing agency and its medical advisory board. Medical examiners would be able to contact the driver licensing agency medical unit or medical advisory board if questions arose during a physical. The

review of the fitness qualifications as part of the licensing process streamlines the procedure and creates a single record for each driver. The pilot found that fraudulent or expired medical certifications and the lack of required medical certifications of drivers did not exist in the six participating States.

In the ANPRM, the FHWA asked interested parties to comment on specific issues including the feasibility of the ''merger'' concept; how best to achieve such a system; how to reconcile the differences between the States' four-year CDL renewal cycle with the FHWA's two-year medical certificate cycle; whether medical examiners should be certified to perform examinations; the degree of flexibility States should have in determining how to implement any new, merged standard; and the types of resources required by States to implement a new, merged standard. Seventy-six parties responded to the notice, including State agencies, for-hire motor carriers, private carriers, safety advocates, and medical groups.

The responses received from commenters to the ANPRM generally involved one of five general issues. Because the parties likely to be interested in this proposed regulation (i.e., State licensing agencies, carriers, drivers, medical professionals) are fairly well defined, and the issues identified through the ANPRM are also well defined, the agency believed that this proposed rulemaking would be a good candidate for negotiated rulemaking. The range of interested parties and issues to be addressed are not the only reasons for the decision to initiate a negotiated rulemaking. The agency is enthusiastic about the opportunity to work cooperatively with partners in the motor carrier community at large to discuss this issue and approaches to resolving it in an open exchange of ideas. The opportunity to engage in face-to-face discussion of concerns and benefits will hopefully allow for a creative, cooperative approach to addressing the merger of medical fitness and licensing decisions.

As referenced earlier, the five general issues identified by the respondents to the ANPRM were: (1) whether States would have statutory authority to verify the physical qualifications of a driver; (2) whether there will be adequate staff available to verify drivers' compliance with physical qualifications requirements at the time a license is issued; (3) the feasibility of merging the two-year medical certificate with the States' four-year licensing cycle; (4) the motor carrier's role in assuring physical qualifications of the driver; and (5) the cost of training licensing examiners and/or staffing medical review boards on the administration of the process.

Comments on the ANPRM included questions on the potential costs to States of assuming responsibility for verifying medical fitness as part of CDL issuance or renewal. Some carriers expressed concern that licensing agencies would be unable to adequately confirm information on the medical form and suggested that the current carrier responsibility for driver fitness be maintained. The agency believes that the results of the six-State pilot program indicate a strong likelihood that States can assume responsibility for the medical fitness determination process. This rulemaking will form the basis for addressing the questions raised by respondents to the ANPRM, as well as other issues that may be identified as this process continues.

Pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561–570, the agency has decided to form a negotiated rulemaking committee. As discussed earlier, the agency believes that this approach is most likely to lead to an efficient and successful transfer of responsibility for medical fitness determinations to State licensing agencies. Unlike traditional, informal notice and comment rulemaking, this process will allow for the open exchange of ideas and information among and between parties with an interest in the outcome of this issue. The agency believes that in adopting this approach, the process will lead to creative, innovative approaches to resolving issues that might not emerge through the individual efforts of commenters to a docket. The process will still result in the promulgation of a notice of proposed rulemaking. This will provide an opportunity for comment by other interested parties and the general public, but the initial proposal that will be published for comment will reflect the exchange of ideas and differing proposals that occur in negotiations. One result of the negotiations will be a better informed commercial motor vehicle safety community with a fuller understanding of the benefits and potential problem areas associated with State verification of medical fitness determinations. This knowledge should help all parties, including the agency, to develop a more practical, effective means of dealing with these medical fitness determinations.

Negotiated Rulemaking Process

Conveners

As provided for in 5 U.S.C. 563(b), a convener assists the agency in identifying the persons or interests that would be significantly affected by the proposed rule. The convener conducts discussions with representatives of such interests to identify the issues of concern to them and to ascertain the feasibility of establishing a negotiated rulemaking committee.

The FHWA retained the services of a contractor to act as a convener and provide advice on the feasibility of using a negotiated rulemaking process for this rule. The convening team met with FHWA officials to review background information on the issues, including the responses to the ANPRM, potential interested parties, and objectives of the agency. Prior to conducting interviews with prospective participants, the convening team analyzed the views of the various respondents to the ANPRM and the level of controversy generated by the issues as outlined in the ANPRM.

The conveners attempted to develop the range of interests that would be affected by the rule and identify individuals who would be able to represent or articulate those interests. The conveners then sought to interview those individuals to determine their views on the issues involved and whether they would be interested in participating in the negotiated rulemaking. The convening team sought to determine whether the negotiated rulemaking process would be effective in developing the rule. Each party was also asked if there were other individuals or groups which should be contacted and these additional parties were also interviewed. Based upon these interviews, the conveners submitted a convening report (copy enclosed in Docket File) in December 1995 to the FHWA, recommending that the agency proceed with the negotiated rulemaking process.

Determination of Need for Negotiated Rulemaking Committee

The purpose of a negotiated rulemaking committee is to develop consensus on a proposed rule. ''Consensus'' means the unanimous concurrence among the interests represented on the negotiated rulemaking committee unless the committee explicitly adopts some other definition. This requirement also means that the agency itself participates in the negotiations in a manner similar to that of any other party.

Before establishing such a negotiated rulemaking committee, the Negotiated Rulemaking Act (5 U.S.C. 563(a)) directs the head of an agency to consider whether:

1. There is a need for the rule;
2. There are a limited number of identifiable interests that will be significantly affected by the rule;
3. There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent those interests and are willing to negotiate in good faith to reach a consensus on a proposed rule;
4. There is a reasonable likelihood that a committee will reach consensus on the proposed rule within a fixed period of time;
5. The negotiated rulemaking will not unreasonably delay the issuance of the notice of proposed rulemaking and the final rule;
6. The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
7. The agency, to the maximum extent possible, consistent with its statutory authority and legal obligations, will use the consensus of the committee as the basis for the rule proposed by the agency for notice and comment.

The FHWA believes that all of the requisite negotiated rulemaking factors are satisfied with regard to the proposal to merge the medical qualification determination and the CDL processes and that the negotiating process could provide significant advantages over conventional informal rulemaking. This determination is based on the review of the comments to the ANPRM and the convener's report submitted by the contractor. There is broad consensus among the parties contacted by the conveners that there are weaknesses in the current medical qualifications system that can be improved. The potentially affected interests are limited in number; there are clearly fewer than 25 distinct interests that would be affected by the rule. A balanced committee representing the various interests at stake in this matter can be empaneled. The parties contacted by the conveners have expressed their interests in discussing the issues and believe that there is a strong likelihood of reaching consensus on the issues within a reasonable period of time. The FHWA believes that these negotiations will not delay, but will expedite the rulemaking process since the negotiations will enable the agency to benefit from the committee members' practical first-hand insights and knowledge into the operation of the physical qualifications determinations and the benefits and costs of integrating those determinations into the licensing process. Gaining those insights and resolving the controversies surrounding the identified issues would otherwise take the agency considerably longer to resolve by using traditional rulemaking. The agency is committed to facilitating the negotiated rulemaking process and will devote the necessary resources, including technical assistance, to the Committee. The member or members of the Committee representing the agency shall participate in the deliberations and activities of the Committee with the same rights and responsibilities as other members of the Committee, and shall be authorized to fully represent the agency in discussions and negotiations of the Committee. The agency, to the maximum extent possible, consistent with its statutory authority and legal obligations, will use the consensus of the Committee as the basis for the rule proposed by the agency for notice and comment.

Therefore, based on this analysis of the seven factors mentioned above, the agency has concluded that the use of the negotiated rulemaking procedure in this case is in the public interest.

Potential Topics for the Negotiated Rulemaking Process

Based on the interviews conducted with potential committee members and the report provided by the convener, the FHWA proposes that the following issues would be considered in the negotiated rulemaking process.

1. Whether the physical qualifications guidelines currently used by the agency should be modified to more effectively implement the current medical standards.
2. The scope of any medical qualifications tracking system which might be used by law enforcement officials, as well as by carriers interested in medical information that is not currently available.
3. What is the status of the various federally-funded State Prototype Medical Review pilot programs which explored the merger of the medical qualifications and licensing processes, and what useful information can be utilized from these efforts in drafting a rule on merging CDL and physical qualifications requirements?
4. How much control should various parties have over the medical review process and should the current commonly-used procedure, in which a company directs its drivers to physicians it selects, be replaced entirely or could it simply be modified? For example, should the agency require drivers to submit a medical long form to employers and the appropriate State licensing agency instead of replacing the current system?
5. How can the current physical examination requirements used by medical providers be clarified? How can these requirements and guidelines be more effectively communicated to the medical provider community?
6. Is there a way to allow merger of the separate requirements without burdening the small operator who moves to another State? In this case, although the driver's medical certification would still be valid, he or she might still be required to be recertified in the new State, thus potentially requiring a new certificate and a corresponding fee (e.g. medical reciprocity of old certificate to new States).

Once the negotiated rulemaking process begins, Committee members may raise other issues necessary for successful completion of the rulemaking.

Potential Participants Who Were Interviewed By Conveners

The following entities were identified as interested parties that should be included in the negotiated rulemaking process either directly as members of the Committee or as a part of a broader caucus of similar or related interests:

Enforcement Groups

Commercial Vehicle Safety Alliance
International Association of Chiefs of Police

State Licensing Agencies

American Association of Motor Vehicle Administrators

Carriers

American Trucking Associations
National Private Truck Council
National School Transportation Association
United Bus Motor Coach Association
American Bus Association
Terra International (Agricultural)
Farmland Industries (Agricultural)

Drivers

Owner-Operators Independent Drivers Association
Independent Truckers and Driver Association
Independent Truck Owner Operator Association
International Brotherhood of Teamsters

Public Interest

Advocates for Highway and Auto Safety
American Automobile Association

Medical

American College of Occupational and Environmental Medicine

Association for the Advancement of Automotive Medicine

American Association of Occupational Health Nurses

Insurance

Lancer Insurance (Busing Interests)

AI Transportation—AIG (Busing and Trucking)

Insurance Institute for Highway Safety

Proposed Agenda and Schedule

The FHWA anticipates that the negotiated rulemaking committee will hold six two-day meetings, approximately once a month. The first committee meeting will focus on such matters as: determining if there are additional interests that should be represented on the Committee; identifying issues to be considered; and setting ground rules, a schedule, and an agenda for future Committee meetings.

Administrative Support

The FHWA's Office of Motor Carrier Research and Standards will supply logistical, technical, and administrative support to the Committee. The meetings will be held at the FHWA headquarters in Washington, D.C. Washington, D.C. is where a majority of the prospective Committee members are located. In general, Committee members will be responsible for their own expenses, but the FHWA will consider requests for compensation in accordance with 5 U.S.C. 568(c).

Applications for Membership on Committee

The FHWA is soliciting comments on this proposal to establish a negotiated rulemaking advisory committee and on the proposed membership of the Committee. Persons may apply or nominate another person for membership on the Committee in accordance with the following procedures:

Persons who will be significantly affected by the proposed rule and who believe that their interests will not be adequately represented by any person on the previously discussed list of potential participants may apply for, or nominate another person for, membership on the negotiated rulemaking committee. Each application or nomination shall include:

1. the name of the applicant or nominee and a description of the interests such person shall represent;

2. evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;

3. a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and

4. the reasons that the persons specified in this notice do not adequately represent the interests of the person submitting the application or nomination.

Announcement of FHWA Public Meeting

In order to identify and select organizations or interests to be represented on the Committee, the FHWA will hold a public meeting on May 14, 1996. The meeting will be held at the Nassif Building, 400 7th Street, SW, Room 9230, Washington, D.C., at 8:30 a.m. e.t. All parties interested in this rulemaking, including the potential participants listed above and parties submitting applications or nominations for membership, are encouraged to attend this meeting. The convener/facilitator will also attend this organizational meeting.

As a general rule, the Federal Advisory Committee Act provides that no advisory committee may meet or take any action until an approved charter has been filed with the appropriate House and Senate committees with jurisdiction over the agency using the committee. Only upon the Secretary of Transportation's approval of the charter and the list of organizations or interests to be represented on the Committee and the filing of the charter will the FHWA form the Committee and begin negotiations.

After review of the comments received in response to this notice and any additional comments received at the organizational meeting, the FHWA will issue a final notice announcing the Committee members and the date of the first Committee meeting.

Authority: [5 U.S.C. 561–570].

Issued on: April 23, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–10548 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 61, No. 83
Monday, April 29, 1996

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

Animal and Plant Health Inspection Service

[Docket No. 96–019–1]

AgrEvo USA Company; Receipt of Petition for Determination of Nonregulated Status for Soybeans Genetically Engineered for Glufosinate Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for certain soybeans genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these soybeans present a plant pest risk.

DATES: Written comments must be received on or before June 28, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–019–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–019–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On March 8, 1996, APHIS received a petition (APHIS Petition No. 96–068–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for soybeans designated as Glufosinate Resistant Soybean (GRS) Transformation Events W62, W98, A2704–12, A2704–21, and A5547–35 that have been genetically engineered for resistance, or tolerance, to the herbicide glufosinate. The AgrEvo petition states that the subject GRS transformation events should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, GRS transformation events W62 and W98 have been genetically engineered to contain the *bar* gene derived from *Streptomyces hygroscopicus* and the *gus* gene derived from *Escherichia coli.* The *bar* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to glufosinate, and the *gus* gene encodes the enzyme B-glucuronidase, which is useful as a selectable marker in the transformation process. Expression of these added genes is controlled in part by gene sequences from the plant pests *Agrobacterium tumefaciens,* alfalfa mosaic virus (AMV), and cauliflower mosaic virus (CaMV). GRS transformation events A2704–12, A2704–21, and A5547–35 contain a synthetic version of the *pat* gene derived from *Streptomyces viridochromogenes,* which encodes the PAT enzyme and confers tolerance to glufosinate. Expression of the synthetic *pat* gene is controlled by a 35S promoter and terminator derived from CaMV. The particle acceleration method was used to transfer the added genes into the parental soybean cultivars.

GRS transformation events W62, W98, A2704–12, A2704–21, and A5547–35 have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from the plant pathogens mentioned above. GRS transformation events W62 and W98 have been field tested since 1990 under APHIS permits or notifications, and GRS transformation events A2704–12, A2704–21, and A5547–35 were field tested in 1995 under APHIS notifications. In the process of reviewing the applications for field trials of the subject GRS transformation events, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as

well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. Currently, glufosinate is not registered for use on soybeans.

FDA published a statement of policy on foods derived from new plant varieties in the Federal Register on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the Federal Register announcing the regulatory status of AgrEvo's GRS transformation events W62, W98, A2704–12, A2704–21, and A5547–35 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 23rd day of April 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–10462 Filed 4–26–96; 8:45 am]

BILLING CODE 3410–34–P

Animal and Plant Health Inspection Service, USDA

[Docket No. 92–110–5]

Veterinary Services Draft Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our notice that advised the public that the Animal and Plant Health Inspection Service has prepared a draft programmatic environmental impact statement for the Veterinary Services Program, which is responsible for the protection of the Nation's livestock and poultry. This extension will provide interested persons with additional time to prepare and submit comments on the draft programmatic environmental impact statement.

DATES: Consideration will be given only to comments on Docket No. 92–110–4 that are received on or before June 25, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 92–110–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 92–110–4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

Interested persons may obtain a copy of the draft environmental impact statement by writing to the addresses listed below under **FOR FURTHER INFORMATION CONTACT.** The draft environmental impact statement may also be viewed on the Internet at www.aphis.usda.gov/bbep.ead/vsdocs.html.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Sweeney, Project Leader, Environmental Analysis and Documentation, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 149, Riverdale, MD 20737–1237, (301) 734–8565; or e-mail: nsweeney@aphis.usda.gov; or Dr. William E. Ketter, Chief Staff Veterinarian, Program Evaluations and Planning Staff, VS, APHIS, Suite 3B08, 4700 River Road Unit 33, Riverdale, MD 20737–1231, (301) 734–4357; or e-mail: wketter@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1996, we published in the Federal Register (61 FR 14046–14047, Docket No. 92–110–4) a notice advising the public that the Animal and Plant Health Inspection Service has prepared a draft programmatic environmental impact statement for the Veterinary Services Program, which is responsible for the protection of the Nation's livestock and poultry. The notice also asked for public comment on the draft programmatic environmental impact statement.

Comments on the draft programmatic environmental impact statement were required to be received on or before May 28, 1996. We are extending the comment period on Docket No. 92–110–4 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Done in Washington, DC, this 23rd day of April 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–10460 Filed 4–26–96; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

[Docket No. 96–015N]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) is soliciting nominations for membership.

The Committee was established in April 1988, as a result of the National Academy of Sciences (NAS) Committee report, ''An Evaluation of the Role of Microbiological Criteria for Foods.'' The NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. This includes criteria pertaining to microorganisms that indicate whether food has been processed using good manufacturing practices.

Nominations for membership are being sought from individuals with scientific expertise in the fields of microbiology, epidemiology, food technology, packaging, pathology, public health, and/or toxicology.

Appointments to the NACMCF will be made by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services. Nominees will be considered without regard to race, color, religion, sex, national origin, age, or marital status. Because of the complexity of the issues to be addressed, it is anticipated that the full NACMCF will meet semi-annually and any subcommittees will meet as necessary.

Interested persons should submit a typed resume to the Office of the Administrator, Food Safety and Inspection Service, room 311 West End Court, 1255 22nd Street, NW., Washington, DC 20250. Nominations for membership must be postmarked no later than May 20, 1996. For additional information, please contact Mr. Craig Fedchock at the above address or by telephone at (202) 254–2517.

Done at Washington, DC, on April 23, 1996.

Michael R. Taylor,

Administrator.

[FR Doc. 96–10491 Filed 4–26–96; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting; Access Board

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 Arlington, Virginia on Tuesday and Wednesday, May 14–15, 1996 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, May 14, 1996

9:00 AM–Noon—Ad Hoc Committee on Bylaws and Statutory Review

1:30 PM–3:30 PM—Planning and Budget Committee

3:45 PM–5:00 PM—Technical Programs Committee

Wednesday, May 15, 1996

9:30 AM–Noon—Executive Committee

1:30 PM–3:30 PM—Board Meeting

ADDRESSES: The meetings will be held at: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia.

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 March 13, 1996 Board Meeting
- Executive Director's Report
- Ad Hoc Committee on Bylaws and Statutory Review Report
- Ad Hoc Committee on Telecommunications Report
- Telecommunications Advisory Committee Charter
- Executive Committee Report
- Final Rule to Extend Suspension of Detectable Warning Requirements
- Planning and Budget Committee Report
- Fiscal Year 1996 Spending Plan
- Technical Programs Committee Report
- Presentation on ''Reg-Neg'' Process
- Presentation on Board's Internet Home Page

All meetings 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. 96–10540 Filed 4–26–96; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany; Amendment of Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of final results of antidumping duty administrative reviews.

SUMMARY: On July 27, 1995 the Department published the final results of administrative reviews of the antidumping duty order on brass sheet and strip from Germany. Clerical errors which were timely filed by the petitioners were not corrected by the Department prior to the time the petitioners filed suit with the Court of International Trade (CIT). Therefore, the Department requested leave to correct the clerical errors in this case. Pursuant to orders issued by the CIT on February 29, 1996, granting leave to the Department to correct these ministerial errors, we have corrected several ministerial errors with respect to sales of subject merchandise by one German manufacturer/exporter. The errors were present in our final results of reviews.

The reviews cover the following three periods:

—March 1, 1990, through February 28, 1991;

—March 1, 1991, through February 29, 1992;

—March 1, 1992, through February 28, 1993.

We are publishing this amendment to the final results of reviews in accordance with 19 CFR § 353.28(c).

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the final results of antidumping administrative reviews on July 27, 1995 (60 FR 38542). The reviews covered one manufacturer/exporter, Wieland Werke AG (Wieland), and the periods March 1, 1990 through February 28, 1991 (fourth review),

March 1, 1991 through February 29, 1992 (fifth review), and March 1, 1992 through February 28, 1993 (sixth review).

For a detailed description of the products covered by this order, see the final results of review referenced above.

On August 7, 1995, the petitioners, Hussey Copper, Ltd., The Miller Company, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America, alleged that in calculating the final antidumping duty margins the Department committed the ministerial errors described below. The Department found the allegations constituted ministerial errors (see memo from the case analyst to Wendy Frankel dated February 9, 1996). However, because the petitioners filed suit with the CIT before we could correct this error, we were unable to make the corrections and publish the amended final results of reviews. Subsequently, the CIT granted the Department leave to correct these ministerial errors.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Ministerial Errors in Final Results of Review

1990–1991 Administrative Review

Comment 1: The petitioners allege that in the final results the Department incorrectly inserted a line of programming which adjusted Wieland's credit expenses based on the ratio between Wieland's U.S. deposit rate and Wieland's German short-term borrowing rate, whereas in our notice of final results we stated that we used the U.S. prime rate to calculate Wieland's imputed U.S. credit expenses for this period.

Department's Position: We have reviewed the questionnaire responses, case briefs, and computer programs, and we agree that including the line of programming in question was a clerical error. Accordingly, we have removed the incorrect line of programming for these amended final results.

Comment 2: The petitioners allege that in the cost test, the Department failed to subtract after-sale rebates and home market freight charges from home market prices, and failed to add home market packing expenses to cost of production.

Department's Position: We agree with the petitioners that it was a ministerial error to fail to deduct after-sale rebates and foreign inland freight expenses from price, and to fail to add packing expenses to costs, for the cost test. We have changed these portions of our analysis accordingly for these amended final results.

1991–1992 Administrative Review

Comment 3: The petitioners allege that the Department miscalculated the metal value for sales of alloy CDA250 by referring to the average value of two other alloys, one of which was CDA 260/M32; the petitioners argue that this last should have been CDA 260/M30.

Department's Position: We have reviewed the computer programs and we agree with the petitioners. We have corrected our analysis accordingly for these amended final results.

Comment 4: The petitioners allege that the Department did not use home market sales of alloy CDA 250 for comparison to U.S. sales in its computer program, despite our statement in the final results of review that we had used them.

Department's Position: We have reviewed the computer programs and we agree with the petitioners. Accordingly, we have corrected our analysis to include the appropriate computer language to allow for comparison of U.S. sales to home market sales of alloy CDA 250, where appropriate.

1991–1992 and 1992–1993 Administrative Reviews

Comment 5: The petitioners allege that in both reviews the Department incorrectly entered plus signs where minus signs should appear in the value-added tax adjustments for early payment discounts.

Department's Position: We have reviewed the computer programs, we agree with the petitioners, and we have corrected our analyses accordingly for these amended final results.

Amended Final Results of Reviews

After correcting the final results for these ministerial errors, the Department has determined that the following margins exist for the fourth, fifth, and sixth review periods:

Manufacturer/exporter	Period	Percent Margin
Wieland-Werke AG	3/1/90–2/28/91	2.57
	3/1/91–2/29/92	2.37
	3/1/92–2/28/93	0.46

Individual differences between the USP and FMV may vary from the above percentages.

This notice serves as a reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and this notice are in accordance with section 751(f) of the Act (19 U.S.C. § 1673(d)) and section 353.28(c) of the Department's regulations.

Dated: April 23, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–10554 Filed 4–26–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 960409104–6104–01; I.D. 032596C]

Taking and Importing of Marine Mammals; Italy as a Large-Scale High Seas Driftnet Nation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Identification of Large-Scale High Seas Driftnet Nation.

SUMMARY: The U.S. Court of International Trade ordered the Secretary of Commerce to identify Italy as a country for which there is reason to believe its nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation. The Secretary did so on March 28, 1996. As a result, the President is required to enter into consultations with Italy within 30 days after the identification to obtain an agreement that will effect the immediate termination of high seas large-scale driftnetting by Italian vessels and nationals. If consultations with Italy are not satisfactorily concluded, the importation into the United States of fish, fish products, and sportfishing equipment from Italy will be prohibited under the High Seas Driftnet Fisheries Enforcement Act (HSDFEA). Further, the Secretary of the Treasury has been

directed to deny entry of Italian large-scale driftnet vessels to U.S. ports and navigable waters. In addition, pursuant to the Dolphin Protection Consumer Information Act (DPCIA), the importation of certain fish and fish products into the United States from Italy is prohibited, unless Italy certifies that such fish and fish products were not caught with large-scale driftnets anywhere on the high seas. This action furthers the U.S. policy to support a United Nations moratorium on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins.

EFFECTIVE DATES: Effective March 28, 1996, except for the documentation requirements of the DPCIA, which take effect on May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Fishery Biologist; telephone: 301–713–2055, or fax: 301–713–0376; or Paul Niemeier, Foreign Affairs Specialist; telephone: 301–713–2276, or fax: 301–713–2313.

SUPPLEMENTARY INFORMATION:

The HSDFEA furthers the purposes of United Nations General Assembly Resolution 46/215, which called for a worldwide ban on large-scale high seas driftnet fishing beginning December 31, 1992. On March 18, 1996, the U.S. Court of International Trade ordered the Secretary of Commerce to identify Italy as a country for which there is reason to believe its nationals or vessels conduct large scale driftnet fishing beyond the exclusive economic zone of any nation, pursuant to the HSDFEA (16 U.S.C. 1826a). On March 28, 1996, the Secretary notified the President that he had identified Italy as such a country. Italian officials were notified by the Department of State on March 29, 1996.

Pursuant to the HSDFEA, a chain of actions is triggered once the Secretary of Commerce notifies Italy that it has been identified as a large-scale high seas driftnet nation. If the consultations with Italy, described in the Summary, are not satisfactorily concluded within 90 days, the President must direct the Secretary of the Treasury to prohibit the importation into the United States of fish, fish products, and sport fishing equipment from Italy. The Secretary of the Treasury is required to implement such prohibitions within 45 days of the President's direction.

If the above sanctions are insufficient to persuade Italy to cease large-scale high seas driftnet fishing within 6 months, or Italy retaliates against the United States during that time as a result of the sanctions, the Secretary of Commerce is required to certify this fact to the President. Such a certification is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a), also known as the Pelly Amendment). This authorizes the President to restrict imports of ''any products from the offending country for any duration'' to achieve compliance with the driftnet moratorium, so long as such action is consistent with U.S. obligations under the General Agreement on Tariffs and Trade.

The DPCIA (16 U.S.C. 1371(a)(2)(E)) requires that an exporting nation whose fishing vessels engage in high seas driftnet fishing provide documentary evidence that certain fish or fish products it wishes to export to the United States were not harvested with a large-scale driftnet on the high seas. Importers are hereby notified that, effective May 29, 1996, all shipments from Italy containing fish and fish products specified in regulations at 50 CFR 216.24(e)(2) are subject to the importation requirements of the DPCIA. This delayed-effectiveness period allows shipments already in transit on March 28, 1996, to clear Customs, and allows adequate time for the appropriate forms to be made available to Italian exporters. These forms include NOAA Form 370, Fisheries Certificate of Origin, required by 50 CFR 216.24(e)(2). The Fisheries Certificate of Origin must accompany all imported shipments of an item with a Harmonized Tariff Schedule number for fish harvested by or imported from a large-scale driftnet nation. As part of those requirements, an official of the Government of Italy must certify that any such import does not contain fish harvested with large-scale driftnets anywhere on the high seas.

Pursuant to the Paperwork Reduction Act, this collection of information has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0648–0040. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Dated: April 22, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–10470 Filed 4–26–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of a Limit on Certain Wool Textile Products Produced or Manufactured in India

April 23, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit.

EFFECTIVE DATE: April 24, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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); Uruguay Round Agreements Act.

The United States Government has decided to rescind the restraint on imports of women's and girls' wool coats in Category 435 from India established on April 18, 1996, pursuant to Article 6.10 of the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 435 for the period April 18, 1996 through April 17, 1997.

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 60 FR 65299, published on December 20, 1995). Also see 61 FR 16760, published on April 17, 1996.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 23, 1996.

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 April 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in India and exported during the period which began

on April 18, 1996 and extends through April 17, 1997.

Effective on April 24, 1996, you are directed to cancel the limit established for Category 435 for the period April 18, 1996 through April 17, 1997.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–10492 Filed 4–26–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Proposed Information Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Naval Health Research Center announces the collection of information for research on the health of Gulf War veterans and seeks public comments on the provisions thereof. 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) ways to enhance the quality, utility and clarity of the information to be collected; and (c) ways to minimize the burden of the information collection on respondents; including the use of automated data collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received BY June 28, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Commander, Naval Health Research Center, Box 85122, San Diego, CA 92186–5122.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and the associated collection instruments, please write to the above address, or call Commander Greg Gray, M.C., U.S.N. at (619) 553–9967.

Title, Associated Form, and OMB Number: Epidemiological Studies of Morbidity Among Gulf War Veterans: A Search for Etiologic Agents and Risk Factors-Seabee Health Study (Study #5), Seabee Health Study Questionnaire, OMB Number 0720-(To be added).

Needs and Uses: This information is necessary to provide the DOD with information to evaluate whether Gulf War veterans have greater frequency of symptoms and illnesses than other veterans of the Gulf War era. Information from this study may assist the DoD and the Department of Veterans Affairs in defining unexplained symptomatology.

Affected Public: Current and former members of US Navy Seabee Battalions.

Annual Burden Hours: 10,000.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Average Burden Per Response: 1 hour.

Frequency: Phase I: 98% of the study respondents will fill out the questionnaire once in 1996 (Phase I) and once in 2001, 2006, and 2011 (Phase II). Two percent of the study respondents will be re-surveyed in 1996, 2001, 2006, and 2011.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are current and former members of US Navy Seabee Battalions. This form will be used to provide the Department of the Navy with information on the prevalence of symptoms and illnesses, and exposures associated with military service in the Gulf War.

Dated: April 24, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10525 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS): 1996 Impact Aid Funding Surveys.

Type of Request: New collection.

Number of Respondents: 127.

Responses per Respondent: 1.

Annual Responses: 127.

Average Burden per Response: 34 minutes.

Annual Burden Hours: 71.

Needs and Uses: Historically, the Federal Government has recognized its responsibility to compensate communities for the education of family members who reside on Federal installations. Funding declines in the Federal Impact Aid Program have led Congress to request data to determine the effect of the military presence on Local Education Agency (LEA) funding levels, as well as the appropriate Federal Government role in compensating LEAs for this effect.

Affected Public: State, local, or tribal governments.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10527 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board Task Force on Information Warfare Defense

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Information Warfare Defense will meet in closed session on May 9–10, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on protection of information interests of national importance through establishment and maintenance of a credible information

warfare defensive capability in several areas, including deterrence. This study will be used to assist in analysis of information warfare procedures, processes, and mechanisms, and illuminate future options in defensive information warfare technology and policy.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: April 23, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10528 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Image-Based Automatic Target Recognition

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Image-Based Automatic Target Recognition will meet in closed session on May 14–15, 1996 at XONTECH, Inc. Van Nuys, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the ability of automatic/aided target recognition technology and systems to support important military missions, principally in the near- and mid-term. The Task Force should concentrate on those technologies and systems that use imagery (EO, IR or radar) as their primary input medium.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: April 23, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10529 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

U.S. Court of Appeals for the Armed Forces; Proposed Rule Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes (underlined) to the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

Rule 24. Form and Content, Page Limitations, Style, and Classified Information

(a) Form and content. All briefs will be legible and will be substantially as follows:

In the United States Court of Appeals For the Armed Forces

UNITED STATES, (Appellee), (Appellant), (Respondent), v.

_____,

(Full typed name, rank, service & service no. of accused) (Appellant), (Appellee), (Petitioner)

Brief on Behalf of (Appellant, Appellee, Etc.)

Crim. App. No. _____
USCA Dkt. No. _____

Index of Brief

[*See* Rule 24(c)(2)]

Table of Cases, Statutes, and Other Authorities Issue(s) Presented

[Set forth, *in a concise statement,* each issue granted review by the Court, raised in the certificate for review or mandatory review case, or presented in the petition for extraordinary relief, writ appeal petition, or petition for new trial.]

Statement of the Case

[Set forth a concise chronology including the results of the accused's trial, action by the covening authority, the officer exercising general court-martial jurisdiction (if any), and the Court of Criminal Appeals as well as other pertinent information regarding the proceedings, *including, where applicable, the date the petition for review was granted.*]

Statement of Facts

[Set forth a concise statement of the facts of the case material to the issue or issues presented, including specific page references to each relevant portion of the record of trial. Answers may adopt appellant's or petitioners' statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Summary of Argument

[*Each brief and answer shall contain a summary of argument, suitably paragraphed to correspond to each issue presented. The summary should be a succinct, but accurate and clear condensation of the arguments made in the body of the brief.*]

Argument

[Discuss briefly the point of law presented, citing and quoting such authorities as are deemed pertinent. *The argument must also include for each issue presented a statement of the applicable standard of review. The standard of review may appear in the discussion of each issue or under a separate heading.*]

Conclusion

[State the relief sought as to each issue presented, for example, reversal of the Court of Criminal Appeals decision and dismissal of the charges, grant of a new trial, the extraordinary relief sought, etc. No particular form of language is required, so long as the brief concludes with a clear prayer for specific Court action.]

Appendix

[The brief of the appellant or petitioner shall include an appendix containing a copy of the Court of Criminal Appeals decision, unpublished opinions cited in the brief, and relevant extracts of rules and regulations. The appellee or respondent shall similarly file an appendix containing a copy of any additional unpublished opinions and relevant extracts of rules and regulations cited in the answer.]

_____
(Signature of counsel)

_____
(Typed name of counsel)

_____
(Address of counsel)

_____
(Telephone no. of counsel)

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed] [delivered] to (enter name of each counsel of record) on

_____
(date)

_____
(Typed name and signature)

(Address and telephone no.)

* * * * *

DATES: Comments on the proposed changes must be received by June 28, 1996.

ADDRESSES: Forward written comments to Thomas F. Granahan, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E. Street, Northwest, Washington, DC 20442–001

FOR FURTHER INFORMATION CONTACT:

Thomas F. Granahan, Clerk of Court, telephone (202) 761–1448 (x600)

Dated: April 23, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10526 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Armed Forces Institute of Pathology (AFIP) Scientific Advisory Board

AGENCY: Department of the Army.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463), announcement is made of the following open meeting:

Date: 9–10 May 1996.

Time: 8:00 am.

Place: Armed Forces Institute of Pathology, Building 54, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP, Building 54, Washington, DC 20306, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The Scientific Advisory Board provides scientific and professional advice and guidance on programs, policies, and procedures of the AFIP.

Agenda: The board will hear status reports from the AFIP Deputy Directors, CAP Director, the National Museum of Health and Medicine, and selected pathology departments. Board members will visit several of the pathology departments.

Open board discussions: Reports will be given on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–10474 Filed 4–26–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21–22 May 1996.

Place: Red Stone Arsenal, Huntsville, Alabama.

Agenda: The Army Science Board's (ASB) Summer Study on ''Unmanned Aerial Vehicles (UAVs)'' will meet for briefings and discussions on the Army's Concept of Employment for UAV's and View UVA training operations. This meeting will be closed to the public in accordance with Section 522b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–10447 Filed 4–26–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 29, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: April 23, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of the Secretary

Type of Review: New.

Title: National Recognition Program for Model Professional Development.

Frequency: One-time.

Affected Public: State, Local or Tribal Gov't., SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 6,400.

Abstract: With the importance of professional development to school reform and excellence in teaching and learning, there is an immediate need to identify and recognize model professional development programs throughout the country that have

schoolwide impact on student success, and that are aligned with the recently developed Principles for Professional Development. The Department will solicit applications from those operating effective professional development activities at the pre-K through 12 level in schools and school districts, evaluate them with the help of professional educators (who will confirm information for high-ranking applicants through site visits), and recognize those programs that are found to meet these criteria.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for New Grants Under the School, College, and University Partnerships (SCUP) Program.
Frequency: Competitive Year.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 175.
Burden Hours: 3,500.
Abstract: The application form will be used to collect program and budget information needed to evaluate the quality of applications submitted and make funding decisions based on the authorizing statute and the published funding criteria.

[FR Doc. 96–10466 Filed 4–26–96; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Extension of Public Comment Period and Changed Public Hearing Date for the Draft Environmental Impact Statement for the Continued Operation of the Pantex Plant and Associated Storage of Weapon Components

AGENCY: Department of Energy.

ACTION: Notice of extension of public comment period and changed public hearing date.

SUMMARY: The Department of Energy (DOE) announces the extension of the public comment period for the Draft Environmental Impact Statement (EIS) for the Continued Operation of the Pantex Plant and Associated Storage of Weapon Components (DOE/EIS–0225D) to July 12, 1996, and change of the public hearing in Richland, Washington from May 2, 1996 to May 23, 1996.

DATES: DOE announced the availability and schedule of public hearings for the Draft Pantex EIS in the Federal Register dated April 5, 1996 (61 FR 15232). In response to requests from the public, DOE is extending the close of the public comment period from July 5, 1996 to July 12, 1996. Comments received by DOE must be postmarked no later than July 12, 1996, to ensure consideration in the Final EIS. Comments postmarked after that date will be considered to the extent practicable.

Due to public hearing conflicts on May 2, 1996, DOE has moved the Richland, Washington hearing date to May 23, 1996; the time and exact location are listed below.

May 23, 1996

Red Lion Inn, 802 George Washington Way, Richland, Washington 99352, Time: 6:00 pm to 9:00 pm.

The public meeting time and location will be published in local newspapers prior to the meeting date. DOE invites the general public, other government agencies, and all other interested parties to participate in the public hearings and comment process for the Draft Pantex EIS. DOE will accept comments on the Draft Pantex EIS at the public hearing.

ADDRESSES: Requests for copies or information on the Draft Pantex EIS as well as written comments should be directed to: Ms. Nanette Founds, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico, 87185–5400. Written comments, suggestions, and requests can also be submitted using the Pantex Plant EIS Faxline at 1–800–822–5499. Facsimiles should be marked: Pantex Plant EIS. Oral comments and requests concerning this EIS may also be submitted by calling the Pantex Plant EIS Hotline at 1–800–788–0306. Comments may also be submitted via the Internet. The e-mail address is: tetratec@indirect.com.

FOR FURTHER INFORMATION CONTACT: For information on DOE's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585, 202–586–4600 or 1–800–472–2756. For information on this EIS, please contact: Ms. Nanette Founds at the above address or by calling (505) 845–4351.

Subsequent Document Preparation

DOE intends to complete the Final EIS and prepare a response to comments received during the review of the Draft EIS in October 1996 and will announce its availability in the Federal Register.

Issued in Washington, DC, on April 23, 1996.

James C. Landers,

Executive Assistant to Assistant Secretary for Defense Programs.

[FR Doc. 96–10510 Filed 4–26–96; 8:45 am]
BILLING CODE 6450–01–P

A Financial Assistance Program for State and Municipal Governments for the Demonstration of Light and Heavy Duty Alternative Fuel Vehicles

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of solicitation.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, in accordance with the Financial Assistance regulations in 10 CFR 600, announces competitive Solicitation Number DE–PS07–96ID13432 to solicit applications from state and municipal governments for demonstration projects in use of light and heavy duty alternative fuel vehicles.

ADDRESSES: Prospective applicants should send a written request for a copy of the solicitation and a DOE application instruction package (which includes standard forms, assurances and certifications) to the U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS–1221, Idaho Falls, Idaho 83401–1563, Attn: SOL DE–PS07–96ID13432. The point of contact is Wendy L. Huggins, Contract Specialist, at (208)-526–2808. Requests transmitted by facsimile at (208) 526–5548 will be accepted. It is advised that prospective applicants submit their requests in writing no later than May 31, 1996. A copy of the solicitation may be viewed on the DOE's Home Page titled ''Current Business Opportunities with the DOE'' at Internet address: http:\\www.pr.doe.gov\propp.html. The deadline for receipt of applications is 3:00 p.m. MDT, June 28, 1996. It is anticipated that review of the proposed applications will begin on or about July 1, 1996. Selections will be made by August 1, 1996, and awards will be issued by September 30, 1996.

SUPPLEMENTARY INFORMATION: In response to Section 409 of the Energy Policy Act of 1992, P.L. 102–486, 42 U.S.C. 13235, the Department of Energy Office of Technology Utilization desires to accelerate the use of alternate fuel vehicles. It is the intent of this solicitation to promote the use of alternate fuel vehicles (both light and heavy duty) by providing the states with practical experience in their use and an increased awareness of their availability and benefits. Because of their high fuel

consumption, regular driving routes, and centralized operation, state and municipal vehicle fleets have been identified as attractive candidates for demonstration of the use of alternate fuels. With the assistance of the Idaho Operations Office, the Office of Technology Utilization has the opportunity to introduce an alternative fuel program through state energy offices.

The U.S. Department of Energy (DOE) invites applications to demonstrate alternative fuel vehicles from each of the state energy offices in the 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico and any territory or possession of the United States. These entities are under no obligation to apply. Only one proposal will be accepted by DOE from each of the 50 states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and any territories or possessions of the United States.

Interested state agencies, municipalities, local school districts, and other local agencies must contact their state energy office for applications for subawards, and must submit their proposals to their energy office to be considered.

Restriction of eligibility to propose under this program is considered necessary to achieve program objectives and is made in accordance with 10 CFR 600.6.

It is anticipated that the DOE will make multiple financial assistance awards as a result of this solicitation. In fiscal year 1996, approximately $1,500,000 has been allocated to the program. Currently $975,000 is available to award and it is expected that additional funding of as much as $600,000 will be made available this fiscal year.

It is anticipated that approximately eight to twelve awards will be made with funding levels not to exceed $150,000 for any individual award.

Procurement Request Number: 07–96ID13432.000

Dated: April 18, 1996.

Brad Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 96–10511 Filed 4–26–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG96–10–000]

Carnegie Interstate Pipeline Company; Notice of Filing

April 23, 1996.

Take notice that on April 18, 1996, Carnegie Interstate Pipeline Company (Carnegie) filed revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1995)). All such motions to intervene or protest should be filed on or before May 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–10464 Filed 4–26–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52791 (December 22, 1989), III FERC Stats. & Regs.¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. MG95–4–001]

Northwest Pipeline Corporation; Notice of Filing

April 23, 1996.

Take notice that on April 15, 1996, Northwest Pipeline Corporation (Northwest) submitted a ''Report of Northwest Pipeline Corporation in Response to Commission Order.'' Northwest states that it submitted the Report in response to the Commission's March 15, 1996 ''Order on Request for Waiver.''[1]

Northwest states that it has mailed copies of this filing to all persons designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–10463 Filed 4–26–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

April 23, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Joint Application for Transfer of License.

b. Project No.: 5044–004.

c. Date Filed: April 4, 1996.

d. Applicants: Graniteville Company and Avondale Mills, Inc.

e. Name of Project: Sibley Mill Hydroelectric Project.

f. Location: On the Augusta Canal of the Savannah River in the City of Augusta, Richmond County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

[1] 74 FERC ¶ 61,298 (1996).

h. Contacts:

Sharon Rodgers, Esq., Corporate Counsel, Graniteville Company, P.O. Box 128, Graniteville, SC 29829

Ms. Cynthia Carney Johnson, Esq, Attorney for Transferee, King & Spalding, 120 West 45th Street, New York, NY 10036–4003 (212) 556–2100.

i. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

j. Comment Date: May 24, 1996.

k. Description of the Proposed Action: The licensee, Graniteville Company, seeks to transfer the project license to Avondale Mills, Inc.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–10465 Filed 4–26–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5459–8]

Common Sense Initiative Council (CISC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Life Cycle Management/Supplier Partnership Project Team, of the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative, recognizes that opportunities exist to reduce the overall environmental impacts of automobile manufacturing by engaging in life cycle management with its suppliers. The Project Team goals are to: develop principles and strategies for the application of life cycle management in the automobile manufacturing sector as a means of further reducing environmental impacts in an economically efficient manner; and demonstrate or pilot test the principles and strategies through manufacturer/supplier partnerships in a manner that produces positive results (i.e., cleaner, cheaper, smarter) and is applicable to and beneficial for the whole sector. To this end, an automotive supplier sector, instrument panels (excluding heating/air conditioning and the electronic components), was identified to bring into this project. The EPA and Project Team are soliciting the interest of instrument panel suppliers in this project. Further, EPA and the Project Team are asking instrument panel suppliers who wish to participate in this project to identify themselves.

DATES: Please respond by no later than May 29, 1996.

ADDRESSES: If desired, written submissions must be sent to: Ms. Julie Lynch (7409); Office of Pollution Prevention and Toxics; Environmental Protection Agency; 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Lynch; telephone number: 202–260–4000; Internet: lynch.julie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative (CSI), the Life Cycle Management/Supplier Partnership (LCM/SP) Project Team is:

(1) Developing principles and strategies for the application of life cycle management in the automobile manufacturing sector as a means of further reducing environmental impacts in an economically efficient manner.

(2) Demonstrating the principles and strategies of life cycle management in automotive manufacturing through manufacturer/supplier partnerships in a manner that produces positive results (i.e., cleaner, cheaper, smarter) and is applicable to and beneficial for the whole sector.

The CSI is an EPA sponsored program to involve stakeholders in the identification of ''cleaner, cheaper, and smarter'' solutions to environmental challenges. The CSI encompasses six industrial sectors including automobile manufacturing. There are a number of projects being conducted within the CSI Automobile Manufacturing Sector involving alternative regulatory system development, community-based technical assistance and involvement, input on existing regulations, as well as the development and demonstration of principles and strategies for life cycle management through a pilot project utilizing a manufacturer/supplier partnership. The Project Team involved in the LCM/SP was initially established in January of 1995 with the creation of CSI and has representatives from auto manufacturers and trade associations, EPA, state environmental agencies, and environmental and community groups.

II. The Life Cycle Management/Supplier Partnership Project

The LCM/SP Project Team participants have come together to discuss and develop pre-competitive approaches to reduce costs and the environmental impacts along the supply chain of auto assembly plants. The Team worked to identify and select a particular automotive supply sector to bring into the project. Tier I instrument panels (referred to hereafter as instrument panels), excluding the electronic and heating/air conditioning components, were selected.

The EPA and the Project Team are soliciting the interest of instrument panel suppliers in this project. Further, EPA and the Project Team are asking instrument panel suppliers who may wish to participate in this project to identify themselves.

Project partners will work together to:

- Develop life cycle management principles and strategies concerning the supply of parts and materials to auto companies;
- Design a pilot project workplan to test the life cycle management principles and strategies for the supply chain of an automotive component;
- Implement the pilot project; and
- Document lessons learned through the revision of the life cycle management principles and strategies.

The instrument panel supply sector was targeted based on a number of criteria including current use of life cycle management, opportunities for partnerships, opportunities to reduce environmental impacts at the assembly plant and along the supply chain, and the potential to improve environmental quality in minority and economically disadvantaged neighborhoods.

As a stakeholder (i.e., one with a stake in the development and outcome) in this area, interested instrument panel suppliers could realize a number of benefits. In order to remain competitive and reduce costs, auto manufacturers are developing new management systems to streamline the auto design and assembly process. These new systems will have a direct affect on the supplier's relationship with the auto manufacturer. Participation in this project offers suppliers a chance to cooperate with auto manufacturers in their environmental management programs. More specifically, the project will develop and demonstrate a model which:

- Seeks to identify cost avoidances and savings for both suppliers and manufacturers, offering participants the financial benefits of LCM;
- Suppliers can use the work with the auto manufacturers in developing environmental management approaches, such as those being proposed under the International Organization for Standardization's forum;
- Considers policies and practices and develops principles and strategies for a new relationship with auto manufacturers that incorporates supply considerations early in the product design and throughout the assembly of the car; and
- Identifies potential pollution prevention benefits such as reduced environmental and occupational liabilities, reduced waste treatments and disposal costs, and, etc.

Participants in this project are expected to exhibit a willingness to come to the table to discuss, develop, and test life cycle management principles and strategies in a pre-competitive environment with the other Project Team members. Those who choose to participate will do so with the understanding that the work of the Project Team will be made publicly available. Generally, team meetings are held monthly. A one year time period is envisioned for this project.

Dated: April 10, 1996.

Carol Kemker,

Designated Federal Officer, CSI Auto Manufacturing Sector.

[FR Doc. 96–10538 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5464–1]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, May 7, 1996, from 9:00 a.m. to 5:00 p.m., and Wednesday, May 8, 1996, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street SW., Washington, D.C. 20460; telephone (202) 260–5373, fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulation for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 et seq.). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting will be open to the public. Limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by May 3, 1996 will be considered by the Task Force at or subsequent to the meeting.

Dated: April 19, 1996.

Eric Strassler,

Designated Federal Official.

[FR Doc. 96–10534 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5463–8]

Proposed Settlement Under Section 122 (h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h), Chemical Commodities, Inc. Superfund Site, Kansas City, KS

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h), to resolve the liability of Aeronca, Inc., AlliedSignal Inc., Alliant Techsystems Inc., Lake Road Warehouse, McDonnell Douglas Corporation, Minnesota Mining and Manufacturing Company, Rockwell International Corporation, Veterinary Laboratories, the Defense Logistics Agency and the General Services Administration for costs incurred by the EPA in connection with response actions taken at the Chemical Commodities, Inc. Site at 43 Kansas Avenue, Kansas City, Kansas (''the Site'').

DATES: Written comments must be provided on or before May 29, 1996.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue,

Kansas City, Kansas 66101 and should refer to: In the Matter of Chemical Commodities, Inc., Kansas City, Kansas, EPA Docket No. VII–96–F–0010.

FOR FURTHER INFORMATION CONTACT: Barbara L. Peterson, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7277.

SUPPLEMENTARY INFORMATION: A variety of incompatible hazardous substances in broken, deteriorating and leaking containers were abandoned in the basement of a three-story warehouse located at the Site presenting the threat of fire or explosion. Among the hazardous substances at the facility were used or surplus materials from Aeronca, Inc., AlliedSignal Inc., Alliant Techsystems Inc., Lake Road Warehouse Co., Minnesota Mining and Manufacturing Company, Rockwell International Company, Veterinary Laboratories, the Defense Logistics Agency and the General Services Administration. The Site is located approximately five miles south of downtown Kansas City, Kansas. The State of Kansas requested that the EPA assume the role of lead agency with respect to cleanup of the Site. The hazardous substances at the Site were removed and properly disposed of by the EPA in November, 1992.

The proposed settlement provides for partial reimbursement of removal action costs incurred by the EPA. The EPA has determined that the settling parties Aeronca, Inc., AlliedSignal Inc., Alliant Techsystems Inc., Lake Road Warehouse Co., Minnesota Mining and Manufacturing Company, Rockwell International Company, Veterinary Laboratories, the Defense Logistics Agency and the General Services Administration, are liable for response costs at the Site pursuant to Section 107(a)(3) of CERCLA. The settling parties have each agreed to pay a portion of the response costs incurred by the EPA. The proposed settlement agreement provides that the EPA will covenant not to sue the settling parties for response costs incurred by the EPA at the Site under Section 107 of CERCLA upon payment of the amounts specified in the settlement agreements.

Dated: April 9, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–10535 Filed 4–20–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5463–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h), Chemical Commodities, Inc., Superfund Site, Shawnee, KS

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h), to resolve the liability of AlliedSignal Inc., Alliant Techsystems Inc., McWane, Inc., Southwestern Bell Telephone Company, Veterinary Laboratories, and the Defense Logistics Agency for costs incurred by the EPA in connection with response actions taken at the Chemical Commodities, Inc. Site at 20201 West 55th Street, Shawnee, Kansas.

DATES: Written comments must be provided on or before May 29, 1996.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of Chemical Commodities, Inc., Kansas City, Kansas, EPA Docket No. VII–96–F–0009.

FOR FURTHER INFORMATION CONTACT: Barbara L. Peterson, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7277.

SUPPLEMENTARY INFORMATION: Chemical Commodities, Inc., a now defunct Kansas corporation, owned and operated a facility for recycling and storage of used and surplus chemicals, including hazardous substances, at 20201 West 55th Street, Shawnee, Kansas (the Site). An investigation of the Site by EPA in August, 1990 revealed that a variety of incompatible hazardous substances in deteriorating and leaking containers were randomly stored at the Site posing a threat of fire or explosion. The Site is located in a rapidly developing suburb of metropolitan Kansas City. The area surrounding the Site supports a mixture of residential, recreational, commercial and light industrial uses. The State of Kansas requested that the EPA assume the role of lead agency with respect to cleanup of the Site. The hazardous substances at the Site were removed and properly disposed of by the EPA in November, 1992.

The proposed settlement provides for partial reimbursement of the removal response costs incurred by EPA. The EPA has determined that the settling parties, AlliedSignal Inc., Alliant Techsystems Inc., McWane, Inc., Southwestern Bell Telephone Company, Veterinary Laboratories, and the Defense Logistics Agency, are liable for response costs at the Site pursuant to Section 107(a)(3) of CERCLA. The settling parties have each agreed to pay a portion of the response costs incurred by the EPA. The proposed settlement agreement provides that the EPA will convenant not to sue the settling parties for response costs incurred by the EPA at the Site under Section 107 of CERCLA upon payment of the amounts specified in the settlement agreements.

Dated: April 9, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–10536 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 18394, April 25, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, April 30, 1996.

CHANGE IN THE MEETING: The Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued April 25, 1996.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 96–10654 Filed 4–25–95; 1:09 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 96–556]

Citizens Utilities Company Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Memorandum Opinion and Order (''MO&O'') addresses the accounting treatment for nonregulated uncollectible revenue and the treatment of affiliate transactions involving nonregulated activities. The MO&O states that the Commission's rules preclude the netting of uncollectibles related to nonregulated activities in Account 5280, Nonregulated operating revenue. The MO&O requires carriers to include all nonregulated uncollectible revenue in Accounts 5301, Uncollectible revenue-telecommunications, and 5302, Uncollectible revenue-other. The MO&O allows subject carriers six months from the publication of this notice to comply with its accounting directive.

DATES: Compliance must be on or before October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Alicia Dunnigan, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0807.

SUPPLEMENTARY INFORMATION: This is the synopsis of the MO&O in AAD 94–6, adopted April 8, 1996, and released April 22, 1996.

The complete text of the MO&O is available for inspection and copying in the Accounting and Audits Division public reference room, 2000 L Street N.W., Suite 812, Washington, D.C.

Copies are also available from International Transcription Service, Inc., at 2100 M Street NW., Suite 140, Washington, D.C. 20037, or call (202) 857–3800.

The MO&O addresses issues raised by the parties in their petitions for reconsideration of a December 27, 1994, order approving the cost allocation manual of Citizens Utilities Company.

The parties requested reconsideration of the requirement that uncollectible revenue associated with nonregulated activities be recorded in the uncollectible revenue accounts instead of the nonregulated revenue account. The MO&O, states that Sections 32.5301 and 32.5302 of the Commission's rules precludes carriers from netting nonregulated uncollectibles in Account 5280. The MO&O requires carriers that have previously been netting uncollectible nonregulated revenue in Account 5280 to comply with the Commission's rules within six months.

The parties requested reconsideration of the statement that the terms of affiliate transactions in which the telephone company provides nonregulated services to its affiliated companies must comply with the Commission's affiliate transactions rules. The MO&O states that when a nonregulated activity is accounted for within the system prescribed in Part 32 of the Commission's rules, pursuant to Section 32.23(c), the transactions between the carrier performing that nonregulated activity and a nonregulated affiliate are subject to the affiliate transactions rules of Section 32.27.

Accordingly, *it is ordered*, pursuant to Sections 1, 4(i), 4(j), and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 220, and Section 553(b)(A) of the Administrative Procedures Act, 5 U.S.C. § 553(b)(A),[1] and Sections 0.91, 0.291, and 1.106 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.106, that the Petitions for Reconsideration filed by Southwestern Bell Telephone Company, BellSouth Telecommunications, Inc., and the United States Telephone Association are granted to the extent indicated in this Order and are otherwise denied.

Federal Communications Commission.

Regina M. Keeney,

Chief, Common Carrier Bureau.

[FR Doc. 96–10497 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–P

[1] Section 553(b)(A) allows an agency to interpret its rules without notice and comment.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Community Bankshares Incorporated, Petersburg, Virginia; to acquire 100 percent of the voting shares of Commerce Bank of Virginia, Richmond, Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Goodenow Bancorporation, Okoboji, Iowa; to merge with Jackson Bancorporation, Inc., Fairmont, Minnesota, and thereby indirectly acquire Bank Midwest Minnesota, Iowa, N.A., Fairmont, Iowa.

2. Stichting Prioriteit ABN AMRO Holding, Amsterdam, The Netherlands; Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands; ABN AMRO Holding N.V., Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam, The Netherlands; and ABN AMRO North America, Inc., Chicago, Illinois; to

acquire 100 percent of the voting shares of Comerica Bank - Illinois, Franklin Park, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Nebraska, Inc., Omaha, Nebraska, and First National of Colorado, Inc., Omaha, Nebraska; to acquire Bolder Bancorporation, Boulder, Colorado, and thereby indirectly acquire The Bank of Boulder, Boulder, Colorado. First National of Colorado also has applied to merge with Bolder Bancorporation.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 83.54 percent of the voting shares of Community Bank of Arizona, Wickenburg, Arizona.

2. Texas Financial Bancorporation, Inc, Minneapolis, Minnesota; First Bancorp, Inc., Denton, Texas; and First Delaware Bancorp, Inc., Dover, Delaware; have applied to acquire 100 percent of the voting shares of Riverside National Bank, Grand Prairie, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Columbia Bancorp, The Dalles, Oregon; to acquire up to 100 percent of the voting shares of Klickitat Valley Bank, Goldendale, Washington. Applicant also has an option to acquire up to 9.9 percent of Klickitat Valley Bank.

2. First Hawaiian, Inc., Honolulu, Hawaii; to acquire 100 percent of the voting shares of ANB Financial Corporation, Kennewick, Washington; and thereby indirectly acquire American National Bank, Kennewick, Washington.

Board of Governors of the Federal Reserve System, April 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10435 Filed 4–26–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 961–0026]

Lockheed Martin Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require Lockheed Martin, a Bethesda, Maryland-based defense and space contractor, to divest its systems engineering and technical services contract with the Federal Aviation Administration; would prohibit Lockheed Martin from providing certain technical services or information to the space business subsidiary of Loral Space & Communications Ltd.; would restrict participation and compensation of persons who serve as directors or officers of both Lockheed Martin and Loral Space; would limit Lockheed Martin's ownership of Loral Space; and would require ''firewalls'' to limit information flow about competitors tactical fighter aircraft and unmanned aerial vehicles. The Consent Agreement settles allegations that Lockheed Martin's proposed $9.1 billion acquisition of Loral Corporation would violate the antitrust laws.

DATES: Comments must be received on or before June 28, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Federal Trade Commission, H–374, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2932. Steven K. Bernstein, Federal Trade Commission, S–2308, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2423.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Lockheed Martin Corporation, a corporation. File No. 961–0026.

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Lockheed Martin Corporation (''Lockheed Martin'') of Loral Corporation (''Loral''), and it now appearing that Lockheed Martin, hereinafter sometimes referred to as ''Proposed Respondent,'' is willing to enter into an agreement containing an order to divest assets, to refrain from certain acts and to provide for certain other relief:

It is hereby agreed by and between Proposed Respondent Lockheed Martin, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Lockheed Martin is a corporation organized, existing and doing business under and by virtue of the laws of the state of Maryland with its office and principal place of business located at 6801 Rockledge Drive, Bethesda, Maryland 20817.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. Proposed Respondent shall submit within thirty (30) days of the date this agreement is signed by Proposed Respondent, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Proposed Respondent setting forth in detail the manner in which the Proposed Respondent will comply with Paragraphs II. through XVI. of the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission for public comment.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either

withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and refrain from certain acts in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent's address as stated in the agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''Lockheed Martin'' means Lockheed Martin Corporation, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Lockheed Martin Corporation, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. Lockheed Martin includes Loral Corporation, which prior to the Acquisition had its principal office and place of business located at 600 Third Avenue, New York, New York 10016; except that Lockheed Martin does not include any of the foregoing that will be part of Loral Space after the Acquisition.

B. ''Loral'' means Loral Corporation, a New York corporation, with its principal office and place of business located at 600 Third Avenue, New York, New York 10016, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Loral Corporation, and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Loral does not include any of the foregoing that will be part of Loral Space after the Acquisition.

C. ''Commission'' means the Federal Trade Commission.

D. ''SETA Services'' means systems engineering, technical assistance services and support services relating to Air Traffic Control Systems provided by Lockheed Martin to the Federal Aviation Administration, pursuant to Paragraphs C.2.2.1.3., C.2.2.1.5., C.2.2.1.12. and C.2.2.4. of Task Area 2 and Paragraphs C.9.1.3., C.9.2.2., C.9.2.3., C.9.2.4., C.9.2.6., C.9.2.7., C.9.2.8. and C.9.2.10. of Task Area 9 of the National Implementation and Support Contract, DTFA01–93–C–00031, that involve the development of technical and other specifications for procurements and programs; the assessment of bid and other proposals; the evaluation, testing or monitoring of any service, equipment or product provided by any company; the modification or change of any performance requirements of any contractor; or the development of financial, cost or budgetary plans, procedures or policies.

E. ''SETA Services Operations'' means all assets, properties, business and goodwill, tangible and intangible, held by Respondent and used in the provision of SETA Services including, *without limitation*, the following:

1. all rights, obligations and interests in Paragraphs C.2.2.1.3., C.2.2.1.5., C.2.2.1.12., C.2.2.4., C.9.1.3., C.9.2.2., C.9.2.3., C.9.2.4., C.9.2.6., C.9.2.7., C.9.2.8. and C.9.2.10. of contract DTFA01–93–C–00031 relating to the provision of SETA Services;

2. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, financial information, technical information, management information and systems, software, software licenses, inventions, copyrights, trademarks, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

3. all rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

4. all rights, titles and interests in and to the contracts entered into in the ordinary course of business, including, but not limited to, contracts with customers (together with associated bid and performance bonds), suppliers, subcontractors, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

5. all rights under warranties and guarantees, express or implied;

6. all books, records and files;

7. all data developed, prepared, received, stored or maintained; and

8. all items of prepaid expense.

F. ''Non-Public Air Traffic Control Information'' means any information not in the public domain disclosed by the Federal Aviation Administration or any company to Respondent in its capacity as a provider of SETA Services.

G. ''Standard Terminal Automation Replacement System'' means any current or future equipment and services designed, developed, proposed or provided by Loral Air Traffic Control to upgrade the traffic control equipment and systems in the Federal Aviation Administration's U.S. air traffic control terminals.

H. ''Traffic Flow Management System'' means any current or future equipment and services designed, developed, proposed or provided by Loral Air Traffic Control to predict arrival and departure traffic flows at U.S. airports for the Federal Aviation Administration.

I. ''Operational and Supportability Implementation Service'' means any current or future equipment and services designed, developed, proposed or provided by Loral Air Traffic Control to upgrade Federal Aviation Administration flight server stations.

J. ''Air Traffic Control Systems'' means any current or future air traffic control equipment, system or service designed, developed, proposed or provided by Loral Air Traffic Control, including, but not limited to, the Standard Terminal Automation Replacement System, the Traffic Flow Management System and the Operational and Supportability Implementation Service, for the Federal Aviation Administration.

K. ''Military Aircraft'' means fixed-wing aircraft manufactured for sale to the United States or foreign governments.

L. ''NITE Hawk Systems'' means any airborne forward-looking infrared targeting system researched, developed, designed, manufactured or sold by Loral for use on the F/A–18 series of Military Aircraft.

M. ''Simulation and Training Systems'' means the operational and weapons systems trainers designed, developed, manufactured or sold by Loral that simulate Military Aircraft.

N. ''Electronic Countermeasures'' means systems designed, developed, manufactured or sold by Loral, including, but not limited to, the ALR–56A and ALR–56C, that detect, jam and deceive hostile radars and radar and infrared guided weapons for use on Military Aircraft.

O. ''Mission Computers'' means any computer designed, developed, manufactured or sold by Loral, including, but not limited to, the AP1, AAAP1R and CP1075A/B/C, that control, monitor or manage the operations and electronics of any Military Aircraft.

P. ''Unmanned Aerial Vehicle'' means any unmanned aircraft used for tactical or strategic reconnaissance missions manufactured for sale to the United States or foreign governments.

Q. ''Integrated Communications Systems'' means systems designed, developed, manufactured or sold by Loral, including, but not limited to, the 367–6000–59–R–012 and the 367–6000–59–R–013, that are capable of both wideband satellite and line-of- sight data link communications and command and control data links for use on Unmanned Aerial Vehicles.

R. ''Loral Air Traffic Control'' means Loral Air Traffic Control, an entity with its principal place of business at 9211 Corporate Blvd., Rockville, Maryland 20850, or any other entity within or controlled by Lockheed Martin that is engaged in, among other things, the research, development, manufacture or sale of Air Traffic Control Systems, and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Loral Air Traffic Control (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Loral Air Traffic Control does not include any of the foregoing that will be part of Loral Space after the Acquisition.

S. ''Lockheed Martin Military Aircraft Business'' means any entity within or controlled by Lockheed Martin that is engaged in, among other things, the research, development, manufacture or sale of Military Aircraft or Unmanned Aerial Vehicles, and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by a Lockheed Martin Military Aircraft Business and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

T. ''Management and Data Systems'' means Lockheed Martin Management and Data Systems Division, an entity with its principal place of business at 7000 Geerdes Blvd., King of Prussia, Pennsylvania 19406, or any other entity within or controlled by Lockheed Martin that is engaged in, among other things, the provision of SETA Services, and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Lockheed Martin Management and Data Systems Division (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

U. ''Non-Public Military Aircraft Information (NITE Hawk)'' means (1) any information not in the public domain disclosed by any Military Aircraft manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of NITE Hawk Systems and (a) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Military Aircraft manufacturer prior to the Acquisition to Loral in its capacity as a provider of NITE Hawk Systems. Non-Public Military Aircraft Information (NITE Hawk) shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Military Aircraft Information (NITE Hawk) to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

V. ''Non-Public Military Aircraft Information (Simulation and Training)'' means (1) any information not in the public domain disclosed by any Military Aircraft manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of Simulation and Training Systems and (a) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Military Aircraft manufacturer prior to the Acquisition to Loral in its capacity as a provider of Simulation and Training Systems. Non-Public Military Aircraft Information (Simulation and Training) shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information

that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Military Aircraft Information (Simulation and Training) to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

W. ''Non-Public Military Aircraft Information (Electronic Countermeasures)'' means (1) any information not in the public domain disclosed by any Military Aircraft manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of Electronic Countermeasures and (a) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Military Aircraft manufacturer prior to the Acquisition to Loral in its capacity as a provider of Electronic Countermeasures. Non-Public Military Aircraft Information (Electronic Countermeasures) shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Military Aircraft Information (Electronic Countermeasures) to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

X. ''Non-Public Military Aircraft Information (Mission Computers)'' means (1) any information not in the public domain disclosed by any Military Aircraft manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of Mission Computers, and (a) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Military Aircraft manufacturer prior to the Acquisition to Loral in its capacity as a provider of Mission Computers. Non-Public Military Aircraft Information (Mission Computers) shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Military Aircraft Information (Mission Computers) to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

Y. ''Non-Public Unmanned Aerial Vehicle Information'' means (1) any information not in the public domain disclosed by any Unmanned Aerial Vehicle manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of Integrated Communications Systems, and (a) if written information, designated in writing by the Unmanned Aerial Vehicle manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Unmanned Aerial Vehicle manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Unmanned Aerial Vehicle manufacturer prior to the Acquisition to Loral in its capacity as a provider of Integrated Communications Systems. Non-Public Unmanned Aerial Vehicle Information shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Unmanned Aerial Vehicle Information to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

Z. ''Satellite'' means an unmanned machine that is launched from the Earth's surface for the purpose of transmitting data back to Earth and which is designed either to orbit the Earth or travel away from the Earth.

AA. ''Restructuring Agreement'' means the Restructuring, Financing and Distribution Agreement, dated as of January 7, 1996, by and among Loral Corporation, Loral Aerospace Holdings, Inc., Loral Aerospace Corp., Loral General Partner, Inc., Loral Globalstar, L.P., Loral Globalstar Limited, Loral Telecommunications Acquisition, Inc. (to be renamed Loral Space & Communications Ltd.) and Lockheed Martin Corporation.

BB. ''Loral Space'' means Loral Space & Communications Ltd., a company organized under the laws of the Islands of Bermuda, with its principal office and place of business located at 600 Third Avenue, New York, New York 10016, as described by the Restructuring Agreement; its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled or managed by Loral Space & Communications Ltd., including, but not limited to, Globalstar, L.P., Space Systems/Loral, Inc. and K&F Industries, Inc., and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Loral Space does not include any of the foregoing that will be part of Loral or Lockheed Martin after the Acquisition.

CC. ''Space Systems/Loral'' means Space Systems/Loral, Inc., an entity

with its principal place of business at 3825 Fabian Way, Palo Alto, California 94303, or any other entity within or controlled by Loral Space that is engaged in, among other things, the research, development, manufacture or sale of Satellites, and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Space Systems/Loral, Inc. (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Space Systems/Loral does not include any of the foregoing that will be part of Loral or Lockheed Martin after the Acquisition and does not include any entity or line of business, outside of Space Systems/Loral, Inc., within or controlled by Loral Space that is not engaged in the research, development, manufacture or sale of Satellites.

DD. ''Defensive Missiles Systems'' are the research, development, manufacture or sale of defensive missiles systems and components, including, among other things, the Theater High Altitude Area Defense System, Corps SAM/MEADS, the Advanced Intercept Technology, National Missile Defense, Naval Upper Tier, the Airborne Laser, target programs and other related activities.

EE. ''Fleet Ballistic Missiles'' are the research, development, manufacture, sale or life cycle support including disposal of strategic offensive missiles and associated support equipment, including, among other things, the Trident missile.

FF. ''Missile System Products Center'' is the research, development, manufacture or sale of missile systems, missile components, missile technology, propulsion systems, seekers, electronics, avionics, composites, bombs, rockets and mortars, including, among other things, the Composites Initiative, the Propulsion Initiative, BLU–109 and Precision Guided Mortar Munition.

GG. ''Space & Strategic Missiles'' means Lockheed Martin Space & Strategic Missiles Sector, an entity with its principal place of business at 6801 Rockledge Drive, Bethesda, Maryland 20817, or any other entity within or controlled by Lockheed Martin that is engaged in, among other things, the research, development, manufacture or sale of Satellites; and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Lockheed Martin Space & Strategic Missiles Sector (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Space & Strategic Missiles does not include Defensive Missile Systems, Fleet Ballistic Missiles, and Missile System Products Center, and any other entity or line of business, outside of Lockheed Martin Space & Strategic Missiles Sector, within or controlled by Lockheed Martin that is not engaged in the research, development, manufacture or sale of Satellites.

HH. ''Common LM/Loral Space Director'' means any person who is simultaneously a member of the Board of Directors of Lockheed Martin or an officer of Lockheed Martin and a member of the Board of Directors of Loral Space or an officer of Loral Space.

II. ''Non-Public Space Information of Lockheed Martin'' means any information not in the public domain relating to Space & Strategic Missiles.

JJ. ''Non-Public Space Information of Loral Space'' means any information not in the public domain relating to Space Systems/Loral.

KK. ''Lockheed Martin/Loral Space Technical Services Agreement'' means the technical services agreement between Lockheed Martin and Loral Space, as described by Article VI, Section 6.7, Paragraph (d), of the Restructuring Agreement.

LL. ''Merger Agreement'' means the Agreement and Plan of Merger, dated as of January 7, 1996, by and among Loral Corporation, Lockheed Martin Corporation and LAC Acquisition Corporation.

MM. ''Stockholders Agreement'' means the Stockholders Agreement referred to in the Restructuring Agreement.

NN. ''Non-Voting Equity Securities'' means any share of stock that does not entitle the shareholder to vote for any member of the Board of Directors.

OO. ''Voting Equity Securities'' means any share of stock that entitles the shareholder to vote for any member of the Board of Directors.

PP. ''Acquisition'' means the transaction described by the Merger Agreement and the Restructuring Agreement, including, but not limited to: (1) The acquisition by Respondent of all of the outstanding voting common stock of Loral; (2) the transfer of the space and telecommunications businesses of Loral and its subsidiaries to Loral Space; (3) the acquisition by Respondent of a 20% convertible preferred stock interest in Loral Space, which in turn owns a 33% interest in Space Systems/Loral; (4) the Lockheed Martin/Loral Space Technical Services Agreement; and (5) the appointment of Mr. Bernard Schwartz, Chairman of the Board of Directors and Chief Executive Officer of Loral Space, to the position of Vice Chairman of the Board of Directors of Lockheed Martin.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within six (6) months of the date Respondent signed the Agreement Containing Consent Order in this matter, the SETA Services Operations, and shall not charge any costs associated with the divestiture to the Federal Aviation Administration.

B. Respondent shall divest the SETA Services Operations only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continued provision of SETA Services in the same manner as provided by Respondent at the time of the proposed divestiture and to remedy the lessening of competition alleged in the Commission's complaint.

C. Pending divestiture of the SETA Services Operations, Respondent shall take such actions as are necessary to ensure the continued provision of SETA Services, to maintain the viability and marketability of the assets used to provide SETA Services, to prevent the destruction, removal, wasting, deterioration or impairment of the assets used to provide SETA Services, and to prevent the disclosure of Non-Public Air Traffic Control Information to Loral Air Traffic Control.

D. Upon reasonable notice from any acquirer or the Federal Aviation Administration to Respondent, Respondent shall provide such technical assistance to the acquirer as is reasonably necessary to enable the acquirer to provide SETA Services in substantially the same manner and quality as provided by Respondent prior to divestiture. Such assistance shall include reasonable consultation with knowledgeable employees and training at the acquirer's facility for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the skills necessary to perform the SETA Services Operations. Respondent shall convey all know-how necessary to perform the SETA Services Operations in substantially the same manner and quality provided by Respondent prior to divestiture, provided, however, that the Respondent may retain the right to use

the know-how. However, Respondent shall not be required to continue providing such assistance for more than one (1) year from the date of the divestiture. Respondent shall charge the acquirer at a rate no more than its own costs for providing such technical assistance.

E. At the time of the execution of the purchase agreement between Respondent and a proposed acquirer of the SETA Services Operations (''Purchase Agreement''), Respondent shall provide the acquirer(s) with a complete list of all full-time, non-clerical, salaried employees of Respondent who were engaged in the provision of SETA Services on the date of the Acquisition, as well as all current full-time, non-clerical, salaried employees of Respondent engaged in the provision of SETA Services on the date of the purchase agreement. Such list(s) shall state each such individual's name, position, address, business telephone number, or if no business telephone number exists, a home telephone number, if available and with the consent of the employee, and a description of the duties and work performed by the individual in connection with the SETA Services Operations.

F. Following the execution of the Purchase Agreement(s) and subject to the consent of the employees, Respondent shall provide the proposed acquirer(s) with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in Paragraph II.E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, Respondent shall further provide the acquirer(s) with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Respondent shall provide all employees identified in Paragraph II.E. of this order with reasonable financial incentives, if necessary, to continue in their employment positions pending divestiture of the SETA Services Operations, and to accept employment with the acquirer(s) at the time of the divestiture. Such incentives shall include continuation of all employee benefits offered by Respondent until the date of the divestiture, and vesting of all pension benefits (as permitted by law). In addition, respondent shall not enforce any confidentiality restrictions relating to the SETA Services or SETA Services Operations that apply to any employee identified in Paragraph II.E. who accepts employment with any proposed acquirer. Respondent also shall not enforce any non-compete restrictions that apply to any employee identified in Paragraph II.E. who accepts employment with any proposed acquirer.

H. For a period of one (1) year commencing on the date of the individual's employment by any acquirer, Respondent shall not re-hire any of the individuals identified in Paragraph II.E. of this order who accept employment with any acquirer, unless such individual has been separated from employment by the acquirer against that individual's wishes.

I. Prior to divestiture, Respondent shall not transfer, without the consent of the Federal Aviation Administration, any of the individuals identified in Paragraph II.E. of this order whose employment responsibilities involve access to Non-Public Air Traffic Control Information from Management and Data Systems to any other position involving business with the Federal Aviation Administration.

III

It is further ordered that:

A. Respondent shall not provide, disclose or otherwise make available to Loral Air Traffic Control any Non-Public Air Traffic Control Information.

B. Respondent shall use any Non-Public Air Traffic Control Information obtained by Management and Data Systems only in Respondent's capacity as provider of technical assistance to an acquirer, pursuant to Paragraph II.D. of this order.

IV

It is further ordered that:

A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the SETA Services Operations within six (6) months of the date Respondent signed the Agreement Containing Consent Order in this matter, the Commission may appoint a trustee to divest the SETA Services Operations. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph IV. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the SETA Services Operations.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the SETA Services Operations, or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an

amount equal to the delay, as determined by the Commission or, for a court- appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer or acquirers as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the SETA Services Operations.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee may also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the SETA Services Operations.

12. The trustee shall have no obligation or authority to operate or maintain the SETA Services Operations.

13. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

It is further ordered that within forty-five (45) days after the date this order becomes final and every forty-five (45) days thereafter until Respondent has fully complied with Paragraphs II. through IV. of this order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. through IV. of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. through IV. including a description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda and all reports and recommendations concerning the divestiture.

VI

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (NITE Hawk), provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Military Aircraft Information (NITE Hawk).

B. Respondent shall use any Non-Public Military Aircraft Information (NITE Hawk) only in Respondent's capacity as a provider of NITE Hawk systems, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (NITE Hawk).

VII

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Simulation and Training), provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Military Aircraft Information (Simulation and Training).

B. Respondent shall use any Non-Public Military Aircraft Information (Simulation and Training) only in Respondent's capacity as a provider of Simulation and Training Systems, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Simulation and Training).

VIII

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Electronic Countermeasures), provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Military Aircraft Information (Electronic Countermeasures).

B. Respondent shall use any Non-Public Military Aircraft Information (Electronic Countermeasures) only in Respondent's capacity as a provider of Electronic Countermeasures, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Electronic Countermeasures).

IX

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Mission Computers), provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Military Aircraft Information (Mission Computers).

B. Respondent shall use any Non-Public Military Aircraft Information (Mission Computers) only in Respondent's capacity as a provider of Mission Computers, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Mission Computers).

X

It is further ordered that Respondent shall deliver a copy of this order to any

United States Military Aircraft manufacturer prior to obtaining any information outside the public domain relating to that manufacturer's Military Aircraft, either from the Military Aircraft manufacturer or through the Acquisition.

XI

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Unmanned Aerial Vehicle Information, provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Unmanned Aerial Vehicle Information.

B. Respondent shall use any Non-Public Unmanned Aerial Vehicle Information only in Respondent's capacity as a provider of Integrated Communications Systems, absent the prior written consent of the proprietor of Non-Public Unmanned Aerial Vehicle Information.

XII

It is further ordered that Respondent shall deliver a copy of this order to any United States Unmanned Aerial Vehicle manufacturer prior to obtaining any information outside the public domain relating to that manufacturer's Unmanned Aerial Vehicle, either from the Unmanned Aerial Vehicle manufacturer or through the Acquisition.

XIII

It is further ordered that:

A. Respondent shall not discuss, provide, disclose or otherwise make available, directly or indirectly, to any Common LM/Loral Space Director any Non-Public Space Information of Lockheed Martin.

B. Respondent shall require any Common LM/Loral Space Director to refrain from discussing, providing, disclosing or otherwise making available, directly or indirectly, any Non-Public Space Information of Loral Space to any member of the Board of Directors of Lockheed Martin, any officer of Lockheed Martin or any employee of Lockheed Martin.

C. Respondent shall conduct all matters relating to Space & Strategic Missiles without the vote, concurrence or other participation of any kind whatsoever of any Common LM/Loral Space Director.

D. Any Common LM/Loral Space Director shall not be counted for purposes of establishing a quorum in connection with any matter relating to Space & Strategic Missiles.

E. Respondent shall not provide any Common LM/Loral Space Director with any type of compensation that is based in whole or in part on the profitability or performance of Space & Strategic Missiles; provided, however, that any Common LM/Loral Space Director may receive as compensation for his or her serving on the Lockheed Martin Board of Directors such stock options or other stock-based compensation as is provided generally to other members of the Lockheed Martin Board of Directors in accordance with Respondent's ordinary practice.

XIV

It is further ordered that:

A. Respondent shall not provide or otherwise make available, directly or indirectly, any personnel, information, facilities, technical services or support from Space & Strategic Missiles to Space Systems/Loral pursuant to any provision contained in the Lockheed Martin/Loral Space Technical Services Agreement.

B. Respondent shall not disclose or otherwise make available to Space & Strategic Missiles any information received in connection with the Lockheed Martin/Loral Space Technical Services Agreement.

C. Respondent shall not disclose to any Space & Strategic Missile employee any information or technical services provided to Space Systems/Loral by Lockheed Martin pursuant to the Lockheed Martin/Loral Space Technical Services Agreement.

XV

It is further ordered that if Respondent's ownership of the equity securities of Loral Space increases to more than twenty percent (20%) of the total equity securities (including both Voting Equity Securities and Non-Voting Equity Securities) of Loral Space as the result of repurchases of equity securities by Loral Space or for any other reason, Respondent shall, following its obtaining actual knowledge of an event leading to such increase (''Event''), reduce its equity security ownership interest to a level of not more than twenty percent (20%). Those equity securities which must be sold are hereinafter referred to as the ''Excess Securities.'' Respondent shall have a period of 185 days following its obtaining actual knowledge of the Event to sell the Excess Securities (the ''Sale Period''); provided, however, that, if within ten (10) business days of Respondent's receipt of such knowledge, Respondent requests that Loral Space file a registration statement providing for such sale, the Sale Period shall be deemed to begin on the effective date of such registration statement, and shall extend for 150 days thereafter, and provided further that, if Respondent elects to sell the Excess Securities in a manner that does not require Loral Space to file a registration statement, and such sales cannot be accomplished within the Sale Period without violating Rule 144 (or any successor provision) under the Securities Act of 1933, then the Sale Period shall be extended by the minimum amount necessary to allow such securities to be sold pursuant to Rule 144 (or any successor provision). Pending the sale of Excess Securities, Respondent shall not exercise any voting rights relating to the Excess Securities. Respondent shall amend the Stockholders Agreement to provide Respondent the means of complying with the foregoing provisions and shall thereafter not amend the applicable provisions of the Stockholders Agreement in a fashion so as to impair Respondent's ability to comply with this paragraph. The provisions of this paragraph shall terminate ten (10) years from the date this order becomes final.

XVI

It is further ordered that Respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in Paragraphs II. through XVI. of this order are complied with or until such other time as is stated in said Interim Agreement.

XVII

It is further ordered that within sixty (60) days of the date this order becomes final and annually for the next ten (10) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs VI. through XVI. of this order. To the extent not prohibited by United States Government national security requirements, Respondent shall include in its reports information sufficient to identify all United States Military Aircraft and Unmanned Aerial Vehicle manufacturers with whom Respondent has entered into an agreement for the research, development, manufacture or sale of NITE Hawk Systems, Simulation and Training Systems, Electronic Countermeasures, Mission Computers or Integrated Communications Systems.

XVIII

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or sale of any division or any other change in the corporation in each instance where such change may affect compliance obligations arising out of the order.

XIX

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege and applicable United States Government national security requirements, upon written request, and on reasonable notice, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

XX

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final, except as otherwise provided in this order.

Appendix I

In the Matter of: Lockheed Martin Corporation, a corporation. File No. 961–0026.

Interim Agreement

This Interim Agreement is by and between Lockheed Martin Corporation (''Lockheed Martin''), a corporation organized and existing under the laws of the State of Maryland, and the Federal Trade Commission (the ''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Premises

Whereas, Lockheed Martin has proposed to acquire all of the outstanding voting common stock of Loral Corporation and engage in a series of related transactions and acts; and

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''Consent Agreement''), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving competition during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, Lockheed Martin entering into this Interim Agreement shall in no way be construed as an admission by Lockheed Martin that the proposed Acquisition constitutes a violation of any statute; and

Whereas, Lockheed Martin understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, Lockheed Martin agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Lockheed Martin agrees to execute and be bound by the terms of the Order contained in the Consent Agreement, as if it were final, from the date Lockheed Martin signs the Consent Agreement.

2. Lockheed Martin agrees to deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense, the Federal Aviation Administration, McDonnell Douglas Corporation, Northrop Grumman Corporation, The Boeing Company and Teledyne Inc.

3. Lockheed Martin agrees to submit, within thirty (30) days of the date the Consent Agreement is signed by Lockheed Martin, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Lockheed Martin setting forth in detail the manner in which Lockheed Martin will comply with Paragraphs II. through XVI. of the Consent Agreement.

4. Lockheed Martin agrees that, from the date Lockheed Martin signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a. and 4.b., it will comply with the provisions of this Interim Agreement:

a. ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the date the Commission finally issues its Complaint and its Decision and Order.

5. Lockheed Martin waives all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, to Lockheed Martin made to its principal office, Lockheed Martin shall permit any duly authorized representative or representatives of the Commission:

a. access, during the office hours of Lockheed Martin and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Lockheed Martin relating to compliance with this Interim Agreement; and

b. upon five (5) days' notice to Lockheed Martin and without restraint or interference from it, to interview officers, directors, or employees of Lockheed Martin, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from Lockheed Martin Corporation (''Lockheed Martin''). The proposed Consent Order contains a number of

provisions designed to remedy the anticompetitive effects likely to result from Lockheed Martin's proposed acquisition of Loral Corporation (''Loral''). The proposed Consent Order requires Lockheed Martin to divest its operations used to perform systems engineering and technical assistance (''SETA'') services for the Federal Aviation Administration (''FAA'') under the National Implementation and Support Contract (''NISC Services Contract'') within six months of the date Lockheed Martin signed the proposed Consent Order. The proposed Consent Order also prohibits Lockheed Martin's space business from providing technical services or information to Space Systems/Loral, a subsidiary of the newly created Loral Space and Communications Ltd. (''Loral Space''), pursuant to a technical services agreement between Lockheed Martin and Loral Space.

The proposed Consent Order further prohibits any Lockheed Martin board member or officer, who is also a board member or officer of Loral Space from: (1) participating in any matters involving Lockheed Martin's space business; (2) having access to any non-public information relating to Lockheed Martin's space business; or (3) providing any non-public information relating to Space Systems/Loral to Lockheed Martin. The proposed Consent Order would also prohibit Lockheed Martin from providing to such common board member or officer compensation that is based on the profitability or performance of Lockheed Martin's space business. Additionally, the proposed Consent Order would require Lockheed Martin to reduce its investment in Loral Space to 20% if, due to a repurchase by Loral Space of its outstanding common stock shares, or for any other reason, Lockheed Martin's interest in Loral Space is effectively raised above 20%. Finally, the proposed Consent Order prohibits Lockheed Martin's military aircraft and unmanned aerial vehicle divisions from gaining access to any non-public information that certain Lockheed Martin divisions will receive after the acquisition from competing military aircraft manufacturers or unmanned aerial vehicle manufacturers.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to a January 8, 1996 cash tender offer, Lockheed Martin agreed to acquire one hundred percent of the voting securities of Loral for approximately $9.1 billion. As part of the transaction, Loral's space and telecommunications businesses, including its 33% ownership interest in Space Systems/Loral, a direct satellite competitor of Lockheed Martin, will be transferred to a new entity, Loral Space. In addition, Lockheed Martin will purchase a 20% convertible preferred stock interest in Loral Space which effectively amounts to a 6.6% interest in the competing Space Systems/Loral business. Lockheed Martin also agreed to provide Loral Space with technical support services, including research and development support, at cost upon request by Loral Space. Finally, Bernard Schwartz, Chairman of the Board of Directors and Chief Executive Officer of Loral Space, will be appointed to the position of Vice Chairman of the Board of Directors of Lockheed Martin.

The proposed Complaint alleges that the transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following markets:

(1) the research, development, manufacture and sale of air traffic control systems;

(2) the research, development, manufacture and sale of commercial low earth orbit (''LEO'') satellites;

(3) the research, development, manufacture and sale of commercial geosynchronous earth orbit (''GEO'') satellites;

(4) the research, development, manufacture and sale of military aircraft; and

(5) the research, development, manufacture and sale of unmanned aerial vehicles.

The proposed Consent Order would remedy the alleged violations in each market. First, Lockheed Martin is currently a supplier of SETA services to the FAA under the NISC Services Contract and Loral is the largest supplier of air traffic control systems to the FAA. In its capacity as an FAA SETA contractor, Lockheed Martin is responsible for, among other things, developing technical and other specifications for FAA procurements, assessing bid and other proposals submitted by companies competing for FAA procurements, testing and evaluating equipment and systems supplied to the FAA, and evaluating the cost and quality performance of FAA contractors. Following the acquisition, Lockheed Martin would be both an FAA SETA contractor and the largest supplier of air traffic control systems to the FAA and would be in a position to gain access to its air traffic control systems competitors' competitively sensitive cost and design information and disadvantage its competitors and the FAA in a number of ways. For instance, with access to its competitors' cost and design information, Lockheed Martin would be able to raise its bid price for procurements of air traffic control systems if, based on this information, it determined that it was the low-cost supplier or that it had the superior technological approach. Moreover, access to its competitors' proprietary technical information could also allow Lockheed Martin to ''free-ride'' off its competitors' research and development efforts thereby reducing the incentive for those competitors to invest in future innovations. Finally, Lockheed Martin could disadvantage its competitors or raise their costs by setting unfair procurement specifications or submitting unfair proposal or performance evaluations.

The proposed Consent Order requires Lockheed Martin to divest all of the assets relating to the provision of FAA SETA services within six (6) months of the date it signed the proposed Consent Order. The proposed Consent Order states that this divestiture shall be to an acquirer or acquirers that receive the prior approval of the Commission. If Lockheed Martin fails to divest the assets within six (6) months, a trustee may be appointed to accomplish the divestiture. The proposed Consent Order also requires Lockheed Martin to provide technical assistance to the acquirer or acquirers for a period not greater than one (1) year, at the request of the acquirer or of the FAA. The purpose of the divestiture is to ensure the continued provision of FAA SETA services under the NISC Services Contract, to maintain the viability and marketability of the assets used to provide SETA services and to remedy the lessening of competition resulting from the acquisition in the market for the research, development, manufacture and sale of air traffic control systems. Recently, in *Litton Industries, Inc.*, File No. 961–0022 (accepted, subject to final approval, by the Commission on February 15, 1996 and awaiting public comments), the Commission voted unanimously to accept a Consent Order following an acquisition that raised similar competitive concerns. In that matter, the Consent Order required Litton, who is one of only two manufacturers of Aegis Destroyers, to divest assets used to provide Aegis

Destroyer SETA services in order to remedy the anticompetitive effects resulting from its acquisition of PRC Inc., a long-standing provider of SETA services to the U.S. Navy.

Second, after the transaction, Lockheed Martin and Loral Space, through its 33% ownership of Space Systems/Loral, will be two of the leading competitors in the markets for commercial LEO and commercial GEO satellites. These markets are highly concentrated and significant barriers to entry exist. Lockheed Martin has agreed to purchase a 20% convertible preferred stock interest in Loral Space which effectively amounts to a 6.6% interest in Space Systems/Loral. In addition, Lockheed Martin has agreed to provide technical assistance, including research and development support, at cost upon request from Loral Space. Finally, Bernard Schwartz, Chairman of the Board of Directors and Chief Executive Officer of Loral Space, will be appointed to the position of Vice Chairman of the Board of Directors of Lockheed Martin.

The acquisition as structured is likely to lead to anticompetitive effects in the commercial LEO and GEO satellite markets. The technical services agreement creates an ongoing relationship between Lockheed Martin and Loral Space which could be used as a mechanism for Lockheed Martin to monitor Loral Space's competitive activities or as a signaling device for Loral Space to alert Lockheed Martin as to the satellite procurements where it expects to submit a bid. As such, the agreement could facilitate coordinated interaction between the companies.

The technical services agreement would also likely reduce Loral Space's incentives to invest in commercial LEO and GEO satellite research and development. If, pursuant to the technical services agreement, Loral Space would be able to obtain proven technologies from Lockheed Martin at cost, it would have little incentive to undertake expensive and risky investment in commercial LEO and GEO satellite research and development. Thus, the agreement would likely lead to a reduction in innovation competition between the companies. Because the technical services agreement between Lockheed Martin and Loral Space, two of the leading competitors in the highly concentrated commercial LEO and GEO satellite markets, creates the potential for the exchange of competitively sensitive information and could lead to a reduction in Loral Space's incentives to innovate, the agreement is likely to result in anticompetitive effects.

Mr. Schwartz's service as an officer or director of competing companies does not violate Section 8 of the Clayton Act because Lockheed Martin's sales in competition with Loral Space are less than 2% of Lockheed Martin's total sales. For this reason, Lockheed Martin meets the Section 8(a)(2)(B) *de minimus* exception to the statute. Nevertheless, Mr. Schwartz's positions with each company still raise significant competitive concerns. For example, by serving on the boards of both companies, Mr. Schwartz would have access to competitively sensitive information from Lockheed Martin and Loral Space, including information on bid strategies, pricing, and research and development plans. In addition, Lockheed Martin would be in a position to use Mr. Schwartz to exercise influence over Loral Space, thereby reducing head-to-head competition between the companies. Lockheed Martin could also offer Mr. Schwartz compensation based on the profitability of Lockheed Martin's space business, thereby reducing his incentive to aggressively compete Loral Space against Lockheed Martin.

In order to remedy the acquisition's anticompetitive effects in the commercial LEO and commercial GEO satellite markets, the proposed Consent Order prohibits Lockheed Martin's space business from providing technical services, personnel, information or facilities, pursuant to the technical services agreement, to Space Systems/Loral. The proposed Consent Order would also prohibit any person who is simultaneously a board member or officer of Lockheed Martin and a board member or officer of Loral Space, including Mr. Schwartz, from: (1) participating in any matters involving Lockheed Martin's space business; (2) having access to any non-public information relating to Lockheed Martin's space business; or (3) providing any non-public information relating to Space Systems/Loral to Lockheed Martin. Further, the proposed Consent Order would prohibit Lockheed Martin from providing to any such common board member or officer compensation that is based on the profitability or performance of Lockheed Martin's space business. Additionally, if Lockheed Martin's interest in Loral Space is effectively raised above 20% due to a stock repurchase by Loral Space, or for any other reason, the proposed Consent Order would require Lockheed Martin to reduce its investment in Loral Space back down to 20%.

Third, Lockheed Martin is a significant competitor in the research, development, manufacture and sale of military aircraft and Loral is the sole supplier of a number of critical systems used on or with military aircraft, including simulation and training systems, the NITE Hawk forward-looking infrared targeting system, electronic countermeasures and mission computers. Following the acquisition, Lockheed Martin would be the sole source supplier for a number of these systems, as well as a competitor in the military aircraft market. In order to integrate or interface these critical systems with a military aircraft, a military aircraft manufacturer will have to provide a wide range of competitively sensitive proprietary information to the Lockheed Martin divisions that manufacture these systems. As a result, the proposed acquisition increases the likelihood that competition between military aircraft suppliers would decrease because Lockheed Martin's military aircraft division could gain access to its competitors' proprietary information, which could affect the prices and services that Lockheed Martin would offer. In addition, advancements in military aircraft research, innovation and quality would be reduced because Lockheed Martin's military aircraft competitors would fear that Lockheed Martin could ''free ride'' off of their technological developments.

To remedy the proposed acquisition's likely anticompetitive effects in the military aircraft market, the proposed Consent Order preserves the confidentiality of military aircraft suppliers' proprietary information by prohibiting Lockheed Martin's divisions that provide these critical systems from making any proprietary information from competing aircraft manufacturers available to Lockheed Martin's aircraft division. Under the proposed Consent Order, Lockheed Martin may only use such information in its capacity as a provider of these military aircraft systems. Non-public information in this context includes any information not in the public domain that is designated as proprietary information by any military aircraft manufacturer that provides such information to Lockheed Martin as well as information not in the public domain provided by any military aircraft manufacturer to Loral prior to the acquisition. The purpose of the proposed Consent Order is to preserve the opportunity for full competition in the market for the research, development, manufacture and sale of military aircraft. The Commission has issued similar orders limiting potentially anticompetitive information transfers following mergers or acquisitions, including *Martin Marietta*

Corp., (C3500) (June 28, 1994), *Alliant Techsystems Inc.*, (C3567) (April 7, 1995), and *Lockheed Martin Corp.*, (C3576) (May 9, 1995). Industry participants have indicated that these prior orders have been effective in protecting their confidential information and preserving competition. In addition, the Department of Defense has stated that the proposed Consent Order resolves all of the competitive issues that they have identified.

Finally, Lockheed Martin is a significant competitor in the market for the research, development, manufacture and sale of unmanned aerial vehicles and Loral is the sole supplier of integrated communications systems, a critical unmanned aerial vehicle component. After the acquisition, Lockheed Martin would be the sole supplier of integrated communications systems for unmanned aerial vehicles and also a competitor in the unmanned aerial vehicle market. Because unmanned aerial vehicle manufacturers will have to provide proprietary information to the Lockheed Martin division that manufactures integrated communication systems, Lockheed Martin's military aircraft division, which manufactures unmanned aerial vehicles, could gain access to competitively sensitive non-public information relating to competing unmanned aerial vehicles. As a result, the proposed acquisition increases the likelihood that competition between unmanned aerial vehicle suppliers would decrease because Lockheed Martin would have access to its competitors' proprietary information, which could affect the prices and services that Lockheed Martin would offer. In addition, advancements in unmanned aerial vehicle research, innovation and quality would be reduced because Lockheed Martin's unmanned aerial vehicle competitors would fear that Lockheed Martin could ''free ride'' off of their technological developments.

To remedy the proposed acquisition's likely anticompetitive effects in the unmanned aerial vehicle market, the proposed Consent Order preserves the confidentiality of unmanned aerial vehicle suppliers' proprietary information by prohibiting Lockheed Martin's communications systems divisions from making any proprietary information from competing unmanned aerial vehicle manufacturers available to Lockheed Martin's military aircraft division. Under the proposed Consent Order, Lockheed Martin may only use such information in its capacity as a provider of integrated communications systems. Non-public information in this context includes any information not in the public domain that is designated as proprietary information by any unmanned aerial vehicle manufacturer that provides such information to Lockheed Martin as well as information not in the public domain provided by any unmanned aerial vehicle manufacturer to Loral prior to the acquisition. The purpose of the proposed Consent Order is to preserve the opportunity for full competition in the market for the research, development, manufacture and sale of unmanned aerial vehicles.

Under the provisions of the proposed Consent Order, Lockheed Martin is required to deliver a copy of the Order to any United States military aircraft manufacturer and to any United States unmanned aerial vehicle manufacturer prior to obtaining any information from them that is outside the public domain. The Order also requires Lockheed Martin to provide the Commission a report of compliance with the provisions of the Order relating to its divestiture of its FAA SETA services assets within forty-five (45) days following the date the Order becomes final, and every forty-five (45) days thereafter until it has completed the required divestiture of its FAA SETA services assets. In addition, the Order also requires Lockheed Martin to provide the Commission a report of compliance with all other provisions of the Order within sixty (60) days following the date the Order becomes final, and annually for the next (10) years on the anniversary of the date the Order becomes final.

In order to preserve competition in the relevant markets during the period prior to the final acceptance of the proposed Consent Order (after the 60-day public notice period), Lockheed Martin has entered into an Interim Agreement with the Commission in which it has agreed to be bound by the proposed Consent Order as of the date the Commission accepted the proposed Consent Order subject to final approval.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–10560 Filed 4–26–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to Section 13 of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Annual Reports prepared for the public by the committees set forth below have been filed with the Library of Congress:

Health Care Policy and Research Special Emphasis Panel
Health Care Technology Study Section
Health Services Research and Developmental Grants Review Committee
Health Services Research Dissemination Study Section
National Advisory Council for Health Care Policy, Research, and Evaluation

Copies of these reports, prepared in accordance with Section 10(d) of the Federal Advisory Committee Act, are available to the public for inspection at: (1) The Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9:00 a.m. and 4:30 p.m.; and (2) the Information Resource Center, Agency for Health Care Policy and Research, Suite 501, 2101 East Jefferson Street, Rockville, Maryland, on weekdays between 9:00 a.m. and 4:30 p.m.

Copies may be obtained by mail request from the Committee Management Officer, Agency for Health Care Policy and Research, Suite 309, 6000 Executive Boulevard, Rockville, Maryland 20852.

Dated: April 17, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–10486 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–90–M

Agency for Toxic Substances and Disease Registry

[ATSDR–112]

Quarterly Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice is a quarterly announcement which contains the following: A list of sites for which ATSDR has completed public health assessments, or issued an addendum to

a previously completed public health assessment, during the period October–December 1995. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and a site for which an assessment was prepared in response to a request from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments and public health assessments with addenda was published in the Federal Register on February 14, 1995 [61 FR 5787]. The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. A charge is applied by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses following the site name.

Public Health Assessments or Addendum Completed or Issued

Between October 1, 1995 and December 31, 1995, public health assessments were issued for the sites listed below:

NPL Sites

California

Frontier Fertilizer—Davis—(PB96–125596)

Indiana

Fisher Calo—Kingsbury—(PB96–128079)

Iowa

Mason City Coal Gasification Plant—Mason City—(PB96–107289)

Massachusetts

Industri-Plex Site—Woburn—(PB96–136445)

Wells, G and H—Woburn—(PB96–136411)

Michigan

Lower Ecorse Creek Dump—Wyandotte—(PB96–128061)

New York

Pfohl Brothers Landfill—Cheektowaga—(PB96–118641)

Port Washington Landfill—North Hempstead—(PB96–115688)

Tennessee

USA Defense Depot Memphis—Memphis—(PB96–117908)

Washington

Hanford 1100-Area (USDOE)—Richland—(PB96–125521)

McChord Air Force Base Wash Rack/Treatment)—American Lake Gardens/Mchord Air Force Base (a/k/a McChord Air Force Base Area ''D'')—Tacoma—(PB96–131909)

Non-NPL Petitioned Site

Georgia

Southern Wood Piedmont Company—Augusta—(PB96–127675)

Dated: April 22, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 96–10503 Filed 4–26–96; 8:45 am]

BILLING CODE 4163–70–P

[ATSDR–108]

Notice of the Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) revise the Priority List of Hazardous Substances to include additional substances most commonly found at facilities on the CERCLA National Priorities List (NPL). This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available to ATSDR and EPA. This revised priority list includes newly listed substances that have been determined to pose the most significant potential threat to human health at or around NPL hazardous waste sites. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

ADDRESSES: Requests for a copy of the 1995 CERCLA Priority List of Hazardous Substances That Will Be The Subject of Toxicological Profiles and Support Document or comments on this notice should bear the docket control number ATSDR–108, and should be submitted to: ATSDR, Division of Toxicology, Emergency Response and Scientific Assessment Branch, Mail Stop E–29, 1600 Clifton Rd., NE., Atlanta, GA 30333.

This is an informational notice only, and comments are not being solicited at this time. However, any comments received will be placed in a publicly accessible docket; therefore, please do not submit confidential business information.

Electronic Availability: The 1995 Revised Priority List will be available as an electronic file on the Federal Bulletin Board on or near the day of publication in the Federal Register. By modem, dial (202) 512–1387 and set your parity to None, Data Bits to 8, and Stop Bit to 1 (N,8,1). To access the Federal Bulletin Board via Internet, use the telnet command to fedbbs.access.gpo.gov. This file is available in WordPerfect 5.1, Dbase IV, and ASCII. The top 20 substances from the priority list are also listed on ATSDR's Home Page on the World-Wide Web located at http://atsdr1.atsdr.cdc.gov:8080/atsdrhome.html.

FOR FURTHER INFORMATION CONTACT: ATSDR, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Rd., NE., Mailstop E–29, Atlanta, GA 30333, telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances that are most commonly found at facilities on the CERCLA NPL. Section 104(i)(2) of CERCLA, as amended [42 U.S.C. 9604(i)(2)], requires that the two agencies prepare a list, in order of

priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, are determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990; 56 FR 52166, October 17, 1991). CERCLA also requires that ATSDR and EPA shall, not less often than once every year thereafter, revise the list to include additional hazardous substances that are determined to pose the most significant potential threat to human health. In 1995, the agencies decided to alter the publication schedule of the priority list by moving to a 2-year publication schedule, reflecting the stability of this listing activity (see 60 FR 16478, March 30, 1995). As a result, the priority list is now on a 2-year publication schedule with a yearly informal review and revision. Each substance on the CERCLA Priority List of Hazardous Substances is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

The previous priority lists of hazardous substances were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information on the frequency of occurrence and the potential for human exposure to substances at NPL sites became available for use in the 1991 priority list with the development of ATSDR's HazDat database. Additional information from HazDat became available for the 1995 listing activity.

In the initial listing activities (1987–1990), new substances were added to the end of the list, without a comparative reranking. A notice announcing the intention of ATSDR and EPA to revise and rerank the Priority List of Hazardous Substances was published on June 27, 1991 (56 FR 29485). In the 1995 listing activity, as in the previous three years, new candidate substances (substances found at three or more NPL sites) were assigned a toxicity/environmental score (TES) using the EPA Reportable Quantity methodology, and were added to the group of substances previously considered for the list. All substances were then evaluated together for consideration on the priority list.

The approach used to generate the 1991 revised priority list was summarized in the ''Revised Priority List of Hazardous Substances'' (56 FR 52166, October 17, 1991). The same approach and the same algorithm were used in the 1995 listing activity. As a result, more than 750 candidate substances have been ranked to create the current list of 275 substances.

The additional information used in the 1995 listing activity has been entered into ATSDR's HazDat database since the development of the 1993 Priority List of Hazardous Substances. As with other site-specific information used in the listing activity, this information has been collected from ATSDR public health assessments and from site file data packages used in the development of public health assessments. The new information includes more recent NPL frequency of occurrence data, additional concentration data, and more information on exposure or potential exposure to substances at NPL sites.

At this time the list includes 275 substances that ATSDR and EPA have determined to pose the most significant potential threat to human health based on the criteria of CERCLA Section 104(i)(2) [42 U.S.C. 9604(i)(2)]. All candidate substances have been analyzed and ranked with the current algorithm, and may become the subject of toxicological profiles in the future.

The addition of approximately 14,000 contaminant data records to the HazDat database since the 1993 listing activity has allowed the agencies to better assess the potential for human exposure to substances at NPL hazardous waste sites. With these additional data, 23 substances have been replaced on the list of 275 substances. Of the 23 replacement substances, 12 are new candidate substances, and 11 are substances that were previously under consideration. These changes in the order of substances appearing on the CERCLA Priority List of Hazardous Substances will be reflected in the program activities that rely on the list for future direction. These changes reflect the dynamic nature of scientific data on substances present at NPL hazardous waste sites.

This evaluation activity and announcement of a revised Priority List of Hazardous Substances fulfills the conditions of CERCLA Section 104(i), as amended. ATSDR and EPA intend to publish the next revised list of hazardous substances in two years, with an informal review and revision performed in one year. These revisions will reflect changes and improvements in data collection and availability. Additional information on the existing methodology used in the development of the CERCLA Priority List of Hazardous Substances can be found in the Federal Register notices mentioned previously.

Administrative Record

ATSDR and EPA are establishing a single administrative record entitled ATSDR–108 for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file, which is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal legal holidays, at the Agency for Toxic Substances and Disease Registry, #4 Executive Park Drive, Suite 2400, Atlanta, Georgia (not a mailing address).

Dated: April 22, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 96–10502 Filed 4–26–96; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

Advisory Committees; Annual Reports; Notice of Availability

Notice is hereby given that pursuant to Section 13 of Public Law 92–463 (5 U.S.C. Appendix 2), the Fiscal Year 1995 annual reports for the following Federal advisory committees used by the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry have been filed with the Library of Congress:

Advisory Committee for Energy-Related Epidemiologic Research

Advisory Committee for Injury Prevention and Control

Advisory Committee on Childhood Lead Poisoning Prevention

Advisory Committee on Immunization Practices

Advisory Committee to the Director, Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, National Center for Infectious Diseases

Board of Scientific Counselors, National Institute for Occupational Safety and Health

Breast and Cervical Cancer Early Detection and Control Advisory Committee

CDC Advisory Committee on the Prevention of HIV Infection

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Hanford Health Effects Subcommittee
Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Savannah River Site
Clinical Laboratory Improvement Advisory Committee
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel
Hanford Thyroid Morbidity Study Advisory Committee
Hospital Infection Control Practices Advisory Committee
Injury Research Grant Review Committee
Interagency Committee on Smoking and Health
Mine Health Research Advisory Committee
National Committee on Vital and Health Statistics
Safety and Occupational Health Study Section
Technical Advisory Committee for Diabetes Translation and Community Control Programs
Workers' Family Protection Task Force

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room LM 133, Madison Building, 101 Independence Avenue, SE, Washington, DC 20540–4760, telephone 202/707–5690. Additionally, on weekdays between 8 a.m. and 4:30 p.m., copies will be available for inspection at the Centers for Disease Control and Prevention (CDC), Committee Management Office, 4 Executive Park Drive, Suite 1117, Atlanta, Georgia 30329, telephone 404/639–6389. Copies may also be obtained by writing to the Centers for Disease Control and Prevention (CDC), Committee Management Office M/S E–72, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Dated: April 23, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–10476 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–18–M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Refugee Assistance-by-Nationality Report—ORR–10.

OMB No.: 0970–0044.

Description: The Office of Refugee Resettlement uses the ORR–10 (Refugee Assistance-by-Nationality Report) to collect information about refugee receipt of public assistance. Section 412(a)(3) of the Immigration and Nationality Act requires ORR to compile and maintain data, by State of residence and nationality, on the number of refugees receiving cash or medical assistance. To satisfy this requirement, ORR requires each State that participates in the Refugee Resettlement program to enumerate, by nationality, its refugee caseload of Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) as of June 30 of each year. ORR then consolidates all responses and reports these data in Appendix A of the annual Report to Congress.

Program managers use data on public assistance utilization by nationality groups to: (1) Plan employment services for refugee populations, (2) gauge the relative need for specialized services of different refugee populations in different areas of the country, and (3) determine whether newly arriving populations have adjusted to the American economy.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
ORR–10	50	1	.417	135.8

Estimated Total Annual Burden Hours: 135.8.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending a message to rkatson@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments 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 technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 22, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–10531 Filed 4–26–96; 8:45 am]

BILLING CODE 4184–01–M

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Refugee State-of-Origin Report.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-or-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires ORR to compile and maintain data on the secondary migration of refugees within the United States after arrival.

In order to meet this legislative requirement, ORR requires each State participating in the Refugee

Resettlement Program to submit an annual report with a count of the number of refugees receiving cash and medical assistance or social services who were initial resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the social security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its refugee arrival totals for each State in order to calculate the social services allocation formula.

Respondents: State Governments.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–11	50	1	.434	217

Estimated Total Annual Burden Hours: 217.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending a message to rkatson@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments 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 technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 22, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–10532 Filed 4–26–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 93D–0025]

Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products; Guidance Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised guidance document entitled ''Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products (Lactating and Non-lactating Cow Products)'' prepared by the Center for Veterinary Medicine (CVM). This guidance document serves to interpret statutory and regulatory requirements and outlines general procedures for conducting evaluations for anti-microbials being considered for approval.

DATES: Written comments on the guidance document may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the revised guidance document entitled, ''Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products'' to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the revised guidance document entitled ''Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products (Lactating and Non-lactating Cow Products)'' prepared by CVM. The guidance document is intended to be used by the pharmaceutical industry for information regarding the types of data that will demonstrate that an anti-microbial mastitis product is safe and effective for both lactating and non-lactating cows. In the Federal Register of February 10, 1993 (58 FR 7893), FDA issued a notice of availability of the CVM draft guideline entitled ''Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Anti-Infective Bovine Mastitis Products.'' Comments by interested persons were requested.

In response to the February 19, 1993, notice, the Animal Health Institute (AHI) notified CVM, by letter dated June 28, 1993, of its intent to form a working group, the Dairy Industry Consortium (DIC), to address the draft CVM guideline ''Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing

Studies for Anti-Infective Bovine Mastitis Products.'' Comments and alternative proposals from the AHI/DIC were forwarded to FDA/CVM in a letter dated May 24, 1994.

Because AHI/DIC put forth extensive complex scientific comments, CVM agreed to participate in a workshop to further discuss and clarify the AHI/DIC comments. FDA/CVM representatives participated in the workshop, which was held on June 2, 1994, in Alexandria, VA. The objective of this workshop was to hold a public meeting to allow for the discussion of AHI/DIC comments. The draft guideline was discussed at the workshop. In a letter dated July 14, 1994, AHI circulated minutes of the workshop to all attendees. In a letter dated August 11, 1994, CVM provided comments on the July 14, 1994, AHI minutes of the workshop. As a result of CVM's comments, a subsequent meeting was held on September 23, 1994, between representatives of FDA/CVM and AHI/DIC to clarify scientific points made in the minutes of the workshop.

No other comments on that draft guideline were received by the agency. The comments on the draft guideline from AHI/DIC are discussed below:

1. General Issues

It was recommended that the final guidance document encompass only the efficacy and target animal safety of anti-infective bovine mastitis products. The draft guideline provided a discussion on other components of the new animal drug application (NADA).

CVM concurs with this comment. The guidance document will mainly address efficacy and target animal safety. Other components of the NADA will be addressed under separate guidance documents (e.g., environmental assessment and manufacturing).

2. Enrollment in Study for Clinical Infectious Mastitis

It was recommended that the enrollment of a clinical mastitis case in an efficacy study include the presence of abnormal milk and/or udder clinical signs at enrollment as the primary element. The presence of microorganisms should be strictly secondary. The experimental unit should be the lactating dairy cow with clinical mastitis (abnormal milk and/or udder clinical signs). For future clinical studies, only cows with a single quarter with clinical mastitis should be enrolled. CVM should use this single quarter data base to infer efficacy to all cows with mastitis in one or more quarters. The diagnosis of clinical mastitis should be the only signalment needed for enrollment in the study. Prior to treatment, single samples for microbiologic and somatic cell count (SCC) assessment should be obtained. Only the single affected quarter will be treated. Any cow developing mastitis in additional quarters during her enrollment should be dropped from the study and not considered failure. Cows requiring and/or receiving treatment in an additional mastitic quarter should be excluded from consideration in the study. Only clinical cases of mastitis in which a mastitis pathogen is isolated in the pretreatment sample should be used to calculate cure rate. It should be necessary to submit to CVM the pre and posttreatment bacteriological culture data from those cows that were initially enrolled in the study but subsequently cultured negative on the pretreatment sample.

CVM agrees with these comments. The guidance document has been revised to reflect these comments.

3. Definition of Cure

It was recommended that the definition of cure should include two parts, a clinical portion and a bacteriological portion. The current definition of cure lacks the clinical assessment. The cure should be assessed between 14 and 28 days posttreatment based on the negative control study design. Clinically, a cured quarter should have normal milk and no clinical signs of mastitis in that quarter. Microbiologically, the mastitis pathogen isolated in the pretreatment sample should be absent from two posttreatment test samples. A minimum of two single microbiology test samples should be obtained at least 5 days apart during the assessment period (14 to 28 days posttreatment). Two single SCC samples should be obtained at the same time. SCC should not be used in the determination of cure for the individual cow. SCC results should only be used as a check of the numerical trend between the means of SCC for ''cured'' and ''not-cured'' cows within each treatment group to determine if other studies are needed for inflammation and safety.

CVM agrees with the proposed definition of cure. The guidance document has been revised to reflect these comments.

4. Enrollment in Study for Subclinical Mastitis

It was recommended that all new anti-infective products for mastitis in the lactating dairy cow must show efficacy for clinical mastitis. No new product should be licensed with subclinical data as in the old guidelines. CVM should consider alternative approaches with adequate justification. To obtain a subclinical indication, additional subclinical data should be required. With acceptable clinical mastitis efficacy results, the subsequent subclinical mastitis study should require that the new therapy demonstrate efficacy but at a lower probability level ($p<0.10$). This should require fewer cows to be necessary for the subclinical study because elimination of the pretreatment pathogen is required in the clinical study. Subclinical trial(s) should select cows with a positive quarter, thus fewer cows may be needed. The subclinical study should be a randomized study. Prior to treatment, two single microbiology and SCC samples should be obtained at a 24-hour interval. At 14 to 28 days posttreatment, two single microbiologic and SCC samples should be obtained at least 5 days apart. In the subclinical study, only one quarter from any cow would be treated. For cows infected in multiple quarters, the quarter to be treated would be randomly selected. The other quarters would not be treated. If additional quarters of clinical mastitis requires additional treatment, the cow would be ineligible for inclusion in the study. Definition of cure for the subclinical study constitutes the elimination of the bacteria isolated in both pretreatment samples. SCC results should be used similarly in subclinical studies as for clinical studies to detect changes and perhaps indicate possible safety problems. Products with acceptable efficacy data from both clinical and subclinical studies should receive the following indication: ''Effective for the treatment of clinical and subclinical mastitis caused by* * *''.

CVM agrees with these comments. The guidance document has been revised to incorporate these comments.

5. Design of Field Studies

It was recommended that clinical efficacy studies would be multilocation/multiherd studies. CVM should eliminate the requirement that a study herd must have a 20 percent incidence of clinical mastitis to participate. Herds participating in a clinical study should have a sufficient number of clinical mastitis cases to fill an adequate number of blocks. Obtaining an adequate number of pathogens may involve multiple locations to fulfill the number needed for each block within the study. In the clinical study, the distribution of mastitis pathogens from the study should be utilized to determine the label efficacy statement. An example for an effective antibiotic for staph and strep mastitis pathogens would be:

''Effective for the treatment of clinical and subclinical mastitis caused by *Staphylococcus* species such as *Staphylococcus aureus*, and *Streptococcus* species such as *Streptococcus agalactiae, Streptococcus uberis*.''

This would eliminate the need in a clinical study to enroll 100 clinical cases per pathogen per treatment group. The study would need to demonstrate adequate power to detect an overall treatment-cure rate above that of the untreated control group. This would take into account spontaneous cure rates.

CVM considered the above comments and has revised the guidance document accordingly in light of CVM's position on this issue. CVM believes that under current regulations, use of positive control studies are permitted, however, CVM is trying to determine what constitutes ''efficacy threshold.'' CVM would still require a negative controlled study in order to separate the spontaneous cure rate from the cure rate attributable to the drug. If a sponsor is considering a positively controlled study, the sponsor should provide a basis for the need to have such a study, and thus be exempted from this standard. It should be discussed with and approved by CVM prior to the study. The design of the positively controlled study needs to be such that depending on the spontaneous cure rates, the study would detect an overall cure rate for the treatment group of 65 to 70 percent per pathogen.

6. Minimum Inhibitory Concentration/Pharmacokinetic Data (MIC/PK Data)

The comment stated that utilization of MIC/PK data for intramammary/mastitis products is still in the scientific discovery stage. The basis for correlating milk residue/efficacy/MIC data to draw a reasonable scientific conclusion is unavailable.

CVM agrees with the above comment, however, the use of MIC/PK data for intramammary products should be addressed when CVM considers the flexible labeling issues and should not be addressed in this current anti-infective bovine mastitis drug guidance document.

7. Non-lactating Treatment and Prevention Products

The comment stated that separate studies would be necessary to obtain a treatment and prevention label claim.

CVM agrees with the comment and has revised the draft guidance to indicate that separate studies would be necessary to obtain a treatment and prevention label claim for use in the dry cow. For the prevention claim, the sponsor would need to establish, through a negative controlled group, the new infection rate (estimates are approximately 2 to 3 percent) and demonstrate at least a 50 percent reduction in the rate of new infections. The criteria for defining a cure is as for clinical mastitis in the lactating cow, i.e., no clinical signs and negative culture at time of freshening.

Guidelines are generally issued under §§ 10.85(a) and 10.90(b) (21 CFR 10.85(a) and 10.90(b)). The agency is now in the process of revising §§ 10.85(a) and 10.90(b). Therefore, this guidance document is not being issued under §§ 10.85(a) and 10.90(b), and it does not bind the agency, and does not create or confer any rights, privileges, or benefits for or on any person. However, it represents the agency's current thinking on this issue. A person may follow the guidance document or may choose to follow alternative procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter with FDA/CVM to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable. When a guidance document states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guidance document.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 1996.

William K. Hubbard,

Association Commissioner for Policy Coordination.

[FR Doc. 96–10485 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F-0102]

Ciba-Geigy Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4361), filed by Ciba-Geigy Corp., proposing that the food additive regulations be amended to provide for safe use of the reaction product of 4,4′-isopropylidenediphenol-epichlorohydrin resin, 4,4′-isopropylidenediphenol bis[(2-glycidyloxy-3-n-butoxy)-1-propyl ether], and 4,4′-isopropylidenediphenol as a component of coatings for food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 19, 1993 (58 FR 21173), FDA announced that a food additive petition (FAP 3B4361) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of the reaction product of 4,4′-isopropylidenediphenol-epichlorohydrin resin, 4,4′-isopropylidenediphenol bis[(2-glycidyloxy-3-n-butoxy)-1-propyl ether], and 4,4′-isopropylidenediphenol as a component of coatings for food-contact use. Ciba-Geigy Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7)

Dated: April 10, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–10547 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–01–F

1996 Gene Therapy Conference: Development and Evaluation of Phase I Products and Workshop on Vector Development; Notice of Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public conference entitled ''1996 Gene Therapy Conference: Development and Evaluation of Phase I Products and Workshop on Vector Development.'' The objective of this conference is to educate investigators on the

investigational new drug (IND) process, points-to-consider documents, resources available from the National Institutes of Health (NIH) to bring gene therapy from the research laboratory to clinical trials, and to conduct a series of workshops on various issues concerning the development, production, and use of viral vectors for gene therapy. FDA believes that the conference will benefit interested parties, including industry, NIH, and FDA, involved in this rapidly advancing and changing field of gene therapy.

DATES: The public conference will be held on Thursday and Friday, July 11 and 12, 1996, 8 a.m. to 5 p.m. Preregistration is requested by June 28, 1996. Registration will be held on both days from 7:30 a.m. to 8 a.m.

ADDRESSES: The public conference will be held at NIH, Bldg. 45, Natcher Auditorium, 9000 Rockville Pike, Bethesda, MD. There is no registration fee. For a complete description of the conference, agendas, speakers, and session chairs check the FDA Biologics Home Page at http://www.fda.gov/cber/cberftp.html. The home page will be updated as the conference gets closer.

FOR FURTHER INFORMATION CONTACT:

Regarding information on registration: Margaret Fanning, NCI–FCRDC, P.O. Box B, Frederick, MD 21702–1201, 301–846–5865, or FAX 301–846–5866.

Regarding information on the conference agenda: Bette A. Goldman, Center for Biologics Evaluation and Research (HFM–500), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2860.

SUPPLEMENTARY INFORMATION: Gene therapy is a dynamic and rapidly advancing field of scientific study. The purpose of this conference is twofold. On July 11, 1996, FDA hopes to provide the gene therapy community with an education and understanding of the IND review process. Many academic investigators and researchers involved in the research and development of gene therapies are not familiar with the regulatory process for the review of IND's. This lack of knowledge of the IND process may decrease the efficiency of pre-IND meetings and increase the review burden on FDA staff. In order to address this problem, the conference will include a description of the IND process, the use of ''points-to-consider'' and guideline documents, and resources available from NIH to bring gene therapy from the research laboratory to clinical trials. On July 12, 1996, the conference will serve as an opportunity for FDA to hear concerns, issues, and ideas from the gene therapy community. There will be presentations of the available scientific data from various groups, followed by discussions, in order to improve understanding of scientific issues that are the foundation of regulatory guidelines. Breakout sessions will address the following: Adenoviral vectors, ancillary products, facilities and manufacturing, information on getting started in gene therapy development, retroviral vectors, pharmacology, toxicology, and the development of new vector systems.

The information obtained from this conference may assist in the development of future scientific and regulatory policy or guidance.

Dated: April 19, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–10484 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement and Proposed Project Requirements and Review Criteria for Cooperative Agreements for Partnerships for Health Professions Education for Fiscal Year 1996

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1996 Cooperative Agreements for Partnerships for Health Professions Education. This model/demonstration program will be jointly funded under sections 738(b) (Minority Faculty Fellowship Program), 739 (Centers of Excellence in Minority Health Professions Education), and 740 (Health Careers Opportunity Program) of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. The goal of this program is to establish and test a comprehensive model program in a geographically defined area (e.g., region, state, metropolitan or rural area), that incorporates a variety of educational and community-based entities in a formal continuum of activities to increase the number and quality of: (1) Minority and disadvantaged health professionals to provide health services to underserved populations and (2) minority faculty serving in health professions schools. No comprehensive model currently exists.

Rationale

The rationale for conducting this model project is to:

1. Test the feasibility and effectiveness of executing a comprehensive program in a defined geographic area, which encompasses a dynamic coordinated educational continuum designed to increase the number and quality of minority/disadvantaged health professionals and minority faculty for health professions schools. This program includes formal linkages among several community-based entities and educational institutions.

2. Compare performance outputs of a comprehensive approach versus the output of several independent projects operating in a defined geographic area as is currently practiced.

3. Assess the cost effectiveness of a comprehensive model versus a multiple independent projects approach (testing the hypothesis that approximately one third of the costs for personnel and overhead expenditures would be saved through a comprehensive administrative infrastructure).

4. Determine the potential for several community and educational entities forming a unified, effective, multi-dimensional, comprehensive educational continuum under the umbrella of a single lead institution.

5. Test the relative soundness of a cooperative comprehensive approach versus that of several projects acting independently. This would facilitate tracking, monitoring and retaining targeted individuals through the educational pathway to become health professionals and/or faculty in health professions schools.

This program announcement is subject to reauthorization of the legislative authorities and to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriations for title VII programs, the amount of available funding for this specific cooperative agreement cannot be estimated.

Purpose

The purposes of this program are to: (1) Assist schools in supporting programs of excellence in health

professions education for minority students, (2) assist individuals from disadvantaged backgrounds to undertake education to enter and graduate from a health professions school and (3) to assist schools in increasing the number of underrepresented minority faculty members at such schools. Applicants are required to meet the statutory requirements identified in sections 738(b), 739, and 740. Definitions regarding each of these programs have been published at 60 FR 62097, dated December 4, 1995. In addition, applicants must meet the requirements of regulations as set forth in 42 CFR part 57, subparts S and V. Applicants may request funding for up to three years. In making awards, consideration will be given to an equitable geographic distribution of projects.

Eligibility

Applicants eligible to apply for this model/demonstration program are accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, public health, veterinary medicine, optometry, allied health, chiropractic, podiatric medicine, clinical psychology, health administration and other public or private nonprofit health or education entities located in a State as defined in section 799.

Proposed Project Requirements

The following project requirements are proposed:

1. The Partnerships for Health Professions Education cooperative agreement is to include efforts to increase the numbers and quality of:

(a) Minority and disadvantaged health professionals who provide health services to underserved populations and

(b) Minority faculty serving in health professions schools.

This would be accomplished through comprehensive geographically defined cooperative initiatives involving several educational and community-based institutions and organizations. Specifically, the project is to establish and test a model comprehensive program in a defined geographic area (e.g. region, state, metropolitan or rural area). The project would bring together a variety of educational and community entities into a formal educational continuum that addresses:

(a) The needs of minority and disadvantaged students through graduation from a health professions school, and

(b) Junior minority faculty aspiring to senior faculty positions in health professions schools.

2. The proposed model must encompass formulation of academic-community educational partnerships including:

(a) Formal linkages among health profession and prehealth profession schools, where both have strong histories and established administrative infrastructures for addressing the types of purposes proposed in this model program;

(b) Linkages among health professions schools and community based health care entities serving underserved populations. This would allow targeted health professions school students to be offered experiences in the delivery of health services in community-based facilities located at sites remote from the institution; and

c. Consortium arrangements (where appropriate) among participating health professions schools.

4. The Partnerships for Health Professions Education Programs shall, for a geographically prescribed area establish:

(a) An educational and non-educational support system designed to improve the quality of the minority applicant pool involving preliminary education, facilitating entry (including post baccalaureate projects where appropriate) and retention activities at the health professions school level. There should be an uninterrupted continuum to assist students through graduation from a health professions school. This would be accomplished through development and implementation of activities related to all the purposes identified in sections 738(b), 739, and 740 of the PHS Act.

(b) Minority faculty development initiatives designed to recruit and provide a formal structured program of preparation in such areas as pedagogical skills, program administration, grant writing and publication skills, research methodology, development of research proposals and community service abilities under a senior faculty mentor. It should involve pre-faculty appointment, faculty fellowship opportunities and retention for junior minority faculty in health professions schools;

(c) Information resources and curricula addressing minority health issues and clinical education at community based sites remote from the health professions school that predominantly serve underserved populations; and

(d) Faculty and student research on health issues particularly affecting minority groups.

5. Measurable, outcome oriented and time framed performance outcome standards will be used to evaluate the project.

6. All award recipients must agree to maintain institutional expenditures of non-Federal funds in an amount not less than the previous fiscal year.

7. Program activities and experiences related to the establishment of the Partnerships for Health Professions Education Program must be documented in a format that would allow for future duplication by other institutional organizations.

Substantial Federal Programmatic Involvement

It is anticipated that the Federal government will have substantial programmatic involvement with the planning, development and administration of the Partnerships for Health Professions Education Program and its outputs by:

1. Providing technical assistance, guidance and reviewing changes needed to conduct the project.

2. Reviewing and advising regarding training content and methodologies and formal faculty development regimens.

3. Providing advice regarding formal linkage and consortium arrangements which have been established for the purpose of conducting the Partnerships for Health Professions Education Program.

4. Assisting in the modification of student participant selection criteria and processes.

5. Providing information relative to proven evaluation methods, including data collection methods, data analysis techniques and participant tracking systems.

6. Reviewing and advising on program evaluation methods, including data collection activities, data analysis techniques and participant tracking systems.

7. Reviewing and advising on the documentation of the activities and experiences related to establishment of the Partnerships for Health Professions Education Program.

8. Providing data and information about Federal programs that may impact the Partnerships for Health Professions Education Program.

9. Participating in the review of subcontracts awarded under the Cooperative Agreement.

Proposed Review Criteria

The following criteria are proposed for review of applications for this program:

1. The relationship of the applicants proposal to the purposes stated for the Partnerships for Health Professions Education Program, the

comprehensiveness and geographic base of the proposed project, the extent to which linkages with community entities and institutions are documented, and the degree to which the proposed project plans are transferable to other institutions.

2. The extent, institutional commitment and outcomes of past efforts and activities of the institution in conducting minority/disadvantaged programs, the extent to which applicant data indicate trends, the numbers and type (race/ethnicity, gender) of individuals that can be expected to benefit from the project, and suitability of participant eligibility requirements, selection criteria, and process.

3. The relevance of objective(s) to the stated problem and need, and to model purposes; their measurability and attainability within a specific time frame; and the extent to which they represent outcome measures.

4. The scope of specific activities and their relevance to the stated objectives and projected outcomes; their appropriateness for a Partnership for Health Professions Education Program; their soundness in terms of the extent and nature of the academic content and non-academic services; and their validity as to the methodologies, logic and sequencing proposed.

5. The administrative and managerial capability of the applicant to conduct the project, qualifications of the staff and faculty, their academic and experiential background and time commitment, the nature and degree of their involvement, and their experience in working with the proposed target group.

6. The appropriateness of the budget for assuring effective utilization of cooperative agreement funds and the institutional or organizational plan for phasing-in income from other sources and developing self-sufficiency for continuing the program after Federal funding.

7. The degree to which the applicant has made significant efforts to increase the number of minority individuals serving in faculty or administrative positions at the health professions school.

8. Techniques and methods to be employed in evaluating the project.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of *Healthy People 2000*. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Additional Information

Interested persons are invited to comment on the proposed project requirements and review criteria. The comment period is 30 days. All comments received on or before May 29, 1996 will be considered before the final project requirements and review criteria are established. Written comments should be addressed to Dr. Ciriaco Q. Gonzales, Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holiday excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Availability

Application materials are available on the World Wide Web at address: http://www.os.dhhs.gov/hrsa/bhpr. Click on the file name you want to download to your computer. It will be saved as a self-extracting WordPerfect 5.1 file. Once the file is downloaded to the applicant's PC, it will still be in a compressed state. To decompress the file, go to the directory where the file has been downloaded and type in the file name followed by a <return>. The file will expand into a WordPerfect 5.1 file. Applicants are strongly encouraged to obtain application materials from the World Wide Web via the Internet.

However, for applicants who do not have Internet capability, application materials are also available on the Bureau of Health Professions (BHPr) Bulletin Board. Use your computer and modem to call (301) 443–5913. Set your modem parameters to 2400 baud, parity to none, data bits to 8, and stop bits to 1. Set your terminal emulation to ANSI or VT–100.

Once you have accessed the BHPr Bulletin Board, you will be asked for your first and last name. It will also ask you to choose a password. *Remember Your Password!* The first time you logon you ''register'' by answering a number of other questions. The next time you logon, BHPr's Bulletin Board will know you.

Press (F) for the (F)iles Menu and (L) to (L)ist Files. Press (L) again to see a list of numbered file areas. To see a list of files in any area, type the number corresponding to that area. Competitive application materials for grant programs administered by the Bureau of Health Professions are located in the File Area item ''B'' titled Grants Announcements.

To (R)ead a file or (D)ownload a file, you need to know its exact name as listed on BHPr's Bulletin Board. Press (R) to (R)ead a file and type the name of the file. Press (D) to (D)ownload a file to your computer. You need to know how your communications software accomplishes downloading.

When you have completed your tour of BHPr's Bulletin Board for this session, press (G) for (G)oodbye and press <enter>.

If you have difficulty accessing the BHPr Bulletin Board, please try the Internet address listed above. If you do not have Internet capability and need assistance in accessing the BHPr Bulletin Board or technical assistance with any aspect of the BHPr Bulletin Board, please call Mr. Larry DiGiulio, Systems Operator for the BHPr Bulletin Board at (301) 443–2850 or ''ldigiuli@hrsa.ssw.dhhs.gov''.

Questions regarding grants policy and business management issues should be directed to Ms. Wilma Johnson, Acting Chief, Centers and Formula Grants Section (wjohnson@hrsa.ssw.dhhs.gov), Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. If you are unable to obtain the application materials electronically, you may obtain application materials in the mail by sending a written request to the Grants Management Branch at the address above. Written requests may also be sent via FAX (301) 443–6343 or via the Internet listed above. Completed

applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact Dr. Ciriaco Q. Gonzales, Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–17, 5600 Fishers Lane, Rockville, Maryland 20857.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is July 12, 1996. Applications will be considered to be ''on time'' if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health System Reporting Requirements.

Dated: April 17, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–10483 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, contact the SAMHSA Reports Clearance Officer on (301) 443–0525.

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 technology.

Proposed Project

National Household Survey on Drug Abuse—Revision—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the Unitied States, age 12 and over. The data are used to determine the prevalence of use of cigarettes, alcohol, and illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources. For 1997, the core NHSDA questionnaire will remain unchanged; however, several special topic modules are expected to change. The total annual burden estimate is 30,220 hours as shown below:

	Number of respondents	Number of responses per respondent	Average burden per response (hrs.)	Total burden (hrs.)
Household screener	53,082	1	0.05	2,654
NHSDA questionnaire	23,320	1	1.18	27,566

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 23, 1996.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 96–10501 Filed 4–26–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

PRT–813910

Applicant: Dr. Michael I. Kelrick, Northeast Missouri State University, Kirksville, Missouri.

The applicant requests a permit to take (collection of seed, stems, leaves) Missouri bladderpod (*Lesquerella filiformis*) at the Wilson's Creek National Battlefield, Republic, Missouri, for the purpose of enhancement of species through propagation and scientific research.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: April 23, 1996.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–10500 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[OR–050–1110–00:G6–0127]

Closure of Public Lands; (Prineville District) Oregon; Correction

April 18, 1996.

This action corrects a Notice in FR Doc. 96–7629, on Friday, March 29, 1996.

On page 14158, third column, following the **ACTION** paragraph, insert the following omitted paragraph:

SUMMARY: Notice is hereby given that effective immediately, the following described roads and trails are closed to all motorized vehicle use year-long.

Dated: April 18, 1996.

James G. Kenna,

Deschutes Resource Area Manager, Prineville District Office.

[FR Doc. 96–10499 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–33–M

[NV–943–1430–01; N–59593]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale of public lands in Clark County, Nevada.

SUMMARY: The following described public land in the City of Mesquite, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 13 S., R. 70 E.
Sec. 24, lot 2;
T. 13 S., R. 71 E.
Sec. 18, lot 9,
Containing 7.72 acres, more or less.

This parcel of land, situated in Mesquite, NV is being offered as a direct sale to the City of Mesquite.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, 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. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to an easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

1. Those rights for highway right-of-way purposes which have been granted to the Nevada Department of Transportation by Permit Nos. Nev–065014, N–125, and Nev–07427 under the Act of August 27, 1958 (072 Stat. 0892; 23 U.S.C. {a} and {d}).

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: April 19, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–10448 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession and Control of the Santa Fe National Forest, United States Forest Service, Santa Fe, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession and control of the Santa Fe National Forest, United States Forest Service, Santa Fe, NM.

A detailed assessment of the human remains was made by Peabody Museum professional staff, Museum of New Mexico professional staff, United States Forest Service professional staff in consultation with representatives of the Pueblo of Cochiti, the Pueblo of Santo Domingo, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan, the Pueblo of Zia, and the Pueblo of Jemez.

In 1908, human remains representing five individuals were recovered from the Yapashi site during legally authorized excavations. No known individuals were identified. No associated funerary objects are present.

The Yapashi site has been identified as late Anasazi period (1250–1475 AD) through architecture, ceramics, and site organization. Ethnographic records, technological continuity, and similarities between the site and present-day pueblos of Cochiti, Santo Domingo, San felipe, Santa Ana, San Ildefonso, Santa Clara, Pojoaque, Tesuque, Nambe, San Juan, and Zia indicate continuity of both occupation and culture between the Yapashi site and these pueblos. Oral traditions of

these present-day pueblos indicate occupation of this particular area during this period.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the United States Forest Service have further determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of Cochiti, the Pueblo of Santo Domingo, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan, and the Pueblo of Zia.

In 1912, human remains representing two individuals were recovered from the Pueblo Kotyiti site during legally authorized excavations. No known individuals were identified. The three associated funerary objects include a ceramic pipe, mineral pigment, and a stone tool.

The Pueblo Kotyiti site has been identified as the fortified pueblo occupied during 1680–1696 (the Great Pueblo Revolt) by the ancestral community of the present-day Pueblo of Cochiti. This identification is supported by historical and ethnohistoric records of the Pueblo Revolt era, continuities of architecture and ceramics between the site and the Pueblo of Cochiti. The oral tradition of the Pueblo of Cochiti also supports their affiliation to the Pueblo Kotyiti site.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the United States Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the United States Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Cochiti.

In 1934, human remains representing three individuals from site LA 340 were donated to the Museum of New Mexico by the Fry family. Accession records indicate the Fry family apparently collected these remains without a valid antiquities permit. No known individuals were identified. No associated funerary objects were present.

Site LA 340 has been identified as Anasazi period (1100–1540 AD) through architecture, ceramics, and site organization. Ethnographic records, technological continuity, and similarities of the site with the present-day pueblos of San Ildefonso, Santa Clara, Pojoaque, Tesuque, Nambe, and San Juan indicate cultural affiliation with this site. The oral traditions of these six Pueblos also indicate affiliation with sites in this particular area during this period.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the United States Forest Service have further determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan.

In 1980, human remains representing six individuals from site AR–03–10–03–401 were confiscated by Forest Service Law Enforcement from Kyle and Mary Martin. No known individuals were identified. The 200 associated funerary objects include pottery sherds, stone tools and flakes, corn cobs and husks, sandal fragments, charcoal, non-human bones and teeth, and seeds.

Ethnographic and ethnohistoric records, ceramics, and the association of the rock shelters with an ancestral Jemez Pueblo site indicate cultural affiliation of the present-day Pueblo of Jemez to site AR–03–10–03–401. The oral traditions of the Pueblos of Jemez support this affiliation to the site during this period.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the United States Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 200 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the United States Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Jemez.

This notice has been sent to officials of the Pueblo of Cochiti, the Pueblo of Santo Domingo, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan, the Pueblo of Zia, and the Pueblo of Jemez. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave. SW, Albuquerque, NM 87102; telephone: (505) 842–3238, fax: (505) 842–3800 before May 29, 1996. Repatriation of the human remains and associated funerary objects to the Pueblo of Cochiti, the Pueblo of Santo Domingo, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan, the Pueblo of Zia, and the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: April 24, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology & Ethnography Program

[FR Doc. 96–10543 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I)

Notice is hereby given that, on April 15, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the International Pharmaceutical Aerosol Consortium for

Toxicology Testing of HFA–134a (''IMPACT–I'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a new member. 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, Astra AB, Sodertalje, Sweden, became a new member of IPACT–I on February 2, 1996.

No other changes have been made in either the membership or planned activity of IPACT–I. Membership in this ground research project remains open, and IPACT–I intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, IPACT–I 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 September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on May 25, 1995. A notice has not yet been published in the Federal Register.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10481 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture for Development and Manufacture of Glass Panels and Funnels for Use in Cathode Ray Tubes

Notice is hereby given that, on July 12, 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''), Sony Electronics Inc. (''Sony''), for itself and on behalf of the parties identified below, filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative research and production venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Sony Electronics Inc., Park Ridge, NJ, owned by Sony Corporation, Tokyo, JAPAN; Corning Inc., Corning, NY; Asahi Glass America, Inc., New York, NY, owned by Asahi Glass Company, Ltd., Tokyo, JAPAN; Corning Asahi Corporation, Corning, NY, owned by Corning Inc. and Asahi Glass America, Inc.; American Video Glass Company, Mount Pleasant, PA, owned by Sony Electronics Inc. and Corning Asahi Corporation; and Corning Asahi Video Products Company, Corning, NY, owned by Corning Inc. and Asahi Glass America, Inc.

The area of planned activity is cooperation in the exchange of information concerning, and the development and manufacture of, glass panels and funnels for use in cathode ray tubes.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10480 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on April 9, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 95–02, titled ''Basic Principles and Control of Crude Oil Emulsion Formation-Part 3,'' have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in project membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become members in the PERF Project: Marathon Oil Company, Littleton, CO; Mobil Technology Company, Paulsboro, NJ; and Texaco, Inc., Houston, TX.

No other changes have been made in either the membership or the planned activities of the Project. Membership remains open, and the participants intend to file additional notifications(s) disclosing all changes in membership in this Project.

On November 30, 1995, PERF Project No. 95–02 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 January 31, 1996 (61 FR 3464).

Information regarding participation in PERF Project No. 95–02 may be obtained from Ms. Catherine Peddie, Shell Oil Products Company, Houston, TX.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10482 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Juveniles Taken Into Custody Reporting Program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) 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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Joseph Moone (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Joseph Moone, 202–397–5929, Office of Juvenile Justice and Delinquency Prevention, Office of

Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) Title of the Form/Collection: Juveniles Taken Into Custody Reporting Program

(3) Agency form numbers, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms JTIC–1A, jtic–1b, JTIC–1C. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked to required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. To enumerate and describe annual movements of juvenile offenders through state correctional systems. It will be used by the Department of Justice for planning and policy affecting states. Providers of data are personnel in state departments of corrections and juvenile services.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 51 respondents with an average 12 hours per respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 628 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 24, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–10472 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,879; Rayloc, Atlanta, GA

TA–W–32,025; Winona Knitting Mills, Berwick Knitwear (Formerly Komar & Sons Berwick Knitwear), Berwick, PA

TA–W–31,975; Modine Manufacturing Co., Clinton, TX

TA–W–31,899; Marion Plywood Corp., Coreline Div., Shawano. WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,993; Aeroil Products Co., Inc., South Hackensack, NJ

TA–W–32,118; James River Corp. Packaging Business, Wausau, WI

TA–W–31,995; ABC Rail Products Corp., Anderson, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,065 & A, B, C, D; Ames Department Stores, Inc., Skowhagen, Caribou, Houlton, Madawaska & Presque Island, ME

TA–W–31,889; Kids Today, Ltd, New York, NY

TA–W–32,067; Segerman International, Inc., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–31843; Pauline Handbags, New York, NY

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decine during the relevant period as required for certification.

TA–W–31,928; Hobet Mining, Inc., Madison, WV

U.S. imports of coal are negligible through the relevant period.

TA–W–31,942; Carter-Wallace, Inc, Trenton, NJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–31,919; Toymax, Inc., Westbury, NY

The investigation revealed that criterion (1) and criterion (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–31,933; Victory Corrugated Container Corp. of New Jersey, Roselle, NJ: February 9, 1995.

TA–W–32,237; Intercontinental Branded Apparel, Hialeah, FL: April 8, 1995.

TA–W–33,039; Turbine Engine Components Textron, Danville, PA: March 8, 1995.

TA–W–32,085; Alcoa Electronic Packaging, San Diego, CA: March 7, 1995.

TA–W–32,019; Simpson Paper Co., West Linn, OR: February 20, 1995.

TA–W–32,088; Mobil Corp., Mobil Research & Development Corp., Princeton, NJ: March 4, 1996.

TA–W–31,812; Dalow Industries, Inc., Long Island City, NY: January 15, 1995.
TA–W–31,883; States Nitewear, Inc., New Bedford, MA: December 15, 1994.
TA–W–31,847: Burton Golf, Inc., Jasper, AL: January 10, 1995.
TA–W–31,855; Kiddie Kloes, Inc., Lansford, PA: January 4, 1995.
TA–W–31,867; Leggoons Sportswear, Inc., Vandalia, MO: January 9, 1995.
TA–W–31,873; Briggs Industries, Inc., Robinson, IL: January 12, 1995 .
TA–W–31,881; Herman Kay Co., Inc., Secaucus, NJ: January 22, 1995.
TA–W–31,965; Delsey Luggage, Inc., Denton, MD: February 12, 1995.
TA–W–31,964; D&A Textiles, Fairview, NJ: February 9, 1995.
TA–W–32,016, TA–W–32,016; Fremont Sawmill, A Division of Ostrander Resources Co., Inc., Lakeview, OR & Paisley, OR: April 5, 1996.
TA–W–31,915; Imperial Bondware Corp., Lafayette, GA: January 1, 1995.
TA–W–32,000; Red Kap, Industries, Booneville, MS: February 22, 1995.
TA–W–31,916; Imperial Wallcoverings, Inc., (a Collins & Aikman Co), Hammond, IN: January 19, 1995.
TA–W–32,142; Stephenson Enterprises, Inc., Folkston, GA: March 19, 1995.
TA–W–31,906; H.H. Cutler Co., Oxford, MS: January 18, 1995.
TA–W–31,913, The Florsheim Shoe Co., Cape Girardeau, MO: May 17, 1995.
TA–W–31,992; Decaturville Manufacturing, Decaturville, TN: February 20, 1995.
TA–W–32,006, Kendall Healthcare Products Co., Cumberland, RI: February 15, 1995.
TA–W–31,892; Augat, Inc., Mashpee, MA: February 2, 1995.
TA–W–31,902; Globe Business Furniture, Inc., Franklin, KY: January 10, 1995.
TA–W–31,909 & A; Whispering Pines Sportswear, Inc., Pageland, SC & Whispering Pines Sportswear, II, Patrick, SC: January 19, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00873; Gen/RX, Inc., (AKA Apotex), American Veterinary Products, Fort Collins, CO
NAFTA–TAA–00857 & A, B; Decaturville Manufacturing Decaturville, TN, Scotts Hill, TN, Parsons, TN
NAFTA–TAA–00831; Hines Oregon Millwork Enterprises, Hines, OR
NAFTA–TAA–00866; Alliant Techsystems, Inc., Accudyne Operations, Janesville, WI
NAFTA–TAA–00850; American Electric Power, Ohio Power Co., Cardinal Plant, Fossil and Dydro Operations, Brilliant, OH
NAFTA–TAA–00864; American Banknote Co., Bedford Park, IL
NAFTA–TAA–00838; Winona Knitting Mills, Berwick Knitwear (formerly Komar & Sons Berwick Knitwear), Berwick, PA
NAFTA–TAA–00876; Keystone Brewers, Inc., d/b/a Pittsburgh Brewing Co., Pittsburgh, PA
NAFTA–TAA–00849; IPM Products Corp., Hybritex Automotive Controls, EL Paso, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00852; Simpson Paper Co., West Linn, OR: February 23, 1995.
NAFTA–TAA–00804; Imperial Wallcoverings, Inc. (A Collins & Aikman Co), Hammond, IN: January 19, 1996.
NAFTA–TAA–00870 & A; Ostrander Resources Co., Inc. d/b/a Fremont Sawmill, Lakeview, OR & Paisley, OR: February 22, 1995.
NAFTA–TAA–00855; Harvard Industries, Harman Automotive Sevierville, TN: February 26, 1995.
NAFTA–TAA–00877; AlliedSignal Aerospace, Government Electronics System, South Montrose, PA: March 1, 1995.
NAFTA–TAA–00871; Breed Technologies, Inc., Breen Automotive, L.P., Brownsville, TX: March 1, 1995.
NAFTA–TAA–00887; Turbotville Dress, Inc., Turbotville, PA: March 1, 1995.

I hereby certify that the aforementioned determinations were issued during the month of April 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 17, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10514 Filed 4–26–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training

Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject mater of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 2000 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of April, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/15/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,204	CENEX, Inc. (Comp)	Bakersfield, CA	03/25/96	Crude Oil, Natural Gas.
32,205	Progressive Knitting Mill (UNITE)	Philadelphia, PA	03/27/96	Bathing Suits.
32,206	General Cable Corp. (Wkrs)	Newport, AR	04/01/96	Various Types of Wire.
32,207	Dolphin International (Comp)	The Dalles, OR	04/01/96	Window/Door Components.
32,208	El Paso Natural Gas (Wkrs)	El Paso, TX	04/01/96	Natural Gas Distribution.
32,209	HIS (Wkrs)	Clinton, KY	02/23/96	Jeans & Shorts.
32,210	Blue Mountain Forest Prod (Wkrs)	Pendleton, OR	03/30/96	Lumber.
32,211	Georgia Girl (Wkrs)	Smithfield, TN	04/02/96	Bottoms—Pants, Skirts, Shorts.
32,212	Montana Power Co. (Wkrs)	Colstrip, MT	03/27/96	Electricity.
32,213	Kellogg Company (U)	San Leandro, CA	04/01/96	Ready To Eat Cereal.
32,214	Layne Inc (Wkrs)	Clarks Summit, PA	03/19/96	Rods, Coupling Box & Pins.
32,215	Pile Manufacturing Corp (Comp)	Troy, AL	03/29/96	Work Shirts.
32,216	Barrett Refining Corp (Wkrs)	Thomas, OK	01/26/96	Diesel Fuel, Jet Fuel.
32,217	C.R. Bard (Wkrs)	Nogales, AZ	04/03/96	Catheters.
32,218	Connors Footwear (Wkrs)	Lisbon, NH	03/28/96	Ladies' Shoes.
32,219	Pelican Seafoods (ILWU)	Pelican, AK	03/14/96	Processed Frozen Fish.
32,220	International Paper Co. (IAM)	Reedsport, OR	03/27/96	Logs.
32,221	J.C. Decker (Wkrs)	Montgomery, PA	03/28/96	Pet Supplies.
32,222	American Screen Printers (Comp)	Mt. Pleasant, NC	03/26/95	Screened Garments.
32,223	Freedom Textile Chemical (OCAW)	Conshohocken, PA	03/15/96	Speciality Chemicals.
32,224	A & C Enterprises (Comp)	Carthage, TN	03/08/96	Ladies' House Robes.
32,225	Movie Star, Inc. (Wkrs)	New York, NY	03/15/96	Ladies' Sleepwear and Loungewear.
32,226	Spencer Industries (Wkrs)	Gainesville, GA	01/16/96	Men's & Ladies' Pant Bottoms.
32,227	Ralph Lauren Womenswear (UNITE)	New York, NY	03/27/96	Ladies' Sportswear.
32,228	Quintana Petroleum (Wkrs)	Houston, TX	03/15/96	Oil and Gas.
32,229	Fashion Development Cntr (Comp)	El Paso, TX	03/28/96	Jeans & Jackets.
32,230	Rexham Graphs (Wkrs)	South Hadley, MA	03/30/96	Microflim.
32,231	Roseburg Forest Products (LSW)	Roseburg, OR	03/27/96	Lumber, Plywood and Particle Board.
32,232	The Timken Company (USWA)	Columbus, OH	03/30/96	Bearings for Railroad Cars.
32,233	Dataproducts Corp. (Comp)	Norcross, GA	04/01/96	Computer Printer Ribbons.
32,234	Carborundum Co. (The) (Comp)	Niagara Falls, NY	03/29/96	Ceramic Products & Offices.
32,235	Zenith Electronics (Wkrs)	El Paso, TX	03/27/96	Television Cable Boxes.
32,236	Salvatrice Shoe, Inc (Comp)	Blackshear, GA	03/29/96	Ladies' Sport & Casual Shoes.
32,237	Intercontinental Branded (Wkrs)	Hialeah, FL	04/08/96	Men's Suits.

[FR Doc. 96–10513 Filed 4–26–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of April, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/08/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,155	Chel-Mar Manufacturing (Wkrs)	Tremont, PA	03/25/96	Shirts—Thermal Sweatshirts.
32,156	Lucia, Inc. (Comp)	Winston-Salem, NC	03/21/96	Ladies' Sportswear.
32,157	FASCO Motors Group (Wkrs)	Tipton, MO	02/29/96	Small Electric Motors.
32,158	Redco Foods, Inc. (Wkrs)	Little Falls, NY	03/25/96	Tea.
32,159	Olympus America, Inc. (Wkrs)	Rio Rancho, NM	03/22/96	Medical Lights.
32,160	Casablance Fan Company (Comp)	Cty of Industry, CA	03/12/96	Ceiling Fans.
32,161	Palm Beach Co. (Wkrs)	Knoxville, TN	03/14/96	Men's Suits, Sport Coats, Trousers.
32,162	Joe Benbasset, Inc. (Comp)	New York, NY	02/23/96	Ladies' Slacks, Skirts & Jackets.
32,163	Barber Rose, Inc. (UNITE)	Eynon, PA	03/22/96	Wedding Gowns.
32,164	Square Sales Corp. (Wkrs)	New York, NY	02/27/96	Sales Office—Knit Fabrics.
32,165	Merit Mills, Inc. (Wkrs)	Eastchester, NY	02/27/96	Knit Fabrics—Converter.
32,166	Tifton Apparel Mfg. (Wkrs)	Tifton, GA	03/12/96	Men's Work Pants, Lab Coats & Aprons.
32,167	Red Kap Industries (Wkrs)	Tupelo, MS	02/20/96	Uniform Pants and Shirts.
32,168	Thompson Co. (UNITE)	Thompson, GA	03/26/96	Men's Dress and Casual Slacks.
32,169	Diversified Apparel (Comp)	Pulaski, VA	03/21/96	Infant and Children's Knit and Denim Wear.
32,170	A–1 Manufacturing (UNITE)	Louisville, AL	03/26/96	Men's Coveralls.
32,171	L. Chessler, Inc. (UNITE)	Philadelphia, PA	03/25/96	Belts & Suspenders.
32,172	Bates of Maine, Inc. (UNITE)	Lewiston, ME	03/27/96	Bedspreads.
32,173	Exxon Company USA (Comp)	Houston, TX	03/26/96	Crude Oil.
32,174	Suzette Fashions (UNITE)	Jersey City, NJ	03/19/96	Ladies' Coats.
32,175	Berkley Medical Resources (UNITE)	Uniontown, PA	03/27/96	Surgical Face Mask.
32,176	Advance Transformer Co. (Comp)	Plattevile, WI	03/29/96	Electronic and Magnetic Lighting Ballasts.
32,177	EMI Company (Wkrs)	Erie, PA	03/21/96	Hub & Wheel Assemblies.
32,178	Kentucky Apparel, LLP (Wkrs)	Burkesville, KY	03/11/96	Denim Jeans.
32,179	Dallco Industries, Inc. (Comp)	Hustontown, PA	03/12/96	Ladies' and Childrens' Apparel.
32,180	The Majestic Products Co. (Comp)	Austin, TX	03/20/96	Fireplaces.
32,181	Centry Pine Products (Comp)	Redmond, OR	03/25/96	Cutstocks—Windows, Doors, Moldings.
32,182	Bend Wood Products (Wkrs)	Bend, OR	03/20/96	Secondary Wood Products.
32,183	Thomas and Betts Corp. (Wkrs)	Montgomeryville, PA	03/18/96	Plastic Components—Elec. Equipment.
32,184	Timber Products Company (Wkrs)	Eugene, OR	03/19/96	Logs.
32,185	Bugle Boy Industries (Wkrs)	N. Little Rock, AR	03/15/96	Men's Pants and Shirts.
32,186	Osram Sylvania (Wkrs)	St. Marys, PA	03/26/96	Lamps.
32,187	Benkel Mfg. Co. (UNITE)	Brooklyn, NY	04/02/96	Hats and Caps.
32,188	Kalkstein Silk Mills, Inc. (UNITE)	Paterson, NJ	04/02/96	Silk and Polyester Upholstery Fabrics.
32,189	Meren Industries, Inc. (UNITE)	Newark, NJ	04/02/96	Fabric Hats and Visors.
32,190	Northeast Lumber Co. (Comp)	Chester, ME	03/11/96	Dimension Lumber.
32,191	General Electric Dist. Ctr. (Wkrs)	Little Rock, AR	03/08/96	Warehouse and Distribution.
32,192	Stafford Blaine Designs (Wkrs)	Minneapolis, MN	03/19/96	Screened T-Shirts.
32,193	GPM Gas Corp. (Wkrs)	Odessa, TX	03/21/96	Natural Gas and Natural Gas Liquids.
32,194	McGill Electric Switch (Comp)	Valparaiso, IN	03/25/96	Switches—Thermoplastic Components.
32,195	CTS (Wkrs)	Bentonville, AR	02/28/96	DIP Switches.
32,196	Liz Claiborne, Inc. (Wkrs)	North Bergen, NJ	03/23/96	Ladies' Sportswear, Offices, Warehouse.
32,197	Sea Isle Sportswear (Comp)	New York, NY	03/26/96	Girl's Blouses, Knit Tops, Shorts.
32,198	E.I. du Pont de Nemours (Comp)	Wilmington, DE	03/28/96	Nylon and Polyester Yarns.
32,199	E.I. du Pont de Nemours (Comp)	Martinsville, VA	03/28/96	Nylon and Polyester Yarns.
32,200	E.I. du Pont de Nemours (Comp)	Lugoff, SC	03/28/96	Nylon and Polyester Yarns.
32,201	E.I. du Pont de Nemours (Comp)	Athens, GA	03/28/96	Nylon and Polyester Yarns.
32,202	E.I. du Pont de Nemours (Comp)	Chattanooga, TN	03/28/09	Nylon and Polyester Yarns.
32,203	Textile Networks, Inc. (Comp)	Knoxville, TN	11/04/95	Tee Shirts.

[FR Doc. 96–10512 Filed 4–26–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–044]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

DATES: May 10, 1996, 9:00 a.m. to 5:00 p.m.

ADDRESSES: Washington Room, Atlanta Hilton and Towers Hotel, 255 Courtland Street, N.E., Atlanta, GA 30303.

FOR FURTHER INFORMATION CONTACT: Dr. Sam L. Pool, Code SD, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 713–483–7109.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Friday, May 10, 1996, from 4:30 p.m. to 5:00 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of NASA Responses to Findings and Recommendations from the Previous Meeting of September 27–28, 1995
—Overview of Plans for the National Space Biomedical Institute
—Medical Operations Update STS and Mir Missions
—Overview of Crew Health Care System and Human Research Facility
—Status of the Brody Committee—Best Clinical Practices
—Discussion of Action Items
—Summary of Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to a sign a visitor's register.

Dated: April 19, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–10487 Filed 4–26–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Number 50–160]

Georgia Institute of Technology Research Reactor Establishment of Temporary Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has designated the Decatur Library, Decatur, Georgia, as a temporary local public document room (LPDR) for the proposed license renewal of the Georgia Institute of Technology research reactor located on the Atlanta, Georgia, campus.

Members of the public may now inspect and copy documents related to the license renewal proceeding at the Decatur Library, 215 Sycamore Street, Decatur, Georgia 30030. The library is open on the following schedule: Monday through Thursday 9:00 a.m. to 9:00 p.m.; Friday and Saturday 9:00 a.m. to 5:00 p.m.; and Sunday 1:00 p.m. to 5:00 p.m.

For further information, interested parties in the Atlanta area may contact the LPDR directly through Mr. Bob Caban, Reference Department, telephone number (404) 370–3070. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 415–7170 or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, this day of April, 1996.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–10489 Filed 4–26–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC- 21910; File No. 812–9834]

The Travelers Insurance Company, et al.

April 22, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: The Travelers Insurance Company (''Company''), The Travelers Fund ABD for Variable Annuities (''Fund ABD'') and Tower Square Securities, Inc. (''TSSI'').

RELEVENT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants and any other separate account established by the Company (''Other Accounts,'' together with Fund ABD, ''Accounts'') seek an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Accounts under certain flexible premium deferred variable annuity contracts issued by the Company.

FILING DATE: The application was filed on October 27, 1995, and amended and restated on March 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 17, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing my request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, The Travelers Life and Annuity Company, One Tower Square, Hartford, Connecticut 06183, Attention: Kathleen A. McGah, Counsel and Assistant Secretary.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Company, a stock life insurance company organized under the laws of the State of Connecticut in 1864, is a wholly-owned subsidiary of The Travelers Insurance Company, which is an indirect wholly-owned subsidiary of Travelers Group, Inc. The Company currently is licensed to do business in all states of the United States, the District of Columbia, Puerto Rico, Guam, the U.S. and British Virgin Islands, and the Bahamas.

2. Fund ABD was established on October 17, 1995, as a separate account under the laws of the State of Connecticut to fund individual and group flexible premium deferred variable annuity contracts and certificates to be issued by the Company (''Current Contracts''). Fund ABD currently is divided into six subaccounts, each of which invests its assets exclusively in the shares of four open-end management investment companies.

3. In the future, the Company may issue through Fund ABD or the Other Accounts other contracts (''Future Contracts'') that are materially similar to the Contracts. (Future Contracts and Current Contracts are hereinafter referred to collectively as ''Contracts.'')

4. TSSI, a broker-dealer registered with the SEC under the securities Exchange Act of 1934, is a member of the National Association of Securities Dealers, Inc. TSSI is an affiliate of the Company and an indirect wholly-owned subsidiary of Travelers Group, Inc. TSSI will be the distributor of the Contracts.

5. The Contracts are designed to provide retirement payments and other benefits for persons covered under plans qualified for federal income tax advantages available under the Internal Revenue Code of 1986, as amended, and for persons desiring such benefits who do not qualify for such tax advantages. Under group contracts, purchase payments will be made by or on behalf of a participant who is covered under a retirement plan. The Contracts provide for allocation of purchase payments to the subaccounts and/or to a fixed account. Upon retirement, annuity payments will be made on a fixed or variable basis. Fixed payments are based on the tables shown in the Contract; however, if a more beneficial payment table is in effect at the time the first payment is being determined, it will be used. Once payments are determined they will be assured throughout the payout period and are fixed in nature. Variable annuity payments will increase or decrease during the payout period. The first variable payment is based on the tables shown in the Contract, but subsequent payments will increase or decrease depending on the net investment performance of the underlying mutual funds chosen for investment during the annuity period. If the annuitant dies before the maturity date of the Contract, the Company will pay a death benefit. Before annuity or income payments begin, however, Contracts owners may transfer all or part of their contract value from one subaccount to another without fees, penalty or charge. There are currently no restrictions on the frequency of transfers, but the Company reserves the right to limit transfers to no more than one in any six month period.

6. The company will assess an annual contract administrative charge of $30 for the Contracts. This charge will not be assessed after an annuity payout has begun, at the death of the annuitant or the Contract owner, or if the Contract owner has a contract value greater than $40,000 on the assessment date. The Company also will assess the subaccounts of Fund ABD a daily asset charge at an effective rate of 0.15% per annum for administrative expenses. These charges cannot be increased during the life of the Contract. These charges represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts. The Company will not profit from these charges.

7. The Company will deduct certain state and local government premium taxes. These deductions may be made when the Contract is purchased, when the Contract is surrendered, when retirement payments begin, or upon payment of a death benefit. Current these taxes range from 0.5% to 5% and depend on the state in which the Contract owner resides or the Contract was sold.

8. To compensate itself for assuming mortality and expense risks, the Company will assess the subaccounts of Fund ABD an amount equal on an annual basis to 1.25% of the daily net asset value of the subaccounts. Approximately 0.9375% of the daily net asset value of the subaccounts is for assumption of the mortality risk, and 0.3125% is for assumption of the expense risk. These charges cannot be increased during the life of the Contracts.

9. The Company assumes certain mortality risks by its contractual obligation to continue to make annuity payments for the life of the annuitant, under annuity options that involve life contingencies. The Company assumes additional mortality and expense risks by its contractual obligation to pay the death benefit if either the annuitant or the Contract owner dies prior to the maturity date. The Company assumes an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. Although, the Company does not expect to profit from the mortality and expense risk charge, any profit would be available to the Company for any proper corporate purpose, including payment of distribution expenses.

10. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A contingent deferred sales charge (''Surrender Charge'') will be assessed upon certain full or partial surrenders. A Surrender Charge applies if all or part of the contract value is surrendered during the first seven years following a purchase payment. The Surrender Charge starts at 6% of a purchase payment in the first and second years following the purchase payment, and reduces to 5% in the third and fourth years, 4% in the fifth year, 3% in the sixth year, and 2% in the seventh year following the payment. There is no charge after eight years following a purchase payment.

11. After the first contract year, Contract owners may surrender up to 10% of their contract value (as of the beginning of the contract year) without incurring a Surrender Charge (the ''Free Withdrawal Amount''). The Free Withdrawal Amount applies to partial surrenders of any amount and to full surrenders, except where the contract value is directly transferred to annuity contracts issued by other financial institutions.

12. There is no charge on contract earnings, which equal: (1) the contract value; minus (2) the sum of all purchase payments received that have not been previously surrendered; minus (3) the 10% Free Withdrawal Amount, if applicable. To determine the amount of

any Surrender Charge, surrenders will be deemed to be taken first from any applicable Free Withdrawal Amount, next from purchase payments (on a first-in, first-out basis), and finally from contract earnings (in excess of any Free Withdrawal Amount). The Company does not expect that the Surrender Charge will cover sales and distribution expenses incurred in connection with the Contracts.

13. Prior to a Contract's maturity date, all or part of the contract value may be transferred between the subaccounts without penalty, fee, or charge. Although currently there are no restrictions on the frequency of transfers, the Company reserves the right to limit transfers to no more than one in any six-month period.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to do so.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expenses risk charge from the assets of the Accounts under the Contracts.

4. Applicants state that the terms of the relief requested with respect to any Future Contracts funded by the Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants represent that the Future Contracts to be funded by the Accounts will be materially similar to the Current Contracts. Applicants state that without the requested relief, the Company would have to request and obtain exemptive relief for the Accounts to fund each Future Contract. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application, and that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the Applicants' need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources.

5. Applicants represent that the 1.25% mortality and expense risk charge for the Contracts is reasonable in relation to the risks assumed by the Company under the Contracts and is within the range of industry practice for comparable annuity contracts, based on a review of the publicly available information regarding products of other companies. The Company represents that it will maintain at its principal offices, and make available upon request to the Commission or its staff, a memorandum detailing the variable annuity products analyzed, and the methodology used in, and the results of, the comparative review.

6. Applicants acknowledge that the Surrender Charge may be insufficient to cover all distribution costs, and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Surrender Charge. Notwithstanding this, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Fund ABD, the Other Accounts,[1] and Contract owners. The basic for such conclusion is set forth in a memorandum which will be maintained by the Company at its home office, and will be available to the Commission or its staff upon request.

7. The Company also represent that the Accounts will invest only in underlying mutual funds which have undertaken to have a board of directors or a board of trustees, as applicable, a majority of whom are not ''interested persons'' of such Accounts within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 (under the 1940 Act) to finance distribution expenses.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10468 Filed 4–26–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicants represent that they will amend the application during the notice period to include the Other Accounts.

[Rel. No. IC–21909; File No. 812–9836]

The Travelers Life and Annuity Company, et al.

April 22, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: The Travelers Life and Annuity Company (''Company''), The Travelers Fund ABD II for Variable Annuities (''Fund ABD II'') and Tower Square Securities, Inc. (''TSSI'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants and any other separate account established by the Company (''Other Accounts,'' together with Fund ABD, ''Accounts'') seek an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Accounts under certain flexible premium deferred variable annuity contracts issued by the Company.

FILING DATE: The application was filed on October 27, 1995, and amended and restated on March 28, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 17, 1996 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, The Travelers Life and Annuity Company, One Tower Square, Hartford, Connecticut 06183, Attention: Kathleen A. McGah, Counsel and Assistant Secretary.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Company, a stock life insurance company organized under the laws of the State of Connecticut in 1973, is a wholly-owned subsidiary of The Travelers Insurance Company, which is an indirect wholly-owned subsidiary of Travelers Group, Inc. The Company currently is licensed to do business in all states except Alabama, Hawaii, Kansas, Maine, New Hampshire, New Jersey, North Carolina, Tennessee, Texas, Wyoming and New York, and currently is seeking licensure in the remaining United States except New York.

2. Fund ABD II was established on October 17, 1995, as a separate account under the laws of the State of Connecticut to fund individual and group flexible premium deferred variable annuity contracts and certificates to be issued by the Company (the ''Current Contracts''). Fund ABD II currently is divided into six subaccounts, each of which invests its assets exclusively in the shares of four open-end management investment companies.

3. In the future, the Company may issue through Fund ABD II or the Other Accounts other contracts (''Future Contracts'') that are materially similar to the Contracts. (Future Contracts and Current Contracts collectively are referred to as ''Contracts.'')

4. TSSI, a broker-dealer registered with the SEC under the Securities Exchange At of 1934, is a member of the National Association of Securities Dealers, Inc. TSSI is an affiliate of the Company and an indirect wholly-owned subsidiary of Travelers Group, Inc. TSSI will be the distributor of the Contracts.

5. The Contracts are designed to provide retirement payments and other benefits for persons covered under plans qualified for federal income tax advantages available under the Internal Revenue Code of 1986, as amended, and for persons desiring such benefits who do not qualify for such tax advantages. Under group contracts, purchase payments will be made by or on behalf of a participant who is covered under a retirement plan. The Contracts provide for allocation of purchase payments to the subaccount and/or to a fixed account. Upon retirement, annuity payments will be made on a fixed or variable basis. Fixed payments are based on the tables shown in the Contract; however, if a more beneficial payment table is in effect at the time the first payment is being determined, it will be used. Once payments are determined, they will be assured throughout the payout period and are fixed in nature. Variable annuity payments will increase or decrease during the payout period. The first variable payment is based on the tables shown in the Contract, but subsequent payments will increase or decrease depending on the net investment performance of the underlying mutual funds chosen for investment during the annuity period. If the annuitant dies before the maturity date of the Contract, the Company will pay a death benefit. Before annuity or income payments begin, however, Contract owners may transfer all or part of their contract value from one subaccount to another without fees, penalty or charge. There currently are no restrictions on the frequency of transfers, but the Company reserves the right to limit transfers to no more than one in any six month period.

6. The Company will assess an annual contract administrative charge of $30 for the Contracts. This charge will not be assessed after an annuity payout has begun, at the death of the annuitant or the Contract owner, or if the Contract owner has a contract value greater than $40,000 on the assessment date. The Company also will assess the subaccount of Fund ABD II a daily asset charge at an effective rate of 0.15% per annum for administrative expenses. These charges cannot be increased during the life of the Contract. These charges represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts. The Company will not profit from these charges.

7. The Company will deduct certain state and local government premium taxes. These deductions may be made when the Contract is purchased, when the Contract is surrendered, when retirement payments begin, or upon payment of a death benefit. Currently these taxes range from 0.5% to 5% and depend on the state in which the Contract owner resides or the Contract was sold.

8. To compensate itself for assuming mortality and expense risks, the Company will assess the subaccount of Fund ABD II an amount equal on an annual basis to 1.25% of the daily net asset value of the subaccount. Approximately 0.9375% of the daily net asset value of the subaccount is for assumption of the mortality risk, and 0.3125% is for assumption of the expense risk. These charges cannot be increased during the life of the Contracts.

9. The Company assumes certain mortality risks by its contractual obligation to continue to make annuity payments for the life of the annuitant, under annuity options that involve life contingencies. The Company assumes additional mortality and expense risks by its contractual obligation to pay the death benefit if either the annuitant or the Contract owner dies prior to the maturity date. The Company assumes an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. Although the Company does not expect to profit from the mortality and expense risk charge, any profit would be available to the Company for any proper corporate purpose, including payment of distribution expenses.

10. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A contingent deferred sales charge (''Surrender Charge'') will be assessed upon certain full or partial surrenders. A Surrender Charge applies if all or part of the contract value is surrendered during the first seven years following a purchase payment. The Surrender Charge starts at 6% of a purchase payment in the first and second years following the purchase payment, and reduces to 5% in the third and fourth years, 4% in the fifth year, 3% in the sixth year, and 2% in the seventh year following the payment. There is no charge after eight years following a purchase payment.

11. After the first contract year, Contract owners may surrender up to 10% of their contract value (as of the beginning of the contract year) without incurring a Surrender Charge (the ''Free Withdrawal Amount''). The Free Withdrawal Amount applies to partial surrenders of any amount and to full surrenders, except where the contract value is directly transferred to annuity contracts issued by other financial institutions.

12. There is no charge on contract earnings, which equal: (1) The contract value; minus (2) the sum of all purchase

payments received that have not been previously surrendered; minus (3) the Free Withdrawal Amount, if applicable. To determine the amount of any Surrender Charge, surrenders will be deemed to be taken first from any applicable Free Withdrawal Amount, next from purchase payments (on a first-in, first-out basis), and finally from contract earnings (in excess of any Free Withdrawal Amount). The Company does not expect that the Surrender Charge will cover sales and distribution expenses incurred in connection with the Contracts.

13. Prior to a Contract's maturity date, all or part of the contract value may be transferred between the subaccount without penalty, fee, or charge. Although there currently are no restrictions on the frequency of transfers, the Company reserves the right to limit transfers to no more than one in any six-month period.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to do so.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expenses risk charge from the assets of the Accounts under the Contracts.

4. Applicants state that the terms of the relief requested with respect to any Future Contracts funded by the Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants represent that the Future Contracts to be funded by the Accounts will be materially similar to the Current Contracts. Applicants state that without the requested relief, the Company would have to request and obtain exemptive relief for the Accounts to fund each Future Contract. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application, and that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the Applicants' need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources.

5. Applicants represent that the 1.25% mortality and expense risk charge for the Contracts is reasonable in relation to the risks assumed by the Company under the Contracts, and is within the range of industry practice for comparable annuity contracts, based on a review of the publicly available information regarding products of other companies. The Company represents that it will maintain at its principal offices, and make available upon request to the Commission or its staff, a memorandum detailing the variable annuity products analyzed, and the methodology used in, and the results of, the comparative review.

6. Applicants acknowledge that the Surrender Charge may be insufficient to cover all distribution costs, and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Surrender Charge. Notwithstanding this, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Fund ABD II, the Other Accounts,[1] and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its home office and will be available to the Commission or its staff upon request.

7. The Company also represents that the Accounts will invest only in underlying mutual funds which have undertaken to have a board of directors or a board of trustees, as applicable, a majority of whom are not ''interested persons'' of such Accounts within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 (under the 1940 Act) to finance distribution expenses.

[1] Applicants represent that they will amend the application during the notice period to include the Other Accounts.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10469 Filed 4–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37138; File No. SR–Amex-96–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange Board of Governors

April 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Articles II, III, and XII of the Exchange Constitution relating to the Board of Governors (''Board''), including the appointment of a second Vice-Chairman, the inclusion of the second highest ranking Exchange executive officer on the Board, and the eligibility of Governors for nomination to a third term. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

Board Position Amendments

Article II, Section 2 of the Exchange Constitution currently calls for the appointment of one Vice-Chairman from among the Exchange members serving on the Board, and it has been customary over the years to rotate between the trading floor and ''upstairs'' communities as the source of that Vice-Chairman. Given the importance of both these communities to the Exchange, it is desirable to be able to have one Vice-Chairman from each constituency. Accordingly, the proposed amendments will permit (but not require) the appointment of two member Vice-Chairmen, and will specify that if there are two Vice-Chairmen, one must come from the trading floor and one from upstairs.

The Exchange would also like to create a new position of Executive Vice-Chairman, who will be the second highest ranking officer of the Exchange and who will serve as a member of the Board of Governors. If the Executive Vice-Chairman position is not filled and the Exchange has a President, then the President will serve on the Board.[1] If at any time neither of those offices are filled, then the Chief Executive would be the only non-elected member of the Board.

Third Term Amendment

It has become apparent that at times the special limitations in the Constitution relating to which kind of Governors can serve third terms at any given time could be a limitation on having the best possible slate of public Governor candidates. Accordingly, it is proposed that the Exchange increase from two to three the maximum number of third term Governors who can be representatives of the public. There is no change to the overall limitation that no more than four third-term Governors may be serving at one time.

2. *Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–14 and should be submitted by May 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

[FR Doc. 96–10493 Filed 4–26–96; 8:45 am]

BILLING CODE 8010–01–M

[1] The Exchange is also proposing to amend Article XII, Section 2 of the Exchange Constitution, Composition of the Emergency Committee (''Committee''). This Section currently provides that the Committee is to be composed of the Chairman of the Board of Governors, the Vice-Chairman of the Board, and the three senior members of the Board who are regular, options, principal, associate or allied members of the Exchange (''Trading Members''). The proposed amendment would change the composition of the Committee such that any Executive Vice-Chairman or President would be on the Committee, and thus only two Trading Members would be on the Committee.

[2] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Computer Matching Program (SSA/Health Care Financing Administration (HCFA))

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, this notice announces a computer matching program that SSA plans to conduct with HCFA.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of

1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: April 16, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) with the Health Care Financing Administration (HCFA)

A. Participating Agencies

SSA and HCFA.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions under which HCFA agrees to the disclosure of Medicaid facility admission and billing data. SSA will use the match results to verify the eligibility of, and the correct amount of benefits payable to, individuals under the supplemental security income (SSI) program, which provides payments under title XVI of the Social Security Act (the Act) to aged, blind and disabled recipients with income and resources below levels established by law and regulations, and federally administered supplementary payments under Section 1616 of the Act, including payments under section 212 of Pub. L. 93–66, 87 Stat. 152. Admission to a Medicaid facility would, under certain circumstances, subject the amount of SSI which an individual could receive for any month throughout which the individual is in such a facility to specific statutory limitations.

C. Authority for Conducting the Matching Program

Section 1611(e) (1) (B) and 1631 (f) of the Act (42 U.S.C. 1382(e) (1) (B) and 1383 (f)).

D. Categories of Records and Individuals Covered by the Match

SSA will provide HCFA with identifying information with respect to applicants for and recipients of SSI benefits extracted from SSA's Supplemental Security Income Record to identify individuals potentially subject to benefit reductions or termination of payment eligibility under the statutory provisions listed above. HCFA will match the SSNs, names, date of birth, sex and race on this finder file with its Medicaid Statistical Information System File and provide a reply file of SSNs common to both files. HCFA will also provide SSA with the Medicaid facility name, address and telephone number for SSN's common to both files.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after a copy of the agreement, as approved by the Data Integrity Boards of both agencies, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement) or 30 days after publication of this notice in the Federal Register, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 96–10488 Filed 4–26–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2372]

United States International Telecommunications Advisory Committee, Radiocommunications Sector, Study Group 8—Mobile Services Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 8—Mobile Services will meet on 16 May 1996 at 10 AM to 1 PM, in room 3524 at the Department of State, 2201 C Street, N.W., Washington, DC 20520.

Study Group 8 studies and develops recommendations concerning technical and operating characteristics of mobile, radiodetermination, amateur and related satellite services.

This May meeting will continue preparations for the October 28, 1996 international meeting of Study Group 8. It will also review activities concerning the Inter-American Telecommunication Commission Permanent Consultative Committee III—Radiocommunications, and begin preparations for the August 19–23 meeting of PCC.III.

A meeting of U.S. Working Party 8E dealing with the Amateur Radio service will be convened by Mr. Paul Rinaldo beginning at 1:30 P.M. in room 3524.

Members of the General Public may attend these meetings and join in the discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: If you wish to attend please send a fax to 202–647–7407 not later than 24 hours before the scheduled meeting. On this fax, please include subject meeting, 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 your picture on it, 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: April 18, 1996.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunication Sector.

[FR Doc. 96–10449 Filed 4–26–96; 8:45 am]

BILLING CODE 4710–45–M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Proposed Conversion of the Tennessee Valley Authority Bellefonte Nuclear Power Plant

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) for the proposed conversion and operation of the unfinished Bellefonte Nuclear Power Plant as a fossil-fueled power plant. Bellefonte Nuclear Power Plant is located near the cities of Hollywood and Scottsboro in northeast Alabama. The proposed action would undertake conversion, modification and addition of equipment; the construction of new facilities; and the subsequent operation of the Bellefonte facility as a fossil-fueled power plant with an approximate electric capacity between 450 megawatts (MW) and 3,000 MW, dependent on the conversion alternative selected. Fossil fuels to be considered are natural gas, coal, and petroleum

coke. Plant conversion technologies to be considered in detail include coal gasification, combustion turbine combined cycle, pressurized fluidized bed combustion, and chemical coproduction.

The Department of Energy (DOE) will act as a cooperating agency for development and review of the environmental impact statement to the extent that the proposed site could be a demonstration site for technologies, such as integrated gasification combined cycle modules and advanced combustion turbines.

The ownership and operation of some facilities at Bellefonte may include entities in addition to TVA under some alternatives.

DATES: Comments on the scope of the EIS must be postmarked no later than May 29, 1996. TVA plans to conduct a public meeting in the vicinity of the Bellefonte plant in May 1996 to discuss the project and to obtain comments on the scope of the EIS. The time and location of this meeting will be announced in local news media.

ADDRESSES: Written comments should be sent to Dale Wilhelm, National Environmental Policy Act Liaison, Tennessee Valley Authority, mail stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may also be e-mailed to gaskew@mhs-tva.attmail.com.

FOR FURTHER INFORMATION CONTACT: Roy Carter, Environmental Research Center, Tennessee Valley Authority, mail stop CEB 4C, Muscle Shoals, Alabama 35662–1010. E-mail may be sent to rvcarter@aol.com.

SUPPLEMENTARY INFORMATION:

Background

Construction began on TVA's Bellefonte Nuclear Plant in 1974. The plant is a pressurized water reactor design with two units. The nuclear steam supply system was designed and supplied by Babcock & Wilcox, Inc. A final EIS was issued for the Bellefonte Nuclear Plant in 1974. Completion of construction was deferred in 1988 because TVA power system requirements grew slower than projected.

TVA's Integrated Resource Plan

TVA's integrated resource plan and programmatic environmental impact statement, *Energy Vision 2020,* was completed in December 1995. *Energy Vision 2020* contains recommendations for meeting the future TVA power system capacity requirements. The short-term action plan of *Energy Vision 2020* recommended the following concerning the unfinished Bellefonte Nuclear Plant: ''Converting the Bellefonte Nuclear Plant to a combined cycle plant utilizing natural gas or gasified coal as the primary fuel has been identified as one of the most viable alternatives. Such an alternative provides the opportunity to utilize a substantial portion of the Bellefonte non-nuclear plant equipment. However, there is a degree of uncertainty and market risk associated with this alternative which requires further in-depth engineering and financial examination.''

Conversion Alternatives

The conversion alternatives expected to be addressed in this EIS are described below:

Pressurized Fluidized Bed Combustion (PFBC)

The PFBC alternative would consist of 8 modules, each consisting of one PFBC unit, one advanced combustion turbine, and one heat recovery steam generator (HRSG). The steam produced by the 8 modules would be routed to Bellefonte's existing steam turbine-generator systems. The net electric output of this alternative is expected to be 2,400 MW.

Natural Gas Combined Cycle (NGCC)

The NGCC alternative would consist of 8 to 10 modules, each consisting of one combustion turbine and one HRSG. The steam produced would be routed to Bellefonte's existing steam turbine-generator systems. The net electric output of this alternative is expected to be 2,600 MW.

Integrated Gasification Combined Cycle (IGCC)

The IGCC alternative would consist of 8 modules, each consisting of one coal gasification plant, one advanced combustion turbine, and one HRSG. The steam produced would be routed to Bellefonte's existing steam turbine-generator systems. The net electric output of this alternative is expected to be 2,720 MW.

Integrated Gasification Combined cycle (IGCC) With Chemical Coproduction

This alternative would consist of 4 coal gasification plants, one advanced combustion turbine, one HRSG, and chemical production plants. Approximately 70 percent of the synthesis gas produced by the 4 coal gasification plants would be routed to the chemical production plants. The remaining synthesis gas would serve the combustion turbine. The net electric output of this alternative is expected to be 450 MW.

Combination NGCC and IGCC Alternative

This alternative would combine the configuration of NGCC and IGCC with chemical coproduction in a phased manner. The first phase of this alternative would consist of a 335 MW NGCC demonstration module consisting of one natural gas-fired advanced combustion turbine and one HRSG. The steam produced would be routed to Bellefonte's existing steam turbine-generator system (unit 2). In the next phase, a 340 MW IGCC facility would be constructed. This IGCC facility would consist of one coal gasification unit, one advanced combustion turbine, and a HRSG. The steam produced would be routed to the existing steam turbine-generator (unit 2). After construction of the IGCC facility, an IGCC chemical coproduction facility may be constructed. The coproduction facility would consist of 3 coal gasification units and related chemical production plants. Excess steam would be routed to the existing steam turbine-generator system (unit 2). Net electric output at the end of this phase would be 785 MW. In the final phase, an NGCC facility would be added. This facility would consist of 5 to 8 natural gas-fired modules each consisting of one advanced combustion turbine and one HRSG. The steam produced would be routed to the other existing steam turbine-generator system (unit 1). Net electric output at the end of this final phase is expected to be approximately 2,600 MW.

Other Conversion Alternatives to be Considered

Certain emerging technologies may also be addressed as possible conversion alternatives. For example, the use of natural gas fired heaters to supply either high temperature pressurized water or a high temperature heat transfer fluid to the existing nuclear steam supply system steam generators may be analyzed. The use of a coal refinery as a companion process to gasification may also be analyzed. The coal refinery process would produce chemical products and supply char to an integrated gasification combined cycle process.

No Action Alternative

As discussed in TVA's Integrated Resource Plan, the no action alternative to conversion of Bellefonte to a fossil-fuel power plant would be the continued deferral of the Bellefonte plant. TVA would continue to explore entering into arrangements with outside entities to complete these units as

nuclear facilities in partnership with TVA. Further environmental review, if any, beyond the existing final EIS for Bellefonte Nuclear Units 1 and 2 for operation as a nuclear facility would coincide with consideration of such a proposed arrangement.

Proposed Issues to be Addressed

The EIS will describe the existing environmental, cultural, and recreational resources that may be potentially affected by construction and operation of the project. TVA's evaluation of potential environmental impacts due to project construction and operation will include, but not necessarily be limited to the impacts on air quality, water quality, aquatic ecology, endangered and threatened species, wetland resources, aesthetics and visual resources, noise, land use, cultural resources, fuel transportation, and socioeconomic resources. TVA's Integrated Resource Plan, *Energy Vision 2020,* identifies and evaluates TVA's need for additional energy resources.

Air quality will likely be one of the most important potential impact areas. Air pollutant emissions from fossil fuel combustion would include nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide. Because the proposed project is to be located on a previously disturbed site, the issues of terrestrial wildlife, vegetation, and land use are not likely to be important.

Natural gas is one of the candidate conversion fuels. However, there is currently no supply of natural gas in the vicinity of the Bellefonte plant. Therefore, the EIS will assess the construction and operation of a natural gas pipeline by considering several alternative pipeline corridors.

The results from evaluating the potential environmental impacts related to these issues and other important issues identified in the scoping process together with engineering and economic considerations will be used in selecting a preferred alternative for the Bellefonte conversion.

Scoping Process

Scoping, which is integral to the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of title significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate draft EIS are avoided. TVA's NEPA procedures require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in a draft EIS will be determined, in part, from written comments submitted by mail, and comments presented orally or in writing at a public meeting. The preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. TVA considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant study and new matters may be identified for potential evaluation.

The scoping process will include both interagency and public scoping. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice and/or attend a public meeting in May that will be announced in area news media. Federal and state agencies to be included in the interagency scoping include U.S. Department of Energy, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Alabama Department of Environmental Management, and Alabama Historical Commission.

Upon consideration of the scoping comments, TVA will develop a range of alternatives and identify important environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be announced, written comments on the draft solicited, and information about possible public meetings to comment on the draft EIS will be published at a future date. TVA expects to release a final EIS by October 1997.

Dated: April 23, 1996.

Kathryn J. Jackson,

Senior Vice President, Resource Group.

[FR Doc. 96–10515 Filed 4–26–96; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending April 19, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1276
Date filed: April 17, 1996
Parties: Members of the International Air Transport Association
Subject:
TC23 Mail Vote 790
Europe-Japan/Korea Amending Reso
Intended effective date: April 29, 1996

Docket Number: OST–96–1277
Date filed: April 17, 1996
Parties: Members of the International Air Transport Association
Subject:
TC2 MV/P 0532 dated March 22, 1996 r-1 - r-17
TC2 MV/P 0533 dated March 22, 1996 r-18 - 21
Within Europe Resolutions
Intended effective date: May 1, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–10521 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 19, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1261
Date filed: April 15, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 13, 1996
Description: Application of Sobelair N.V./S.A., pursuant 49 U.S.C. 41302 and Subpart Q of the Regulations, applies for a foreign air carrier permit, to provide, commencing on or about May 3, 1996, charter foreign air transportation of persons, property, and mail between any point in Belgium or the United States via intermediate points to any point in the United States or any point in Belgium and beyond, respectively, and other charters subject to 14 CFR Part 212.

Docket Number: OST–96–1274
Date filed: April 17, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 15, 1996

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and 41108 and Subpart Q of the Regulations, applies for renewal of temporary authority to provide foreign air transportation on certain transatlantic routes named on segments 3, 9 and 11 of its Certificate of Public Convenience and Necessity for Route 616, as issued by Order 91–10–33 (October 25, 1991) in the Delta-Pan Am Route Transfer.

Docket Number: OST–96–1275

Date filed: April 17, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 15, 1996

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and 41108, and Subpart Q of the Regulations, applies for renewal of its Certificate of Public Convenience and Necessity for Route 617, authorizing Delta to engage in foreign air transportation of persons, property and mail between the terminal points New York City, New York/Newark, New Jersey and Ottawa/Montreal, Canada. Delta's certificate for Route 617 expires on October 17, 1996. Delta requests renewal of its certificate for a term of indefinite duration.

Docket Number: OST–96–1279

Date filed: April 18, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 16, 1996

Description: Application of Orient Avia Airlines, pursuant to 49 U.S.C. 41301, and Subpart Q, requests a foreign air carrier permit, to operate scheduled and charter services carrying passengers, cargo and/or mail between points in Russia and Honolulu, Hawaii.

Docket Number: OST–96–1281

Date filed: April 19, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 17, 1996

Description: Application of Sun Pacific International, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, seeks to amend its certificate of public convenience and necessity (Interstate air transportation), granted by Order 96–3–35, to eliminate the single aircraft restriction contained in its certificate; and Motion to Shorten the Answer date until May 10, 1996.

Docket Number: OST–96–1282

Date filed: April 19, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 17, 1996

Description: Application of Sun Pacific International, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, seeks to amend its certificate of public convenience and necessity (foreign air transportation), granted by Order 96–3–35, to eliminate the single aircraft restriction contained in its certificate: Motion to shorten the Answer period May 10, 1996.

Docket Number: OST–96–1287

Date filed: April 19, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 17, 1996

Description: Application of USAir, Inc., pursuant to 49 U.S.C. 41102 and 41108, and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 613, authorizing USAir to engage in scheduled foreign air transportation of persons, property and mail between the coterminal points Washington, D.C./Baltimore, Maryland and Montreal/Ottawa, Canada. USAir requests that its certificate, which is set to expire on October 17, 1996, be renewed for a term of unlimited duration.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–10520 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

RTCA, Inc. Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held May 15–16, 1996, beginning at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Report of Working Group Activities: a. Working Group 1 Report (Operations Working Group); b. Working Group 2 Report (Technical Working Group); c. Working Group 3 Report (CDTI Working Group); (4) Review of Latest Version of the MASPS; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 24, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–10516 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–02–U–00–EUG) to Use the Revenue From a Passenger Facility Charge (PFC) at Eugene Airport/ Mahlon Sweet Field, Submitted by the City of Eugene, Eugene, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Eugene Airport/Mahlon Sweet Field under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 29, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Susan Weixelman, at the following address: City of Eugene, 28855 Lockheed Drive, Eugene, OR 97402.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Eugene Airport/ Mahlon Sweet Field, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Read, (206) 227–2661; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056. The

application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–U–00–EUG) to use PFC revenue at Eugene Airport/Mahlon Sweet Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 19, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the City of Eugene, Eugene, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 1, 1996.

Background Information

The original application was approved August 31, 1993, for a total of $3,729,699.00. This application is to obtain ''use'' authority on projects previously approved under ''impose only'' authority.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: November 1, 1993.

Proposed charge expiration date: December 1, 1998.

Total estimated PFC revenues: $350,000.00.

Brief description of proposed project: Land acquisition—Phase I.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: As approved in the Record of Decision dated August 31, 1993.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eugene Airport/Mahlon Sweet Field.

Issued in Renton, Washington on April 19, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–10518 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–02–U–00–HLN) to Use the Revenue From a Passenger Facility Charge (PFC) at Helena Regional Airport, Submitted by the Helena Regional Airport Authority, Helena, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Helena Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before may 29, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration Building, Suite 2; 2725 Skyway Drive; Helena, MT 59601.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ronald Mercer, Airport Director at the following address: Helena Regional Airport Authority, 2850 Skyway Drive, Helena, MT 59601.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Helena Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David Gabbert, (406) 449–5271; Helena Airports District Office, HLN–ADO; Federal Aviation Administration Building Suite 2; 2725 Skyway Drive; Helena, MT 59601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–U–00–HLN) to use PFC revenue at Helena Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 19, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Helena Regional Airport Authority, Helena, Montana, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 27, 1996.

Background Information

The original application was approved January 15, 1993, for a total of $1,056,190.00. This application is to obtain ''use'' authority on projects previously approved under ''impose only'' authority.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: April 1, 1993.

Proposed charge expiration date: July 1, 1999.

Total estimated PFC revenues: $962,828.00.

Brief description of proposed project: Overlay Runway 9/27 with porous friction course.

Class or classes or air carriers which the public agency has requested not be required to collect PFC's: Part 121 nonscheduled charter carriers as identified in the Record of Decision dated January 14, 1993.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Helena Regional Airport.

Issued in Renton, Washington on April 19, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–10517 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#96–02–U–00–GJT) To Use the Revenue From a Passenger Facility Charge (PFC) at Walker Field Airport, Submitted by the Walker Field Airport Authority, Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Walker Field Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 29, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn Street, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Marcel J. Theberge, A.A.E., at the following address: Walker Field Airport Authority, 2828 Walker Field Drive, Suite 211, Grand Junction, CO 81506.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Walker Field Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn Street, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–U–00–GJT) to use PFC revenue at Walker Field Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 19, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Walker Field Airport Authority, Grand Junction, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 20, 1996.

Background Information

The original application was approved January 15, 1993, for a total of $1,812,000.00. This application is to obtain ''use'' authority on projects previously approved under ''impose only'' authority.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: April 1, 1993.

Proposed charge expiration date: $267,000.00.

Brief description of proposed project: Rehabilitate Taxiway ''A''; Install precision approach path indicator (PAPI), Runway 11; Install visual approach descent indicators (VADI) and runway end identifier lights (REIL), Runway 4/22; Rehabilitate Runway 4/22; Install fencing.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: As approved in the Record of Decision dated January 15, 1993.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walker Field Airport.

Issued in Renton, Washington on April 19, 1996.

David A. Field,

Manger, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–10519 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Docket No. AB–167 (Sub-No. 1159)]

Consolidated Rail Corporation—Abandonment—in Union County, NJ

The Board has issued a certificate authorizing Consolidated Rail Corporation (Conrail) to abandon its 1.03-mile Sound Shore Industrial Track from milepost 0.29 to milepost 1.32, in Linden, Union County, NJ. The abandonment was granted subject to standard employee protective conditions.

The abandonment certificate will become effective 30 days after this publication unless the Board finds that a financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued.

Requests for public use conditions must be filed with the Board and Conrail within 10 days after publication.

Any offers of financial assistance must be filed with the Board and Conrail no later than 10 days from the publication date of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: ''Office of Proceedings, AB–OFA.'' Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10904 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: April 23, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–10539 Filed 4–26–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (the Board). This decision relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 22, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Customs Service (CUS)

OMB Number: 1515–0045.

Form Number: CF 7533–C.

Type of Review: Extension.

Title: U.S. Customs In-Transit Manifest.

Description: The CF 7533 is used by railroads to transport merchandise (products and manufactures) of the United States from one port to another port in the United States through Canada.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15 hours.

OMB Number: 1515–0059.

Form Number: CF 1303.

Type of Review: Extension.

Title: Ship's Stores Declaration.

Description: 19 U.S.C. 1446 allows ''ship's stores'' to remain on board a vessel without payment of duty. 19 U.S.C. 1431 allows Customs, by regulation, to prescribe how goods are to be manifested. The CF 1303 is used for audit cargo purposes so that the goods can be easily distinguished from other cargo. Respondents are master's, operators or owners to vessels.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (each transaction).

Estimated Total Reporting Burden: 26,000 hours.

OMB Number: 1515–0079.

Form Number: CF 4790.

Type of Review: Extension.

Title: Report of International Transportation of Currency or Monetary Instruments.

Description: The CF 4790 establishes a record of currency and negotiable instruments entering and departing the United States. The information is shared by Federal, state, local or foreign enforcement agencies to establish financial audit trails, which have a high degree of usefulness in the investigation of criminal, civil and regulatory violations.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 214,500.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 35,757 hours.

OMB Number: 1515–0117.

Form Number: None.

Type of Review: Extension.

Title: Establishment of a Container Station.

Description: A container station that is independent of either an importing carrier or a bonded carrier may be established at any port or portion thereof, where under the jurisdiction of a port director. This information collection is the application to establish such a container station.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 177.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 354 hours.

OMB Number: 1515–0121.

Form Number: None.

Type of Review: Extension.

Title: Establishment of a Bonded Warehouse.

Description: Owners and lessees desiring to establish a bonded warehouse must make written application to the port director for the warehouse, along with any applicable fee and any other documents required.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 45.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 135 hours.

OMB Number: 1515–0127.

Form Number: None.

Type of Review: Extension.

Title: Application for Bonding of Smelting.

Description: A manufacturer engaged in smelting and/or refining of metal-bearing materials shall submit an application for the bonding of the plant to the port director giving the location of the plant and the nature of the work performed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 6.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 576 hours.

OMB Number: 1515–0133.

Form Number: None.

Type of Review: Extension.

Title: Application to Receive Free Materials in a Bonded Manufacturing Warehouse.

Description: The proprietor of a bonded manufacturing warehouse must make application to the Customs port director to enter into that warehouse any domestic merchandise except merchandise which is subject to IRS tax, and which is to be used in connection with the manufacture of articles permitted to be manufactured.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 6.

Estimated Burden Hours Per Respondent: 30 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1515–0134.

Form Number: None.

Type of Review: Extension.

Title: Bonded Warehouses—Alterations, Suspensions, Relocations and Discontinuance.

Description: The proprietor of a bonded warehouse may wish to alter, relocate, or temporarily suspend all or part of a bonded space or discontinue the bonded status of the warehouse. The port director may approve these changes upon receipt of a written application by the proprietor.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 110.

Estimated Burden Hours Per Respondent: 1 hour, 10 minutes. Frequency of Response: On occasion.

Estimated Total Reporting Burden: 193 hours.

OMB Number: 1515–0138.

Form Number: None.

Type of Review: Extension.

Title: Permit to Transfer Containers to a Container Station.

Description: In order for a container station operator to receive a permit to transfer a container or containers to a container station, he/she must furnish a list of names, addresses, etc., of the persons employed by him/her upon demand of the port director.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 400 hours.

OMB Number: 1515–0194.

Form Number: None.

Type of Review: Extension.

Title: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

Description: Various products exported and brought back to the United States are eligible for reduced treatment under the HTSUS, provided certain conditions are met. The declaration by the owner, importer, consignee or agent states that these conditions have been met.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 750.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 575 hours.

Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management

and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–10494 Filed 4–26–96; 8:45 am].

BILLING CODE 4820–02–P.

Submission to OMB for Review; Comment Request

April 19, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0004.

Form Number: IRS Form SS–8.

Type of Review: Extension.

Title: Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

Description: This form is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal employment taxes and income tax withholding. IRS uses the information on Form SS–8 to make the determination.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 9,730.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—34 hr., 55 min.

Learning about the law or the form—12 min.

Preparing and sending the form to the IRS—46 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 349,210 hours.

OMB Number: 1545–0146.

Form Number: IRS Form 2553.

Type of Review: Extension.

Title: Election by a Small Business Corporation.

Description: This form is filed by a qualifying corporation to elect to be an S corporation as defined in Internal Revenue Code (IRC) section 1361. This information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 13 min.

Learning about the law or the form—3 hr., 5 min.

Preparing, copying, assembling, and sending the form to the IRS—3 hr., 18 min.

Frequency of Response: Other (once).

Estimated Total Reporting/ Recordkeeping Burden: 6,305,000 hours.

OMB Number: 1545–1394.

Form Number: IRS Form 1120–SF.

Type of Review: Revision.

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

Description: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be establishment by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—17 hr., 56 min.

Learning about the law or the form—.3 hr., 5 min.

Preparing the form—6 hr., 19 min.

Copying, assembling, and sending the form to the IRS—.48 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 28,140 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–10495 Filed 4–26–96; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

April 23, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below by the May 10, 1996 start-up date, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by April 29, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 96–012–G.

Type of Review: Revision.

Title: Internal Revenue Service Notice Redesign Survey/Experimental Design.

Description: The IRS Notice Redesign Team has been charged with redesigning all of IRS's notices, to make them easier to understand and less burdensome to taxpayers. Elements of their redesign efforts are the direct result of input already received from taxpayers in previous qualitative studies conducted by Value Tracking.

The Core Business System for Value Tracking has developed a survey instrument to rate the level of satisfaction of the redesigned notices. In addition, Value Tracking is proposing to conduct an experimental design to compare relative satisfaction levels of the old notices with the new ones.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,340.

Estimated Burden Hours Per Respondent:

Advance Letter—2 minutes.

Initial Mailing

—Intro Letter—2 minutes.
—Questionnaire—5 minutes.

Postcard Reminder—1 minute.

Second Mailing

—Intro Letter—2 minutes.
—Questionnaire—5 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 860 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–10496 Filed 4–26–96; 8:45 am]

BILLING CODE 4830–01–P

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Notice of Meeting

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on May 17, 1996 in Louisville, Kentucky. The session will be held from 10:00 a.m.–3:00 p.m. in Parlor A, Medallion Ballroom, The Seelbach Hotel, 500 Fourth Avenue, Louisville, Kentucky (Tel. (502) 585–3200.)

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Tel. (202) 622–0220.

SUPPLEMENTARY INFORMATION: The provisional agenda to be considered at the meeting is as follows:

1. The remote entry filing program: status and prospects
2. Courier issues under the Customs Modernization Act
3. The role of Regulatory Audit and the Account Manager
4. Current broker issues
   a. The new broker regulations
   b. Improved efficiency in issuance of permits
   c. Privatization of the broker examination process
5. How Customs will work with the smaller importers (not in the top 1000)

The provisional agenda may be amended prior to the meeting. The Committee, in its discretion, may take up other matters, time permitting.

The meeting is open to the public. However, participation in the discussion is limited to Committee members and Treasury and Customs staff. It is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give notice by contacting Ms. Theresa Manning no later than May 10, 1996 at 202–622–0220.

Dated: April 24, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–10490 Filed 4–26–96; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Proposed Collection; Comment Request for Regulations PS–264–82

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–264–82 (TD 8508), Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders. (Regulation §§ 1.1367–1(f), 1.1368–1(f)(2), 1.1368–1(f)(3), 1.1368–1(f)(4), 1.1368–1(g)(2)).

DATES: Written comments should be received on or before June 28, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders.

OMB Number: 1545–1139.

Regulation Project Number: PS–264–82 Final.

Abstract: The regulation provides the procedures and the statements to be filed by S corporations for making the election provided under Internal Revenue Code section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filed will be used to verify that taxpayers are complying with the requirements imposed by Congress.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 200 hours.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the 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 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 technology.

Approved: April 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–10545 Filed 4–26–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

U.S. Participation at Lisbon Expo '98

AGENCY: United States Information Agency.

ACTION: Seeking contributions.

SUMMARY: The United States Information Agency announces that the United States intends to participate at Lisbon Expo '98, a World Fair officially

sanctioned by the Bureau of International Expositions, to be held in Lisbon, Portugal from May 22–September 30, 1998. Participation will entail the design, fabrication and operation of a 12,000 square foot U.S. Pavilion focusing on the expo theme, ''The Oceans—A Heritage for the Future.'' Financing is being sought through cash and in kind contributions from the private sector, as well as state and local governments and other organizations.

FOR FURTHER INFORMATION CONTACT: Organizations wishing to contribute to, or participate in, this project should contact the United States Information Agency's Lisbon Expo Coordinator, Mr. James E. Ogul, by mail at U.S. Information Agency, E/SP, 301 Fourth St., S.W., Rm. 314, Washington, DC 20547, telephone: 202–260–6511, Fax: 202–401–5618, or the internet: JOGUL@USIA.GOV.

John G. Busch,

Chief, Products and Services Division, Office of Contracts.

[FR Doc. 96–10523 Filed 4–26–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0166.

Title and Form Number: Application for Ordinary Life Insurance (Age 70), VA Form 29–8701.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by the policyholder to apply for replacement insurance for Modified Life Reduced at Age 70.

Current Actions: The information collected on the form is used by VBA personnel to initiate the granting of coverage for which applied.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 350 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,200.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10454 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0032.

Title and Form Number: Veterans's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information requested is necessary for VBA to determine if it is economically feasible for a veteran to reside in specially adapted housing and to compute the proper grant amount.

Current Actions: Title 38, U.S.C., Chapter 21, authorizes a VA Program of grants for specially adapted housing for disabled veterans. The chapter specifically outlines those determinations that must be made by VA before such grant is approved for a particular veteran. VA Form 26–4555c is used to collect information that is necessary for VBA to meet the requirements.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 115 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 460.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: Apri 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10455 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: None assigned.

Title and Form Number: Direct Deposit Enrollment, VA Form 24–0296 (Test).

Type of Review: New collection.

Need and Uses: The form will be used to gather the necessary information required to enroll VA Compensation and Pension beneficiaries in the Direct Deposit/Electronic Funds Transfer (DD/EFT) program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

Current Actions: Regulatory authority contained in 31 CFR 209 provides the Secretary of Veterans Affairs the right to authorize the appropriate disbursing officer to make a recurring Federal payment to a beneficiary by sending to the financial institution designated by the beneficiary a payment that is drawn in favor of that institution and is for credit to the account of the beneficiary, in lieu of payment by check drawn to his order. To accomplish this, the beneficiary to whom the recurring payment will be made should provide VA with a written request on a form promulgated by the Treasury Department or such agency-adapted form for the purpose which designates the financial institution.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,800 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Responses: One-time.

Estimated Number of Respondents: 84,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the reports should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10456 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–M

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0086.

Title and Form Number: Request for Determination of Eligibility and Available Loan Guaranty Entitlement, VA Form 26–1880.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is completed by an applicant to establish eligibility for Loan Guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen. The information furnished on VA Form 26–1880 is necessary for VBA to make a determination on whether or nor the applicant is eligible for Loan Guaranty benefits.

Current Actions: The form used by VBA to determine an applicant—s eligibility for Loan Guaranty benefits, and the amount of entitlement available. Each completed form is normally accompanied by proof of military service. If eligible, VBA will issue the applicant a Certificate of Eligibility to be used in applying for Loan Guaranty benefits.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 117, 093 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 468,372.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10457 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0066.

Title and Form Number: Request to Employer for Employment Information in Connection with Claim for Disability Benefits, VA Form 29–459.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to request employment information in connection with a claim for disability insurance benefits.

Current Actions: The information collected on the form is used by VBA to establish the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 862 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10458 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–P

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, in Room 930, from May 28, 1996, through May 30, 1996. The meeting will convene at 8:30 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits deliver, including, but not limited to, the following: education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: April 22, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–10459 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–M

Notices

Federal Register
Vol. 61, No. 83
Monday, April 29, 1996

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

Animal and Plant Health Inspection Service

[Docket No. 96–019–1]

AgrEvo USA Company; Receipt of Petition for Determination of Nonregulated Status for Soybeans Genetically Engineered for Glufosinate Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for certain soybeans genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these soybeans present a plant pest risk.

DATES: Written comments must be received on or before June 28, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–019–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–019–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On March 8, 1996, APHIS received a petition (APHIS Petition No. 96–068–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for soybeans designated as Glufosinate Resistant Soybean (GRS) Transformation Events W62, W98, A2704–12, A2704–21, and A5547–35 that have been genetically engineered for resistance, or tolerance, to the herbicide glufosinate. The AgrEvo petition states that the subject GRS transformation events should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, GRS transformation events W62 and W98 have been genetically engineered to contain the *bar* gene derived from *Streptomyces hygroscopicus* and the *gus* gene derived from *Escherichia coli.* The *bar* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to glufosinate, and the *gus* gene encodes the enzyme B-glucuronidase, which is useful as a selectable marker in the transformation process. Expression of these added genes is controlled in part by gene sequences from the plant pests *Agrobacterium tumefaciens,* alfalfa mosaic virus (AMV), and cauliflower mosaic virus (CaMV). GRS transformation events A2704–12, A2704–21, and A5547–35 contain a synthetic version of the *pat* gene derived from *Streptomyces viridochromogenes,* which encodes the PAT enzyme and confers tolerance to glufosinate. Expression of the synthetic *pat* gene is controlled by a 35S promoter and terminator derived from CaMV. The particle acceleration method was used to transfer the added genes into the parental soybean cultivars.

GRS transformation events W62, W98, A2704–12, A2704–21, and A5547–35 have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from the plant pathogens mentioned above. GRS transformation events W62 and W98 have been field tested since 1990 under APHIS permits or notifications, and GRS transformation events A2704–12, A2704–21, and A5547–35 were field tested in 1995 under APHIS notifications. In the process of reviewing the applications for field trials of the subject GRS transformation events, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as

well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. Currently, glufosinate is not registered for use on soybeans.

FDA published a statement of policy on foods derived from new plant varieties in the Federal Register on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the Federal Register announcing the regulatory status of AgrEvo's GRS transformation events W62, W98, A2704–12, A2704–21, and A5547–35 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 23rd day of April 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–10462 Filed 4–26–96; 8:45 am]

BILLING CODE 3410–34–P

Animal and Plant Health Inspection Service, USDA

[Docket No. 92–110–5]

Veterinary Services Draft Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our notice that advised the public that the Animal and Plant Health Inspection Service has prepared a draft programmatic environmental impact statement for the Veterinary Services Program, which is responsible for the protection of the Nation's livestock and poultry. This extension will provide interested persons with additional time to prepare and submit comments on the draft programmatic environmental impact statement.

DATES: Consideration will be given only to comments on Docket No. 92–110–4 that are received on or before June 25, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 92–110–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 92–110–4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

Interested persons may obtain a copy of the draft environmental impact statement by writing to the addresses listed below under **FOR FURTHER INFORMATION CONTACT.** The draft environmental impact statement may also be viewed on the Internet at www.aphis.usda.gov/bbep.ead/vsdocs.html.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Sweeney, Project Leader, Environmental Analysis and Documentation, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 149, Riverdale, MD 20737–1237, (301) 734–8565; or e-mail: nsweeney@aphis.usda.gov; or Dr. William E. Ketter, Chief Staff Veterinarian, Program Evaluations and Planning Staff, VS, APHIS, Suite 3B08, 4700 River Road Unit 33, Riverdale, MD 20737–1231, (301) 734–4357; or e-mail: wketter@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1996, we published in the Federal Register (61 FR 14046–14047, Docket No. 92–110–4) a notice advising the public that the Animal and Plant Health Inspection Service has prepared a draft programmatic environmental impact statement for the Veterinary Services Program, which is responsible for the protection of the Nation's livestock and poultry. The notice also asked for public comment on the draft programmatic environmental impact statement.

Comments on the draft programmatic environmental impact statement were required to be received on or before May 28, 1996. We are extending the comment period on Docket No. 92–110–4 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Done in Washington, DC, this 23rd day of April 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–10460 Filed 4–26–96; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

[Docket No. 96–015N]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) is soliciting nominations for membership.

The Committee was established in April 1988, as a result of the National Academy of Sciences (NAS) Committee report, ''An Evaluation of the Role of Microbiological Criteria for Foods.'' The NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. This includes criteria pertaining to microorganisms that indicate whether food has been processed using good manufacturing practices.

Nominations for membership are being sought from individuals with scientific expertise in the fields of microbiology, epidemiology, food technology, packaging, pathology, public health, and/or toxicology.

Appointments to the NACMCF will be made by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services. Nominees will be considered without regard to race, color, religion, sex, national origin, age, or marital status. Because of the complexity of the issues to be addressed, it is anticipated that the full NACMCF will meet semi-annually and any subcommittees will meet as necessary.

Interested persons should submit a typed resume to the Office of the Administrator, Food Safety and Inspection Service, room 311 West End Court, 1255 22nd Street, NW., Washington, DC 20250. Nominations for membership must be postmarked no later than May 20, 1996. For additional information, please contact Mr. Craig Fedchock at the above address or by telephone at (202) 254–2517.

Done at Washington, DC, on April 23, 1996.

Michael R. Taylor,

Administrator.

[FR Doc. 96–10491 Filed 4–26–96; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting; Access Board

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 Arlington, Virginia on Tuesday and Wednesday, May 14–15, 1996 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, May 14, 1996

9:00 AM–Noon—Ad Hoc Committee on Bylaws and Statutory Review

1:30 PM–3:30 PM—Planning and Budget Committee

3:45 PM–5:00 PM—Technical Programs Committee

Wednesday, May 15, 1996

9:30 AM–Noon—Executive Committee

1:30 PM–3:30 PM—Board Meeting

ADDRESSES: The meetings will be held at: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia.

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 March 13, 1996 Board Meeting
- Executive Director's Report
- Ad Hoc Committee on Bylaws and Statutory Review Report
- Ad Hoc Committee on Telecommunications Report
- Telecommunications Advisory Committee Charter
- Executive Committee Report
- Final Rule to Extend Suspension of Detectable Warning Requirements
- Planning and Budget Committee Report
- Fiscal Year 1996 Spending Plan
- Technical Programs Committee Report
- Presentation on ''Reg-Neg'' Process
- Presentation on Board's Internet Home Page

All meetings 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. 96–10540 Filed 4–26–96; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany; Amendment of Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of final results of antidumping duty administrative reviews.

SUMMARY: On July 27, 1995 the Department published the final results of administrative reviews of the antidumping duty order on brass sheet and strip from Germany. Clerical errors which were timely filed by the petitioners were not corrected by the Department prior to the time the petitioners filed suit with the Court of International Trade (CIT). Therefore, the Department requested leave to correct the clerical errors in this case. Pursuant to orders issued by the CIT on February 29, 1996, granting leave to the Department to correct these ministerial errors, we have corrected several ministerial errors with respect to sales of subject merchandise by one German manufacturer/exporter. The errors were present in our final results of reviews.

The reviews cover the following three periods:

—March 1, 1990, through February 28, 1991;

—March 1, 1991, through February 29, 1992;

—March 1, 1992, through February 28, 1993.

We are publishing this amendment to the final results of reviews in accordance with 19 CFR § 353.28(c).

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the final results of antidumping administrative reviews on July 27, 1995 (60 FR 38542). The reviews covered one manufacturer/exporter, Wieland Werke AG (Wieland), and the periods March 1, 1990 through February 28, 1991 (fourth review),

March 1, 1991 through February 29, 1992 (fifth review), and March 1, 1992 through February 28, 1993 (sixth review).

For a detailed description of the products covered by this order, see the final results of review referenced above.

On August 7, 1995, the petitioners, Hussey Copper, Ltd., The Miller Company, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America, alleged that in calculating the final antidumping duty margins the Department committed the ministerial errors described below. The Department found the allegations constituted ministerial errors (see memo from the case analyst to Wendy Frankel dated February 9, 1996). However, because the petitioners filed suit with the CIT before we could correct this error, we were unable to make the corrections and publish the amended final results of reviews. Subsequently, the CIT granted the Department leave to correct these ministerial errors.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Ministerial Errors in Final Results of Review

1990–1991 Administrative Review

Comment 1: The petitioners allege that in the final results the Department incorrectly inserted a line of programming which adjusted Wieland's credit expenses based on the ratio between Wieland's U.S. deposit rate and Wieland's German short-term borrowing rate, whereas in our notice of final results we stated that we used the U.S. prime rate to calculate Wieland's imputed U.S. credit expenses for this period.

Department's Position: We have reviewed the questionnaire responses, case briefs, and computer programs, and we agree that including the line of programming in question was a clerical error. Accordingly, we have removed the incorrect line of programming for these amended final results.

Comment 2: The petitioners allege that in the cost test, the Department failed to subtract after-sale rebates and home market freight charges from home market prices, and failed to add home market packing expenses to cost of production.

Department's Position: We agree with the petitioners that it was a ministerial error to fail to deduct after-sale rebates and foreign inland freight expenses from price, and to fail to add packing expenses to costs, for the cost test. We have changed these portions of our analysis accordingly for these amended final results.

1991–1992 Administrative Review

Comment 3: The petitioners allege that the Department miscalculated the metal value for sales of alloy CDA250 by referring to the average value of two other alloys, one of which was CDA 260/M32; the petitioners argue that this last should have been CDA 260/M30.

Department's Position: We have reviewed the computer programs and we agree with the petitioners. We have corrected our analysis accordingly for these amended final results.

Comment 4: The petitioners allege that the Department did not use home market sales of alloy CDA 250 for comparison to U.S. sales in its computer program, despite our statement in the final results of review that we had used them.

Department's Position: We have reviewed the computer programs and we agree with the petitioners. Accordingly, we have corrected our analysis to include the appropriate computer language to allow for comparison of U.S. sales to home market sales of alloy CDA 250, where appropriate.

1991–1992 and 1992–1993 Administrative Reviews

Comment 5: The petitioners allege that in both reviews the Department incorrectly entered plus signs where minus signs should appear in the value-added tax adjustments for early payment discounts.

Department's Position: We have reviewed the computer programs, we agree with the petitioners, and we have corrected our analyses accordingly for these amended final results.

Amended Final Results of Reviews

After correcting the final results for these ministerial errors, the Department has determined that the following margins exist for the fourth, fifth, and sixth review periods:

Manufacturer/exporter	Period	Percent Margin
Wieland-Werke AG	3/1/90–2/28/91	2.57
	3/1/91–2/29/92	2.37
	3/1/92–2/28/93	0.46

Individual differences between the USP and FMV may vary from the above percentages.

This notice serves as a reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and this notice are in accordance with section 751(f) of the Act (19 U.S.C. § 1673(d)) and section 353.28(c) of the Department's regulations.

Dated: April 23, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–10554 Filed 4–26–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 960409104–6104–01; I.D. 032596C]

Taking and Importing of Marine Mammals; Italy as a Large-Scale High Seas Driftnet Nation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Identification of Large-Scale High Seas Driftnet Nation.

SUMMARY: The U.S. Court of International Trade ordered the Secretary of Commerce to identify Italy as a country for which there is reason to believe its nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation. The Secretary did so on March 28, 1996. As a result, the President is required to enter into consultations with Italy within 30 days after the identification to obtain an agreement that will effect the immediate termination of high seas large-scale driftnetting by Italian vessels and nationals. If consultations with Italy are not satisfactorily concluded, the importation into the United States of fish, fish products, and sportfishing equipment from Italy will be prohibited under the High Seas Driftnet Fisheries Enforcement Act (HSDFEA). Further, the Secretary of the Treasury has been

directed to deny entry of Italian large-scale driftnet vessels to U.S. ports and navigable waters. In addition, pursuant to the Dolphin Protection Consumer Information Act (DPCIA), the importation of certain fish and fish products into the United States from Italy is prohibited, unless Italy certifies that such fish and fish products were not caught with large-scale driftnets anywhere on the high seas. This action furthers the U.S. policy to support a United Nations moratorium on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins.

EFFECTIVE DATES: Effective March 28, 1996, except for the documentation requirements of the DPCIA, which take effect on May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Fishery Biologist; telephone: 301–713–2055, or fax: 301–713–0376; or Paul Niemeier, Foreign Affairs Specialist; telephone: 301–713–2276, or fax: 301–713–2313.

SUPPLEMENTARY INFORMATION:

The HSDFEA furthers the purposes of United Nations General Assembly Resolution 46/215, which called for a worldwide ban on large-scale high seas driftnet fishing beginning December 31, 1992. On March 18, 1996, the U.S. Court of International Trade ordered the Secretary of Commerce to identify Italy as a country for which there is reason to believe its nationals or vessels conduct large scale driftnet fishing beyond the exclusive economic zone of any nation, pursuant to the HSDFEA (16 U.S.C. 1826a). On March 28, 1996, the Secretary notified the President that he had identified Italy as such a country. Italian officials were notified by the Department of State on March 29, 1996.

Pursuant to the HSDFEA, a chain of actions is triggered once the Secretary of Commerce notifies Italy that it has been identified as a large-scale high seas driftnet nation. If the consultations with Italy, described in the Summary, are not satisfactorily concluded within 90 days, the President must direct the Secretary of the Treasury to prohibit the importation into the United States of fish, fish products, and sport fishing equipment from Italy. The Secretary of the Treasury is required to implement such prohibitions within 45 days of the President's direction.

If the above sanctions are insufficient to persuade Italy to cease large-scale high seas driftnet fishing within 6 months, or Italy retaliates against the United States during that time as a result of the sanctions, the Secretary of Commerce is required to certify this fact to the President. Such a certification is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a), also known as the Pelly Amendment). This authorizes the President to restrict imports of ''any products from the offending country for any duration'' to achieve compliance with the driftnet moratorium, so long as such action is consistent with U.S. obligations under the General Agreement on Tariffs and Trade.

The DPCIA (16 U.S.C. 1371(a)(2)(E)) requires that an exporting nation whose fishing vessels engage in high seas driftnet fishing provide documentary evidence that certain fish or fish products it wishes to export to the United States were not harvested with a large-scale driftnet on the high seas. Importers are hereby notified that, effective May 29, 1996, all shipments from Italy containing fish and fish products specified in regulations at 50 CFR 216.24(e)(2) are subject to the importation requirements of the DPCIA. This delayed-effectiveness period allows shipments already in transit on March 28, 1996, to clear Customs, and allows adequate time for the appropriate forms to be made available to Italian exporters. These forms include NOAA Form 370, Fisheries Certificate of Origin, required by 50 CFR 216.24(e)(2). The Fisheries Certificate of Origin must accompany all imported shipments of an item with a Harmonized Tariff Schedule number for fish harvested by or imported from a large-scale driftnet nation. As part of those requirements, an official of the Government of Italy must certify that any such import does not contain fish harvested with large-scale driftnets anywhere on the high seas.

Pursuant to the Paperwork Reduction Act, this collection of information has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0648–0040. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Dated: April 22, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–10470 Filed 4–26–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of a Limit on Certain Wool Textile Products Produced or Manufactured in India

April 23, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit.

EFFECTIVE DATE: April 24, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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); Uruguay Round Agreements Act.

The United States Government has decided to rescind the restraint on imports of women's and girls' wool coats in Category 435 from India established on April 18, 1996, pursuant to Article 6.10 of the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 435 for the period April 18, 1996 through April 17, 1997.

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 60 FR 65299, published on December 20, 1995). Also see 61 FR 16760, published on April 17, 1996.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 23, 1996.

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 April 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in India and exported during the period which began

on April 18, 1996 and extends through April 17, 1997.

Effective on April 24, 1996, you are directed to cancel the limit established for Category 435 for the period April 18, 1996 through April 17, 1997.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–10492 Filed 4–26–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Proposed Information Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Naval Health Research Center announces the collection of information for research on the health of Gulf War veterans and seeks public comments on the provisions thereof. 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) ways to enhance the quality, utility and clarity of the information to be collected; and (c) ways to minimize the burden of the information collection on respondents; including the use of automated data collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received BY June 28, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Commander, Naval Health Research Center, Box 85122, San Diego, CA 92186–5122.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and the associated collection instruments, please write to the above address, or call Commander Greg Gray, M.C., U.S.N. at (619) 553–9967.

Title, Associated Form, and OMB Number: Epidemiological Studies of Morbidity Among Gulf War Veterans: A Search for Etiologic Agents and Risk Factors-Seabee Health Study (Study #5), Seabee Health Study Questionnaire, OMB Number 0720-(To be added).

Needs and Uses: This information is necessary to provide the DOD with information to evaluate whether Gulf War veterans have greater frequency of symptoms and illnesses than other veterans of the Gulf War era. Information from this study may assist the DoD and the Department of Veterans Affairs in defining unexplained symptomatology.

Affected Public: Current and former members of US Navy Seabee Battalions.

Annual Burden Hours: 10,000.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Average Burden Per Response: 1 hour.

Frequency: Phase I: 98% of the study respondents will fill out the questionnaire once in 1996 (Phase I) and once in 2001, 2006, and 2011 (Phase II). Two percent of the study respondents will be re-surveyed in 1996, 2001, 2006, and 2011.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are current and former members of US Navy Seabee Battalions. This form will be used to provide the Department of the Navy with information on the prevalence of symptoms and illnesses, and exposures associated with military service in the Gulf War.

Dated: April 24, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10525 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS): 1996 Impact Aid Funding Surveys.

Type of Request: New collection.

Number of Respondents: 127.

Responses per Respondent: 1.

Annual Responses: 127.

Average Burden per Response: 34 minutes.

Annual Burden Hours: 71.

Needs and Uses: Historically, the Federal Government has recognized its responsibility to compensate communities for the education of family members who reside on Federal installations. Funding declines in the Federal Impact Aid Program have led Congress to request data to determine the effect of the military presence on Local Education Agency (LEA) funding levels, as well as the appropriate Federal Government role in compensating LEAs for this effect.

Affected Public: State, local, or tribal governments.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10527 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board Task Force on Information Warfare Defense

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Information Warfare Defense will meet in closed session on May 9–10, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on protection of information interests of national importance through establishment and maintenance of a credible information

warfare defensive capability in several areas, including deterrence. This study will be used to assist in analysis of information warfare procedures, processes, and mechanisms, and illuminate future options in defensive information warfare technology and policy.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: April 23, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10528 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Image-Based Automatic Target Recognition

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Image-Based Automatic Target Recognition will meet in closed session on May 14–15, 1996 at XONTECH, Inc. Van Nuys, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the ability of automatic/aided target recognition technology and systems to support important military missions, principally in the near- and mid-term. The Task Force should concentrate on those technologies and systems that use imagery (EO, IR or radar) as their primary input medium.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: April 23, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10529 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

U.S. Court of Appeals for the Armed Forces; Proposed Rule Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes (underlined) to the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

Rule 24. Form and Content, Page Limitations, Style, and Classified Information

(a) Form and content. All briefs will be legible and will be substantially as follows:

In the United States Court of Appeals For the Armed Forces

UNITED STATES, (Appellee), (Appellant), (Respondent), v.

_____,

(Full typed name, rank, service & service no. of accused) (Appellant), (Appellee), (Petitioner)

Brief on Behalf of (Appellant, Appellee, Etc.)

Crim. App. No. _____
USCA Dkt. No. _____

Index of Brief

[*See* Rule 24(c)(2)]

Table of Cases, Statutes, and Other Authorities Issue(s) Presented

[Set forth, *in a concise statement,* each issue granted review by the Court, raised in the certificate for review or mandatory review case, or presented in the petition for extraordinary relief, writ appeal petition, or petition for new trial.]

Statement of the Case

[Set forth a concise chronology including the results of the accused's trial, action by the covening authority, the officer exercising general court-martial jurisdiction (if any), and the Court of Criminal Appeals as well as other pertinent information regarding the proceedings, *including, where applicable, the date the petition for review was granted.*]

Statement of Facts

[Set forth a concise statement of the facts of the case material to the issue or issues presented, including specific page references to each relevant portion of the record of trial. Answers may adopt appellant's or petitioners' statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Summary of Argument

[*Each brief and answer shall contain a summary of argument, suitably paragraphed to correspond to each issue presented. The summary should be a succinct, but accurate and clear condensation of the arguments made in the body of the brief.*]

Argument

[Discuss briefly the point of law presented, citing and quoting such authorities as are deemed pertinent. *The argument must also include for each issue presented a statement of the applicable standard of review. The standard of review may appear in the discussion of each issue or under a separate heading.*]

Conclusion

[State the relief sought as to each issue presented, for example, reversal of the Court of Criminal Appeals decision and dismissal of the charges, grant of a new trial, the extraordinary relief sought, etc. No particular form of language is required, so long as the brief concludes with a clear prayer for specific Court action.]

Appendix

[The brief of the appellant or petitioner shall include an appendix containing a copy of the Court of Criminal Appeals decision, unpublished opinions cited in the brief, and relevant extracts of rules and regulations. The appellee or respondent shall similarly file an appendix containing a copy of any additional unpublished opinions and relevant extracts of rules and regulations cited in the answer.]

_____
(Signature of counsel)

_____
(Typed name of counsel)

_____
(Address of counsel)

_____
(Telephone no. of counsel)

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed] [delivered] to (enter name of each counsel of record) on

_____
(date)

_____
(Typed name and signature)

(Address and telephone no.)

* * * * *

DATES: Comments on the proposed changes must be received by June 28, 1996.

ADDRESSES: Forward written comments to Thomas F. Granahan, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E. Street, Northwest, Washington, DC 20442–001

FOR FURTHER INFORMATION CONTACT:

Thomas F. Granahan, Clerk of Court, telephone (202) 761–1448 (x600)

Dated: April 23, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10526 Filed 4–26–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Armed Forces Institute of Pathology (AFIP) Scientific Advisory Board

AGENCY: Department of the Army.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463), announcement is made of the following open meeting:

Date: 9–10 May 1996.

Time: 8:00 am.

Place: Armed Forces Institute of Pathology, Building 54, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP, Building 54, Washington, DC 20306, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The Scientific Advisory Board provides scientific and professional advice and guidance on programs, policies, and procedures of the AFIP.

Agenda: The board will hear status reports from the AFIP Deputy Directors, CAP Director, the National Museum of Health and Medicine, and selected pathology departments. Board members will visit several of the pathology departments.

Open board discussions: Reports will be given on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–10474 Filed 4–26–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21–22 May 1996.

Place: Red Stone Arsenal, Huntsville, Alabama.

Agenda: The Army Science Board's (ASB) Summer Study on ''Unmanned Aerial Vehicles (UAVs)'' will meet for briefings and discussions on the Army's Concept of Employment for UAV's and View UVA training operations. This meeting will be closed to the public in accordance with Section 522b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–10447 Filed 4–26–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 29, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: April 23, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of the Secretary

Type of Review: New.

Title: National Recognition Program for Model Professional Development.

Frequency: One-time.

Affected Public: State, Local or Tribal Gov't., SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 6,400.

Abstract: With the importance of professional development to school reform and excellence in teaching and learning, there is an immediate need to identify and recognize model professional development programs throughout the country that have

schoolwide impact on student success, and that are aligned with the recently developed Principles for Professional Development. The Department will solicit applications from those operating effective professional development activities at the pre-K through 12 level in schools and school districts, evaluate them with the help of professional educators (who will confirm information for high-ranking applicants through site visits), and recognize those programs that are found to meet these criteria.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for New Grants Under the School, College, and University Partnerships (SCUP) Program.
Frequency: Competitive Year.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 175.
Burden Hours: 3,500.
Abstract: The application form will be used to collect program and budget information needed to evaluate the quality of applications submitted and make funding decisions based on the authorizing statute and the published funding criteria.

[FR Doc. 96–10466 Filed 4–26–96; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Extension of Public Comment Period and Changed Public Hearing Date for the Draft Environmental Impact Statement for the Continued Operation of the Pantex Plant and Associated Storage of Weapon Components

AGENCY: Department of Energy.

ACTION: Notice of extension of public comment period and changed public hearing date.

SUMMARY: The Department of Energy (DOE) announces the extension of the public comment period for the Draft Environmental Impact Statement (EIS) for the Continued Operation of the Pantex Plant and Associated Storage of Weapon Components (DOE/EIS–0225D) to July 12, 1996, and change of the public hearing in Richland, Washington from May 2, 1996 to May 23, 1996.

DATES: DOE announced the availability and schedule of public hearings for the Draft Pantex EIS in the Federal Register dated April 5, 1996 (61 FR 15232). In response to requests from the public, DOE is extending the close of the public comment period from July 5, 1996 to July 12, 1996. Comments received by DOE must be postmarked no later than July 12, 1996, to ensure consideration in the Final EIS. Comments postmarked after that date will be considered to the extent practicable.

Due to public hearing conflicts on May 2, 1996, DOE has moved the Richland, Washington hearing date to May 23, 1996; the time and exact location are listed below.

May 23, 1996

Red Lion Inn, 802 George Washington Way, Richland, Washington 99352, Time: 6:00 pm to 9:00 pm.

The public meeting time and location will be published in local newspapers prior to the meeting date. DOE invites the general public, other government agencies, and all other interested parties to participate in the public hearings and comment process for the Draft Pantex EIS. DOE will accept comments on the Draft Pantex EIS at the public hearing.

ADDRESSES: Requests for copies or information on the Draft Pantex EIS as well as written comments should be directed to: Ms. Nanette Founds, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico, 87185–5400. Written comments, suggestions, and requests can also be submitted using the Pantex Plant EIS Faxline at 1–800–822–5499. Facsimiles should be marked: Pantex Plant EIS. Oral comments and requests concerning this EIS may also be submitted by calling the Pantex Plant EIS Hotline at 1–800–788–0306. Comments may also be submitted via the Internet. The e-mail address is: tetratec@indirect.com.

FOR FURTHER INFORMATION CONTACT: For information on DOE's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585, 202–586–4600 or 1–800–472–2756. For information on this EIS, please contact: Ms. Nanette Founds at the above address or by calling (505) 845–4351.

Subsequent Document Preparation

DOE intends to complete the Final EIS and prepare a response to comments received during the review of the Draft EIS in October 1996 and will announce its availability in the Federal Register.

Issued in Washington, DC, on April 23, 1996.

James C. Landers,

Executive Assistant to Assistant Secretary for Defense Programs.

[FR Doc. 96–10510 Filed 4–26–96; 8:45 am]
BILLING CODE 6450–01–P

A Financial Assistance Program for State and Municipal Governments for the Demonstration of Light and Heavy Duty Alternative Fuel Vehicles

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of solicitation.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, in accordance with the Financial Assistance regulations in 10 CFR 600, announces competitive Solicitation Number DE–PS07–96ID13432 to solicit applications from state and municipal governments for demonstration projects in use of light and heavy duty alternative fuel vehicles.

ADDRESSES: Prospective applicants should send a written request for a copy of the solicitation and a DOE application instruction package (which includes standard forms, assurances and certifications) to the U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS–1221, Idaho Falls, Idaho 83401–1563, Attn: SOL DE–PS07–96ID13432. The point of contact is Wendy L. Huggins, Contract Specialist, at (208)-526–2808. Requests transmitted by facsimile at (208) 526–5548 will be accepted. It is advised that prospective applicants submit their requests in writing no later than May 31, 1996. A copy of the solicitation may be viewed on the DOE's Home Page titled ''Current Business Opportunities with the DOE'' at Internet address: http:\\www.pr.doe.gov\propp.html. The deadline for receipt of applications is 3:00 p.m. MDT, June 28, 1996. It is anticipated that review of the proposed applications will begin on or about July 1, 1996. Selections will be made by August 1, 1996, and awards will be issued by September 30, 1996.

SUPPLEMENTARY INFORMATION: In response to Section 409 of the Energy Policy Act of 1992, P.L. 102–486, 42 U.S.C. 13235, the Department of Energy Office of Technology Utilization desires to accelerate the use of alternate fuel vehicles. It is the intent of this solicitation to promote the use of alternate fuel vehicles (both light and heavy duty) by providing the states with practical experience in their use and an increased awareness of their availability and benefits. Because of their high fuel

consumption, regular driving routes, and centralized operation, state and municipal vehicle fleets have been identified as attractive candidates for demonstration of the use of alternate fuels. With the assistance of the Idaho Operations Office, the Office of Technology Utilization has the opportunity to introduce an alternative fuel program through state energy offices.

The U.S. Department of Energy (DOE) invites applications to demonstrate alternative fuel vehicles from each of the state energy offices in the 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico and any territory or possession of the United States. These entities are under no obligation to apply. Only one proposal will be accepted by DOE from each of the 50 states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and any territories or possessions of the United States.

Interested state agencies, municipalities, local school districts, and other local agencies must contact their state energy office for applications for subawards, and must submit their proposals to their energy office to be considered.

Restriction of eligibility to propose under this program is considered necessary to achieve program objectives and is made in accordance with 10 CFR 600.6.

It is anticipated that the DOE will make multiple financial assistance awards as a result of this solicitation. In fiscal year 1996, approximately $1,500,000 has been allocated to the program. Currently $975,000 is available to award and it is expected that additional funding of as much as $600,000 will be made available this fiscal year.

It is anticipated that approximately eight to twelve awards will be made with funding levels not to exceed $150,000 for any individual award.

Procurement Request Number: 07–96ID13432.000

Dated: April 18, 1996.

Brad Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 96–10511 Filed 4–26–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG96–10–000]

Carnegie Interstate Pipeline Company; Notice of Filing

April 23, 1996.

Take notice that on April 18, 1996, Carnegie Interstate Pipeline Company (Carnegie) filed revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1995)). All such motions to intervene or protest should be filed on or before May 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–10464 Filed 4–26–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52791 (December 22, 1989), III FERC Stats. & Regs.¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. MG95–4–001]

Northwest Pipeline Corporation; Notice of Filing

April 23, 1996.

Take notice that on April 15, 1996, Northwest Pipeline Corporation (Northwest) submitted a ''Report of Northwest Pipeline Corporation in Response to Commission Order.'' Northwest states that it submitted the Report in response to the Commission's March 15, 1996 ''Order on Request for Waiver.''[1]

Northwest states that it has mailed copies of this filing to all persons designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–10463 Filed 4–26–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

April 23, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Joint Application for Transfer of License.

b. Project No.: 5044–004.

c. Date Filed: April 4, 1996.

d. Applicants: Graniteville Company and Avondale Mills, Inc.

e. Name of Project: Sibley Mill Hydroelectric Project.

f. Location: On the Augusta Canal of the Savannah River in the City of Augusta, Richmond County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

[1] 74 FERC ¶ 61,298 (1996).

h. Contacts:

Sharon Rodgers, Esq., Corporate Counsel, Graniteville Company, P.O. Box 128, Graniteville, SC 29829

Ms. Cynthia Carney Johnson, Esq, Attorney for Transferee, King & Spalding, 120 West 45th Street, New York, NY 10036–4003 (212) 556–2100.

i. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

j. Comment Date: May 24, 1996.

k. Description of the Proposed Action: The licensee, Graniteville Company, seeks to transfer the project license to Avondale Mills, Inc.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–10465 Filed 4–26–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5459–8]

Common Sense Initiative Council (CISC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Life Cycle Management/Supplier Partnership Project Team, of the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative, recognizes that opportunities exist to reduce the overall environmental impacts of automobile manufacturing by engaging in life cycle management with its suppliers. The Project Team goals are to: develop principles and strategies for the application of life cycle management in the automobile manufacturing sector as a means of further reducing environmental impacts in an economically efficient manner; and demonstrate or pilot test the principles and strategies through manufacturer/supplier partnerships in a manner that produces positive results (i.e., cleaner, cheaper, smarter) and is applicable to and beneficial for the whole sector. To this end, an automotive supplier sector, instrument panels (excluding heating/air conditioning and the electronic components), was identified to bring into this project. The EPA and Project Team are soliciting the interest of instrument panel suppliers in this project. Further, EPA and the Project Team are asking instrument panel suppliers who wish to participate in this project to identify themselves.

DATES: Please respond by no later than May 29, 1996.

ADDRESSES: If desired, written submissions must be sent to: Ms. Julie Lynch (7409); Office of Pollution Prevention and Toxics; Environmental Protection Agency; 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Lynch; telephone number: 202–260–4000; Internet: lynch.julie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative (CSI), the Life Cycle Management/Supplier Partnership (LCM/SP) Project Team is:

(1) Developing principles and strategies for the application of life cycle management in the automobile manufacturing sector as a means of further reducing environmental impacts in an economically efficient manner.

(2) Demonstrating the principles and strategies of life cycle management in automotive manufacturing through manufacturer/supplier partnerships in a manner that produces positive results (i.e., cleaner, cheaper, smarter) and is applicable to and beneficial for the whole sector.

The CSI is an EPA sponsored program to involve stakeholders in the identification of ''cleaner, cheaper, and smarter'' solutions to environmental challenges. The CSI encompasses six industrial sectors including automobile manufacturing. There are a number of projects being conducted within the CSI Automobile Manufacturing Sector involving alternative regulatory system development, community-based technical assistance and involvement, input on existing regulations, as well as the development and demonstration of principles and strategies for life cycle management through a pilot project utilizing a manufacturer/supplier partnership. The Project Team involved in the LCM/SP was initially established in January of 1995 with the creation of CSI and has representatives from auto manufacturers and trade associations, EPA, state environmental agencies, and environmental and community groups.

II. The Life Cycle Management/Supplier Partnership Project

The LCM/SP Project Team participants have come together to discuss and develop pre-competitive approaches to reduce costs and the environmental impacts along the supply chain of auto assembly plants. The Team worked to identify and select a particular automotive supply sector to bring into the project. Tier I instrument panels (referred to hereafter as instrument panels), excluding the electronic and heating/air conditioning components, were selected.

The EPA and the Project Team are soliciting the interest of instrument panel suppliers in this project. Further, EPA and the Project Team are asking instrument panel suppliers who may wish to participate in this project to identify themselves.

Project partners will work together to:

- Develop life cycle management principles and strategies concerning the supply of parts and materials to auto companies;
- Design a pilot project workplan to test the life cycle management principles and strategies for the supply chain of an automotive component;
- Implement the pilot project; and
- Document lessons learned through the revision of the life cycle management principles and strategies.

The instrument panel supply sector was targeted based on a number of criteria including current use of life cycle management, opportunities for partnerships, opportunities to reduce environmental impacts at the assembly plant and along the supply chain, and the potential to improve environmental quality in minority and economically disadvantaged neighborhoods.

As a stakeholder (i.e., one with a stake in the development and outcome) in this area, interested instrument panel suppliers could realize a number of benefits. In order to remain competitive and reduce costs, auto manufacturers are developing new management systems to streamline the auto design and assembly process. These new systems will have a direct affect on the supplier's relationship with the auto manufacturer. Participation in this project offers suppliers a chance to cooperate with auto manufacturers in their environmental management programs. More specifically, the project will develop and demonstrate a model which:

- Seeks to identify cost avoidances and savings for both suppliers and manufacturers, offering participants the financial benefits of LCM;
- Suppliers can use the work with the auto manufacturers in developing environmental management approaches, such as those being proposed under the International Organization for Standardization's forum;
- Considers policies and practices and develops principles and strategies for a new relationship with auto manufacturers that incorporates supply considerations early in the product design and throughout the assembly of the car; and
- Identifies potential pollution prevention benefits such as reduced environmental and occupational liabilities, reduced waste treatments and disposal costs, and, etc.

Participants in this project are expected to exhibit a willingness to come to the table to discuss, develop, and test life cycle management principles and strategies in a pre-competitive environment with the other Project Team members. Those who choose to participate will do so with the understanding that the work of the Project Team will be made publicly available. Generally, team meetings are held monthly. A one year time period is envisioned for this project.

Dated: April 10, 1996.

Carol Kemker,

Designated Federal Officer, CSI Auto Manufacturing Sector.

[FR Doc. 96–10538 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5464–1]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, May 7, 1996, from 9:00 a.m. to 5:00 p.m., and Wednesday, May 8, 1996, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street SW., Washington, D.C. 20460; telephone (202) 260–5373, fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulation for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 et seq.). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting will be open to the public. Limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by May 3, 1996 will be considered by the Task Force at or subsequent to the meeting.

Dated: April 19, 1996.

Eric Strassler,

Designated Federal Official.

[FR Doc. 96–10534 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5463–8]

Proposed Settlement Under Section 122 (h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h), Chemical Commodities, Inc. Superfund Site, Kansas City, KS

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h), to resolve the liability of Aeronca, Inc., AlliedSignal Inc., Alliant Techsystems Inc., Lake Road Warehouse, McDonnell Douglas Corporation, Minnesota Mining and Manufacturing Company, Rockwell International Corporation, Veterinary Laboratories, the Defense Logistics Agency and the General Services Administration for costs incurred by the EPA in connection with response actions taken at the Chemical Commodities, Inc. Site at 43 Kansas Avenue, Kansas City, Kansas (''the Site'').

DATES: Written comments must be provided on or before May 29, 1996.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue,

Kansas City, Kansas 66101 and should refer to: In the Matter of Chemical Commodities, Inc., Kansas City, Kansas, EPA Docket No. VII–96–F–0010.

FOR FURTHER INFORMATION CONTACT: Barbara L. Peterson, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7277.

SUPPLEMENTARY INFORMATION: A variety of incompatible hazardous substances in broken, deteriorating and leaking containers were abandoned in the basement of a three-story warehouse located at the Site presenting the threat of fire or explosion. Among the hazardous substances at the facility were used or surplus materials from Aeronca, Inc., AlliedSignal Inc., Alliant Techsystems Inc., Lake Road Warehouse Co., Minnesota Mining and Manufacturing Company, Rockwell International Company, Veterinary Laboratories, the Defense Logistics Agency and the General Services Administration. The Site is located approximately five miles south of downtown Kansas City, Kansas. The State of Kansas requested that the EPA assume the role of lead agency with respect to cleanup of the Site. The hazardous substances at the Site were removed and properly disposed of by the EPA in November, 1992.

The proposed settlement provides for partial reimbursement of removal action costs incurred by the EPA. The EPA has determined that the settling parties Aeronca, Inc., AlliedSignal Inc., Alliant Techsystems Inc., Lake Road Warehouse Co., Minnesota Mining and Manufacturing Company, Rockwell International Company, Veterinary Laboratories, the Defense Logistics Agency and the General Services Administration, are liable for response costs at the Site pursuant to Section 107(a)(3) of CERCLA. The settling parties have each agreed to pay a portion of the response costs incurred by the EPA. The proposed settlement agreement provides that the EPA will covenant not to sue the settling parties for response costs incurred by the EPA at the Site under Section 107 of CERCLA upon payment of the amounts specified in the settlement agreements.

Dated: April 9, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–10535 Filed 4–20–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5463–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h), Chemical Commodities, Inc., Superfund Site, Shawnee, KS

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h), to resolve the liability of AlliedSignal Inc., Alliant Techsystems Inc., McWane, Inc., Southwestern Bell Telephone Company, Veterinary Laboratories, and the Defense Logistics Agency for costs incurred by the EPA in connection with response actions taken at the Chemical Commodities, Inc. Site at 20201 West 55th Street, Shawnee, Kansas.

DATES: Written comments must be provided on or before May 29, 1996.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of Chemical Commodities, Inc., Kansas City, Kansas, EPA Docket No. VII–96–F–0009.

FOR FURTHER INFORMATION CONTACT: Barbara L. Peterson, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7277.

SUPPLEMENTARY INFORMATION: Chemical Commodities, Inc., a now defunct Kansas corporation, owned and operated a facility for recycling and storage of used and surplus chemicals, including hazardous substances, at 20201 West 55th Street, Shawnee, Kansas (the Site). An investigation of the Site by EPA in August, 1990 revealed that a variety of incompatible hazardous substances in deteriorating and leaking containers were randomly stored at the Site posing a threat of fire or explosion. The Site is located in a rapidly developing suburb of metropolitan Kansas City. The area surrounding the Site supports a mixture of residential, recreational, commercial and light industrial uses. The State of Kansas requested that the EPA assume the role of lead agency with respect to cleanup of the Site. The hazardous substances at the Site were removed and properly disposed of by the EPA in November, 1992.

The proposed settlement provides for partial reimbursement of the removal response costs incurred by EPA. The EPA has determined that the settling parties, AlliedSignal Inc., Alliant Techsystems Inc., McWane, Inc., Southwestern Bell Telephone Company, Veterinary Laboratories, and the Defense Logistics Agency, are liable for response costs at the Site pursuant to Section 107(a)(3) of CERCLA. The settling parties have each agreed to pay a portion of the response costs incurred by the EPA. The proposed settlement agreement provides that the EPA will convenant not to sue the settling parties for response costs incurred by the EPA at the Site under Section 107 of CERCLA upon payment of the amounts specified in the settlement agreements.

Dated: April 9, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–10536 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 18394, April 25, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, April 30, 1996.

CHANGE IN THE MEETING: The Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued April 25, 1996.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 96–10654 Filed 4–25–95; 1:09 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 96–556]

Citizens Utilities Company Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Memorandum Opinion and Order (''MO&O'') addresses the accounting treatment for nonregulated uncollectible revenue and the treatment of affiliate transactions involving nonregulated activities. The MO&O states that the Commission's rules preclude the netting of uncollectibles related to nonregulated activities in Account 5280, Nonregulated operating revenue. The MO&O requires carriers to include all nonregulated uncollectible revenue in Accounts 5301, Uncollectible revenue-telecommunications, and 5302, Uncollectible revenue-other. The MO&O allows subject carriers six months from the publication of this notice to comply with its accounting directive.

DATES: Compliance must be on or before October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Alicia Dunnigan, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0807.

SUPPLEMENTARY INFORMATION: This is the synopsis of the MO&O in AAD 94–6, adopted April 8, 1996, and released April 22, 1996.

The complete text of the MO&O is available for inspection and copying in the Accounting and Audits Division public reference room, 2000 L Street N.W., Suite 812, Washington, D.C.

Copies are also available from International Transcription Service, Inc., at 2100 M Street NW., Suite 140, Washington, D.C. 20037, or call (202) 857–3800.

The MO&O addresses issues raised by the parties in their petitions for reconsideration of a December 27, 1994, order approving the cost allocation manual of Citizens Utilities Company.

The parties requested reconsideration of the requirement that uncollectible revenue associated with nonregulated activities be recorded in the uncollectible revenue accounts instead of the nonregulated revenue account. The MO&O, states that Sections 32.5301 and 32.5302 of the Commission's rules precludes carriers from netting nonregulated uncollectibles in Account 5280. The MO&O requires carriers that have previously been netting uncollectible nonregulated revenue in Account 5280 to comply with the Commission's rules within six months.

The parties requested reconsideration of the statement that the terms of affiliate transactions in which the telephone company provides nonregulated services to its affiliated companies must comply with the Commission's affiliate transactions rules. The MO&O states that when a nonregulated activity is accounted for within the system prescribed in Part 32 of the Commission's rules, pursuant to Section 32.23(c), the transactions between the carrier performing that nonregulated activity and a nonregulated affiliate are subject to the affiliate transactions rules of Section 32.27.

Accordingly, *it is ordered*, pursuant to Sections 1, 4(i), 4(j), and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 220, and Section 553(b)(A) of the Administrative Procedures Act, 5 U.S.C. § 553(b)(A),[1] and Sections 0.91, 0.291, and 1.106 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.106, that the Petitions for Reconsideration filed by Southwestern Bell Telephone Company, BellSouth Telecommunications, Inc., and the United States Telephone Association are granted to the extent indicated in this Order and are otherwise denied.

Federal Communications Commission.

Regina M. Keeney,

Chief, Common Carrier Bureau.

[FR Doc. 96–10497 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–P

[1] Section 553(b)(A) allows an agency to interpret its rules without notice and comment.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Community Bankshares Incorporated, Petersburg, Virginia; to acquire 100 percent of the voting shares of Commerce Bank of Virginia, Richmond, Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Goodenow Bancorporation, Okoboji, Iowa; to merge with Jackson Bancorporation, Inc., Fairmont, Minnesota, and thereby indirectly acquire Bank Midwest Minnesota, Iowa, N.A., Fairmont, Iowa.

2. Stichting Prioriteit ABN AMRO Holding, Amsterdam, The Netherlands; Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands; ABN AMRO Holding N.V., Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam, The Netherlands; and ABN AMRO North America, Inc., Chicago, Illinois; to

acquire 100 percent of the voting shares of Comerica Bank - Illinois, Franklin Park, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Nebraska, Inc., Omaha, Nebraska, and First National of Colorado, Inc., Omaha, Nebraska; to acquire Bolder Bancorporation, Boulder, Colorado, and thereby indirectly acquire The Bank of Boulder, Boulder, Colorado. First National of Colorado also has applied to merge with Bolder Bancorporation.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 83.54 percent of the voting shares of Community Bank of Arizona, Wickenburg, Arizona.

2. Texas Financial Bancorporation, Inc, Minneapolis, Minnesota; First Bancorp, Inc., Denton, Texas; and First Delaware Bancorp, Inc., Dover, Delaware; have applied to acquire 100 percent of the voting shares of Riverside National Bank, Grand Prairie, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Columbia Bancorp, The Dalles, Oregon; to acquire up to 100 percent of the voting shares of Klickitat Valley Bank, Goldendale, Washington. Applicant also has an option to acquire up to 9.9 percent of Klickitat Valley Bank.

2. First Hawaiian, Inc., Honolulu, Hawaii; to acquire 100 percent of the voting shares of ANB Financial Corporation, Kennewick, Washington; and thereby indirectly acquire American National Bank, Kennewick, Washington.

Board of Governors of the Federal Reserve System, April 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10435 Filed 4–26–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 961–0026]

Lockheed Martin Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require Lockheed Martin, a Bethesda, Maryland-based defense and space contractor, to divest its systems engineering and technical services contract with the Federal Aviation Administration; would prohibit Lockheed Martin from providing certain technical services or information to the space business subsidiary of Loral Space & Communications Ltd.; would restrict participation and compensation of persons who serve as directors or officers of both Lockheed Martin and Loral Space; would limit Lockheed Martin's ownership of Loral Space; and would require ''firewalls'' to limit information flow about competitors tactical fighter aircraft and unmanned aerial vehicles. The Consent Agreement settles allegations that Lockheed Martin's proposed $9.1 billion acquisition of Loral Corporation would violate the antitrust laws.

DATES: Comments must be received on or before June 28, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Federal Trade Commission, H–374, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2932. Steven K. Bernstein, Federal Trade Commission, S–2308, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2423.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Lockheed Martin Corporation, a corporation. File No. 961–0026.

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Lockheed Martin Corporation (''Lockheed Martin'') of Loral Corporation (''Loral''), and it now appearing that Lockheed Martin, hereinafter sometimes referred to as ''Proposed Respondent,'' is willing to enter into an agreement containing an order to divest assets, to refrain from certain acts and to provide for certain other relief:

It is hereby agreed by and between Proposed Respondent Lockheed Martin, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Lockheed Martin is a corporation organized, existing and doing business under and by virtue of the laws of the state of Maryland with its office and principal place of business located at 6801 Rockledge Drive, Bethesda, Maryland 20817.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. Proposed Respondent shall submit within thirty (30) days of the date this agreement is signed by Proposed Respondent, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Proposed Respondent setting forth in detail the manner in which the Proposed Respondent will comply with Paragraphs II. through XVI. of the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission for public comment.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either

withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and refrain from certain acts in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent's address as stated in the agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''Lockheed Martin'' means Lockheed Martin Corporation, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Lockheed Martin Corporation, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. Lockheed Martin includes Loral Corporation, which prior to the Acquisition had its principal office and place of business located at 600 Third Avenue, New York, New York 10016; except that Lockheed Martin does not include any of the foregoing that will be part of Loral Space after the Acquisition.

B. ''Loral'' means Loral Corporation, a New York corporation, with its principal office and place of business located at 600 Third Avenue, New York, New York 10016, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Loral Corporation, and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Loral does not include any of the foregoing that will be part of Loral Space after the Acquisition.

C. ''Commission'' means the Federal Trade Commission.

D. ''SETA Services'' means systems engineering, technical assistance services and support services relating to Air Traffic Control Systems provided by Lockheed Martin to the Federal Aviation Administration, pursuant to Paragraphs C.2.2.1.3., C.2.2.1.5., C.2.2.1.12. and C.2.2.4. of Task Area 2 and Paragraphs C.9.1.3., C.9.2.2., C.9.2.3., C.9.2.4., C.9.2.6., C.9.2.7., C.9.2.8. and C.9.2.10. of Task Area 9 of the National Implementation and Support Contract, DTFA01–93–C–00031, that involve the development of technical and other specifications for procurements and programs; the assessment of bid and other proposals; the evaluation, testing or monitoring of any service, equipment or product provided by any company; the modification or change of any performance requirements of any contractor; or the development of financial, cost or budgetary plans, procedures or policies.

E. ''SETA Services Operations'' means all assets, properties, business and goodwill, tangible and intangible, held by Respondent and used in the provision of SETA Services including, *without limitation*, the following:

1. all rights, obligations and interests in Paragraphs C.2.2.1.3., C.2.2.1.5., C.2.2.1.12., C.2.2.4., C.9.1.3., C.9.2.2., C.9.2.3., C.9.2.4., C.9.2.6., C.9.2.7., C.9.2.8. and C.9.2.10. of contract DTFA01–93–C–00031 relating to the provision of SETA Services;

2. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, financial information, technical information, management information and systems, software, software licenses, inventions, copyrights, trademarks, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

3. all rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

4. all rights, titles and interests in and to the contracts entered into in the ordinary course of business, including, but not limited to, contracts with customers (together with associated bid and performance bonds), suppliers, subcontractors, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

5. all rights under warranties and guarantees, express or implied;

6. all books, records and files;

7. all data developed, prepared, received, stored or maintained; and

8. all items of prepaid expense.

F. ''Non-Public Air Traffic Control Information'' means any information not in the public domain disclosed by the Federal Aviation Administration or any company to Respondent in its capacity as a provider of SETA Services.

G. ''Standard Terminal Automation Replacement System'' means any current or future equipment and services designed, developed, proposed or provided by Loral Air Traffic Control to upgrade the traffic control equipment and systems in the Federal Aviation Administration's U.S. air traffic control terminals.

H. ''Traffic Flow Management System'' means any current or future equipment and services designed, developed, proposed or provided by Loral Air Traffic Control to predict arrival and departure traffic flows at U.S. airports for the Federal Aviation Administration.

I. ''Operational and Supportability Implementation Service'' means any current or future equipment and services designed, developed, proposed or provided by Loral Air Traffic Control to upgrade Federal Aviation Administration flight server stations.

J. ''Air Traffic Control Systems'' means any current or future air traffic control equipment, system or service designed, developed, proposed or provided by Loral Air Traffic Control, including, but not limited to, the Standard Terminal Automation Replacement System, the Traffic Flow Management System and the Operational and Supportability Implementation Service, for the Federal Aviation Administration.

K. ''Military Aircraft'' means fixed-wing aircraft manufactured for sale to the United States or foreign governments.

L. ''NITE Hawk Systems'' means any airborne forward-looking infrared targeting system researched, developed, designed, manufactured or sold by Loral for use on the F/A–18 series of Military Aircraft.

M. ''Simulation and Training Systems'' means the operational and weapons systems trainers designed, developed, manufactured or sold by Loral that simulate Military Aircraft.

N. ''Electronic Countermeasures'' means systems designed, developed, manufactured or sold by Loral, including, but not limited to, the ALR–56A and ALR–56C, that detect, jam and deceive hostile radars and radar and infrared guided weapons for use on Military Aircraft.

O. ''Mission Computers'' means any computer designed, developed, manufactured or sold by Loral, including, but not limited to, the AP1, AAAP1R and CP1075A/B/C, that control, monitor or manage the operations and electronics of any Military Aircraft.

P. ''Unmanned Aerial Vehicle'' means any unmanned aircraft used for tactical or strategic reconnaissance missions manufactured for sale to the United States or foreign governments.

Q. ''Integrated Communications Systems'' means systems designed, developed, manufactured or sold by Loral, including, but not limited to, the 367–6000–59–R–012 and the 367–6000–59–R–013, that are capable of both wideband satellite and line-of- sight data link communications and command and control data links for use on Unmanned Aerial Vehicles.

R. ''Loral Air Traffic Control'' means Loral Air Traffic Control, an entity with its principal place of business at 9211 Corporate Blvd., Rockville, Maryland 20850, or any other entity within or controlled by Lockheed Martin that is engaged in, among other things, the research, development, manufacture or sale of Air Traffic Control Systems, and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Loral Air Traffic Control (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Loral Air Traffic Control does not include any of the foregoing that will be part of Loral Space after the Acquisition.

S. ''Lockheed Martin Military Aircraft Business'' means any entity within or controlled by Lockheed Martin that is engaged in, among other things, the research, development, manufacture or sale of Military Aircraft or Unmanned Aerial Vehicles, and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by a Lockheed Martin Military Aircraft Business and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

T. ''Management and Data Systems'' means Lockheed Martin Management and Data Systems Division, an entity with its principal place of business at 7000 Geerdes Blvd., King of Prussia, Pennsylvania 19406, or any other entity within or controlled by Lockheed Martin that is engaged in, among other things, the provision of SETA Services, and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Lockheed Martin Management and Data Systems Division (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

U. ''Non-Public Military Aircraft Information (NITE Hawk)'' means (1) any information not in the public domain disclosed by any Military Aircraft manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of NITE Hawk Systems and (a) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Military Aircraft manufacturer prior to the Acquisition to Loral in its capacity as a provider of NITE Hawk Systems. Non-Public Military Aircraft Information (NITE Hawk) shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Military Aircraft Information (NITE Hawk) to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

V. ''Non-Public Military Aircraft Information (Simulation and Training)'' means (1) any information not in the public domain disclosed by any Military Aircraft manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of Simulation and Training Systems and (a) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Military Aircraft manufacturer prior to the Acquisition to Loral in its capacity as a provider of Simulation and Training Systems. Non-Public Military Aircraft Information (Simulation and Training) shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information

that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Military Aircraft Information (Simulation and Training) to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

W. ''Non-Public Military Aircraft Information (Electronic Countermeasures)'' means (1) any information not in the public domain disclosed by any Military Aircraft manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of Electronic Countermeasures and (a) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Military Aircraft manufacturer prior to the Acquisition to Loral in its capacity as a provider of Electronic Countermeasures. Non-Public Military Aircraft Information (Electronic Countermeasures) shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Military Aircraft Information (Electronic Countermeasures) to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

X. ''Non-Public Military Aircraft Information (Mission Computers)'' means (1) any information not in the public domain disclosed by any Military Aircraft manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of Mission Computers, and (a) if written information, designated in writing by the Military Aircraft manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Military Aircraft manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Military Aircraft manufacturer prior to the Acquisition to Loral in its capacity as a provider of Mission Computers. Non-Public Military Aircraft Information (Mission Computers) shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Military Aircraft Information (Mission Computers) to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

Y. ''Non-Public Unmanned Aerial Vehicle Information'' means (1) any information not in the public domain disclosed by any Unmanned Aerial Vehicle manufacturer, other than Lockheed Martin, to Respondent or Loral in its capacity as a provider of Integrated Communications Systems, and (a) if written information, designated in writing by the Unmanned Aerial Vehicle manufacturer as proprietary information by an appropriate legend, marking, stamp or positive written identification on the face thereof, or (b) if oral, visual or other information, identified as proprietary information in writing by the Unmanned Aerial Vehicle manufacturer prior to the disclosure or within thirty (30) days after such disclosure; or (2) any information not in the public domain disclosed by any Unmanned Aerial Vehicle manufacturer prior to the Acquisition to Loral in its capacity as a provider of Integrated Communications Systems. Non-Public Unmanned Aerial Vehicle Information shall not include: (1) information known or disclosed to Respondent, *excluding Loral,* at the time Respondent signed the Agreement Containing Consent Order in this matter, (2) information that subsequently falls within the public domain through no violation of this order by Respondent, (3) information that subsequently becomes known to Respondent from a third party not in breach of a confidential disclosure agreement (information obtained from Loral or otherwise obtained as a result of the Acquisition shall not be considered information known to Respondent from a third party), or (4) information after six (6) years from the date of disclosure of such Non-Public Unmanned Aerial Vehicle Information to Respondent, or such other period as agreed to in writing by Respondent and the provider of the information.

Z. ''Satellite'' means an unmanned machine that is launched from the Earth's surface for the purpose of transmitting data back to Earth and which is designed either to orbit the Earth or travel away from the Earth.

AA. ''Restructuring Agreement'' means the Restructuring, Financing and Distribution Agreement, dated as of January 7, 1996, by and among Loral Corporation, Loral Aerospace Holdings, Inc., Loral Aerospace Corp., Loral General Partner, Inc., Loral Globalstar, L.P., Loral Globalstar Limited, Loral Telecommunications Acquisition, Inc. (to be renamed Loral Space & Communications Ltd.) and Lockheed Martin Corporation.

BB. ''Loral Space'' means Loral Space & Communications Ltd., a company organized under the laws of the Islands of Bermuda, with its principal office and place of business located at 600 Third Avenue, New York, New York 10016, as described by the Restructuring Agreement; its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled or managed by Loral Space & Communications Ltd., including, but not limited to, Globalstar, L.P., Space Systems/Loral, Inc. and K&F Industries, Inc., and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Loral Space does not include any of the foregoing that will be part of Loral or Lockheed Martin after the Acquisition.

CC. ''Space Systems/Loral'' means Space Systems/Loral, Inc., an entity

with its principal place of business at 3825 Fabian Way, Palo Alto, California 94303, or any other entity within or controlled by Loral Space that is engaged in, among other things, the research, development, manufacture or sale of Satellites, and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Space Systems/Loral, Inc. (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Space Systems/Loral does not include any of the foregoing that will be part of Loral or Lockheed Martin after the Acquisition and does not include any entity or line of business, outside of Space Systems/Loral, Inc., within or controlled by Loral Space that is not engaged in the research, development, manufacture or sale of Satellites.

DD. ''Defensive Missiles Systems'' are the research, development, manufacture or sale of defensive missiles systems and components, including, among other things, the Theater High Altitude Area Defense System, Corps SAM/MEADS, the Advanced Intercept Technology, National Missile Defense, Naval Upper Tier, the Airborne Laser, target programs and other related activities.

EE. ''Fleet Ballistic Missiles'' are the research, development, manufacture, sale or life cycle support including disposal of strategic offensive missiles and associated support equipment, including, among other things, the Trident missile.

FF. ''Missile System Products Center'' is the research, development, manufacture or sale of missile systems, missile components, missile technology, propulsion systems, seekers, electronics, avionics, composites, bombs, rockets and mortars, including, among other things, the Composites Initiative, the Propulsion Initiative, BLU–109 and Precision Guided Mortar Munition.

GG. ''Space & Strategic Missiles'' means Lockheed Martin Space & Strategic Missiles Sector, an entity with its principal place of business at 6801 Rockledge Drive, Bethesda, Maryland 20817, or any other entity within or controlled by Lockheed Martin that is engaged in, among other things, the research, development, manufacture or sale of Satellites; and its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Lockheed Martin Space & Strategic Missiles Sector (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each; except that Space & Strategic Missiles does not include Defensive Missile Systems, Fleet Ballistic Missiles, and Missile System Products Center, and any other entity or line of business, outside of Lockheed Martin Space & Strategic Missiles Sector, within or controlled by Lockheed Martin that is not engaged in the research, development, manufacture or sale of Satellites.

HH. ''Common LM/Loral Space Director'' means any person who is simultaneously a member of the Board of Directors of Lockheed Martin or an officer of Lockheed Martin and a member of the Board of Directors of Loral Space or an officer of Loral Space.

II. ''Non-Public Space Information of Lockheed Martin'' means any information not in the public domain relating to Space & Strategic Missiles.

JJ. ''Non-Public Space Information of Loral Space'' means any information not in the public domain relating to Space Systems/Loral.

KK. ''Lockheed Martin/Loral Space Technical Services Agreement'' means the technical services agreement between Lockheed Martin and Loral Space, as described by Article VI, Section 6.7, Paragraph (d), of the Restructuring Agreement.

LL. ''Merger Agreement'' means the Agreement and Plan of Merger, dated as of January 7, 1996, by and among Loral Corporation, Lockheed Martin Corporation and LAC Acquisition Corporation.

MM. ''Stockholders Agreement'' means the Stockholders Agreement referred to in the Restructuring Agreement.

NN. ''Non-Voting Equity Securities'' means any share of stock that does not entitle the shareholder to vote for any member of the Board of Directors.

OO. ''Voting Equity Securities'' means any share of stock that entitles the shareholder to vote for any member of the Board of Directors.

PP. ''Acquisition'' means the transaction described by the Merger Agreement and the Restructuring Agreement, including, but not limited to: (1) The acquisition by Respondent of all of the outstanding voting common stock of Loral; (2) the transfer of the space and telecommunications businesses of Loral and its subsidiaries to Loral Space; (3) the acquisition by Respondent of a 20% convertible preferred stock interest in Loral Space, which in turn owns a 33% interest in Space Systems/Loral; (4) the Lockheed Martin/Loral Space Technical Services Agreement; and (5) the appointment of Mr. Bernard Schwartz, Chairman of the Board of Directors and Chief Executive Officer of Loral Space, to the position of Vice Chairman of the Board of Directors of Lockheed Martin.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within six (6) months of the date Respondent signed the Agreement Containing Consent Order in this matter, the SETA Services Operations, and shall not charge any costs associated with the divestiture to the Federal Aviation Administration.

B. Respondent shall divest the SETA Services Operations only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continued provision of SETA Services in the same manner as provided by Respondent at the time of the proposed divestiture and to remedy the lessening of competition alleged in the Commission's complaint.

C. Pending divestiture of the SETA Services Operations, Respondent shall take such actions as are necessary to ensure the continued provision of SETA Services, to maintain the viability and marketability of the assets used to provide SETA Services, to prevent the destruction, removal, wasting, deterioration or impairment of the assets used to provide SETA Services, and to prevent the disclosure of Non-Public Air Traffic Control Information to Loral Air Traffic Control.

D. Upon reasonable notice from any acquirer or the Federal Aviation Administration to Respondent, Respondent shall provide such technical assistance to the acquirer as is reasonably necessary to enable the acquirer to provide SETA Services in substantially the same manner and quality as provided by Respondent prior to divestiture. Such assistance shall include reasonable consultation with knowledgeable employees and training at the acquirer's facility for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the skills necessary to perform the SETA Services Operations. Respondent shall convey all know-how necessary to perform the SETA Services Operations in substantially the same manner and quality provided by Respondent prior to divestiture, provided, however, that the Respondent may retain the right to use

the know-how. However, Respondent shall not be required to continue providing such assistance for more than one (1) year from the date of the divestiture. Respondent shall charge the acquirer at a rate no more than its own costs for providing such technical assistance.

E. At the time of the execution of the purchase agreement between Respondent and a proposed acquirer of the SETA Services Operations (''Purchase Agreement''), Respondent shall provide the acquirer(s) with a complete list of all full-time, non-clerical, salaried employees of Respondent who were engaged in the provision of SETA Services on the date of the Acquisition, as well as all current full-time, non-clerical, salaried employees of Respondent engaged in the provision of SETA Services on the date of the purchase agreement. Such list(s) shall state each such individual's name, position, address, business telephone number, or if no business telephone number exists, a home telephone number, if available and with the consent of the employee, and a description of the duties and work performed by the individual in connection with the SETA Services Operations.

F. Following the execution of the Purchase Agreement(s) and subject to the consent of the employees, Respondent shall provide the proposed acquirer(s) with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in Paragraph II.E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, Respondent shall further provide the acquirer(s) with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Respondent shall provide all employees identified in Paragraph II.E. of this order with reasonable financial incentives, if necessary, to continue in their employment positions pending divestiture of the SETA Services Operations, and to accept employment with the acquirer(s) at the time of the divestiture. Such incentives shall include continuation of all employee benefits offered by Respondent until the date of the divestiture, and vesting of all pension benefits (as permitted by law). In addition, respondent shall not enforce any confidentiality restrictions relating to the SETA Services or SETA Services Operations that apply to any employee identified in Paragraph II.E. who accepts employment with any proposed acquirer. Respondent also shall not enforce any non-compete restrictions that apply to any employee identified in Paragraph II.E. who accepts employment with any proposed acquirer.

H. For a period of one (1) year commencing on the date of the individual's employment by any acquirer, Respondent shall not re-hire any of the individuals identified in Paragraph II.E. of this order who accept employment with any acquirer, unless such individual has been separated from employment by the acquirer against that individual's wishes.

I. Prior to divestiture, Respondent shall not transfer, without the consent of the Federal Aviation Administration, any of the individuals identified in Paragraph II.E. of this order whose employment responsibilities involve access to Non-Public Air Traffic Control Information from Management and Data Systems to any other position involving business with the Federal Aviation Administration.

III

It is further ordered that:

A. Respondent shall not provide, disclose or otherwise make available to Loral Air Traffic Control any Non-Public Air Traffic Control Information.

B. Respondent shall use any Non-Public Air Traffic Control Information obtained by Management and Data Systems only in Respondent's capacity as provider of technical assistance to an acquirer, pursuant to Paragraph II.D. of this order.

IV

It is further ordered that:

A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the SETA Services Operations within six (6) months of the date Respondent signed the Agreement Containing Consent Order in this matter, the Commission may appoint a trustee to divest the SETA Services Operations. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph IV. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the SETA Services Operations.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the SETA Services Operations, or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an

amount equal to the delay, as determined by the Commission or, for a court- appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer or acquirers as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the SETA Services Operations.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee may also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the SETA Services Operations.

12. The trustee shall have no obligation or authority to operate or maintain the SETA Services Operations.

13. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

It is further ordered that within forty-five (45) days after the date this order becomes final and every forty-five (45) days thereafter until Respondent has fully complied with Paragraphs II. through IV. of this order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. through IV. of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. through IV. including a description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda and all reports and recommendations concerning the divestiture.

VI

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (NITE Hawk), provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Military Aircraft Information (NITE Hawk).

B. Respondent shall use any Non-Public Military Aircraft Information (NITE Hawk) only in Respondent's capacity as a provider of NITE Hawk systems, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (NITE Hawk).

VII

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Simulation and Training), provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Military Aircraft Information (Simulation and Training).

B. Respondent shall use any Non-Public Military Aircraft Information (Simulation and Training) only in Respondent's capacity as a provider of Simulation and Training Systems, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Simulation and Training).

VIII

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Electronic Countermeasures), provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Military Aircraft Information (Electronic Countermeasures).

B. Respondent shall use any Non-Public Military Aircraft Information (Electronic Countermeasures) only in Respondent's capacity as a provider of Electronic Countermeasures, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Electronic Countermeasures).

IX

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Mission Computers), provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Military Aircraft Information (Mission Computers).

B. Respondent shall use any Non-Public Military Aircraft Information (Mission Computers) only in Respondent's capacity as a provider of Mission Computers, absent the prior written consent of the proprietor of Non-Public Military Aircraft Information (Mission Computers).

X

It is further ordered that Respondent shall deliver a copy of this order to any

United States Military Aircraft manufacturer prior to obtaining any information outside the public domain relating to that manufacturer's Military Aircraft, either from the Military Aircraft manufacturer or through the Acquisition.

XI

It is further ordered that:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Unmanned Aerial Vehicle Information, provide, disclose or otherwise make available to any Lockheed Martin Military Aircraft Business any Non-Public Unmanned Aerial Vehicle Information.

B. Respondent shall use any Non-Public Unmanned Aerial Vehicle Information only in Respondent's capacity as a provider of Integrated Communications Systems, absent the prior written consent of the proprietor of Non-Public Unmanned Aerial Vehicle Information.

XII

It is further ordered that Respondent shall deliver a copy of this order to any United States Unmanned Aerial Vehicle manufacturer prior to obtaining any information outside the public domain relating to that manufacturer's Unmanned Aerial Vehicle, either from the Unmanned Aerial Vehicle manufacturer or through the Acquisition.

XIII

It is further ordered that:

A. Respondent shall not discuss, provide, disclose or otherwise make available, directly or indirectly, to any Common LM/Loral Space Director any Non-Public Space Information of Lockheed Martin.

B. Respondent shall require any Common LM/Loral Space Director to refrain from discussing, providing, disclosing or otherwise making available, directly or indirectly, any Non-Public Space Information of Loral Space to any member of the Board of Directors of Lockheed Martin, any officer of Lockheed Martin or any employee of Lockheed Martin.

C. Respondent shall conduct all matters relating to Space & Strategic Missiles without the vote, concurrence or other participation of any kind whatsoever of any Common LM/Loral Space Director.

D. Any Common LM/Loral Space Director shall not be counted for purposes of establishing a quorum in connection with any matter relating to Space & Strategic Missiles.

E. Respondent shall not provide any Common LM/Loral Space Director with any type of compensation that is based in whole or in part on the profitability or performance of Space & Strategic Missiles; provided, however, that any Common LM/Loral Space Director may receive as compensation for his or her serving on the Lockheed Martin Board of Directors such stock options or other stock-based compensation as is provided generally to other members of the Lockheed Martin Board of Directors in accordance with Respondent's ordinary practice.

XIV

It is further ordered that:

A. Respondent shall not provide or otherwise make available, directly or indirectly, any personnel, information, facilities, technical services or support from Space & Strategic Missiles to Space Systems/Loral pursuant to any provision contained in the Lockheed Martin/Loral Space Technical Services Agreement.

B. Respondent shall not disclose or otherwise make available to Space & Strategic Missiles any information received in connection with the Lockheed Martin/Loral Space Technical Services Agreement.

C. Respondent shall not disclose to any Space & Strategic Missile employee any information or technical services provided to Space Systems/Loral by Lockheed Martin pursuant to the Lockheed Martin/Loral Space Technical Services Agreement.

XV

It is further ordered that if Respondent's ownership of the equity securities of Loral Space increases to more than twenty percent (20%) of the total equity securities (including both Voting Equity Securities and Non-Voting Equity Securities) of Loral Space as the result of repurchases of equity securities by Loral Space or for any other reason, Respondent shall, following its obtaining actual knowledge of an event leading to such increase (''Event''), reduce its equity security ownership interest to a level of not more than twenty percent (20%). Those equity securities which must be sold are hereinafter referred to as the ''Excess Securities.'' Respondent shall have a period of 185 days following its obtaining actual knowledge of the Event to sell the Excess Securities (the ''Sale Period''); provided, however, that, if within ten (10) business days of Respondent's receipt of such knowledge, Respondent requests that Loral Space file a registration statement providing for such sale, the Sale Period shall be deemed to begin on the effective date of such registration statement, and shall extend for 150 days thereafter, and provided further that, if Respondent elects to sell the Excess Securities in a manner that does not require Loral Space to file a registration statement, and such sales cannot be accomplished within the Sale Period without violating Rule 144 (or any successor provision) under the Securities Act of 1933, then the Sale Period shall be extended by the minimum amount necessary to allow such securities to be sold pursuant to Rule 144 (or any successor provision). Pending the sale of Excess Securities, Respondent shall not exercise any voting rights relating to the Excess Securities. Respondent shall amend the Stockholders Agreement to provide Respondent the means of complying with the foregoing provisions and shall thereafter not amend the applicable provisions of the Stockholders Agreement in a fashion so as to impair Respondent's ability to comply with this paragraph. The provisions of this paragraph shall terminate ten (10) years from the date this order becomes final.

XVI

It is further ordered that Respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in Paragraphs II. through XVI. of this order are complied with or until such other time as is stated in said Interim Agreement.

XVII

It is further ordered that within sixty (60) days of the date this order becomes final and annually for the next ten (10) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs VI. through XVI. of this order. To the extent not prohibited by United States Government national security requirements, Respondent shall include in its reports information sufficient to identify all United States Military Aircraft and Unmanned Aerial Vehicle manufacturers with whom Respondent has entered into an agreement for the research, development, manufacture or sale of NITE Hawk Systems, Simulation and Training Systems, Electronic Countermeasures, Mission Computers or Integrated Communications Systems.

XVIII

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or sale of any division or any other change in the corporation in each instance where such change may affect compliance obligations arising out of the order.

XIX

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege and applicable United States Government national security requirements, upon written request, and on reasonable notice, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

XX

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final, except as otherwise provided in this order.

Appendix I

In the Matter of: Lockheed Martin Corporation, a corporation. File No. 961–0026.

Interim Agreement

This Interim Agreement is by and between Lockheed Martin Corporation (''Lockheed Martin''), a corporation organized and existing under the laws of the State of Maryland, and the Federal Trade Commission (the ''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Premises

Whereas, Lockheed Martin has proposed to acquire all of the outstanding voting common stock of Loral Corporation and engage in a series of related transactions and acts; and

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''Consent Agreement''), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving competition during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, Lockheed Martin entering into this Interim Agreement shall in no way be construed as an admission by Lockheed Martin that the proposed Acquisition constitutes a violation of any statute; and

Whereas, Lockheed Martin understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, Lockheed Martin agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Lockheed Martin agrees to execute and be bound by the terms of the Order contained in the Consent Agreement, as if it were final, from the date Lockheed Martin signs the Consent Agreement.

2. Lockheed Martin agrees to deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense, the Federal Aviation Administration, McDonnell Douglas Corporation, Northrop Grumman Corporation, The Boeing Company and Teledyne Inc.

3. Lockheed Martin agrees to submit, within thirty (30) days of the date the Consent Agreement is signed by Lockheed Martin, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Lockheed Martin setting forth in detail the manner in which Lockheed Martin will comply with Paragraphs II. through XVI. of the Consent Agreement.

4. Lockheed Martin agrees that, from the date Lockheed Martin signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a. and 4.b., it will comply with the provisions of this Interim Agreement:

a. ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the date the Commission finally issues its Complaint and its Decision and Order.

5. Lockheed Martin waives all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, to Lockheed Martin made to its principal office, Lockheed Martin shall permit any duly authorized representative or representatives of the Commission:

a. access, during the office hours of Lockheed Martin and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Lockheed Martin relating to compliance with this Interim Agreement; and

b. upon five (5) days' notice to Lockheed Martin and without restraint or interference from it, to interview officers, directors, or employees of Lockheed Martin, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from Lockheed Martin Corporation (''Lockheed Martin''). The proposed Consent Order contains a number of

provisions designed to remedy the anticompetitive effects likely to result from Lockheed Martin's proposed acquisition of Loral Corporation (''Loral''). The proposed Consent Order requires Lockheed Martin to divest its operations used to perform systems engineering and technical assistance (''SETA'') services for the Federal Aviation Administration (''FAA'') under the National Implementation and Support Contract (''NISC Services Contract'') within six months of the date Lockheed Martin signed the proposed Consent Order. The proposed Consent Order also prohibits Lockheed Martin's space business from providing technical services or information to Space Systems/Loral, a subsidiary of the newly created Loral Space and Communications Ltd. (''Loral Space''), pursuant to a technical services agreement between Lockheed Martin and Loral Space.

The proposed Consent Order further prohibits any Lockheed Martin board member or officer, who is also a board member or officer of Loral Space from: (1) participating in any matters involving Lockheed Martin's space business; (2) having access to any non-public information relating to Lockheed Martin's space business; or (3) providing any non-public information relating to Space Systems/Loral to Lockheed Martin. The proposed Consent Order would also prohibit Lockheed Martin from providing to such common board member or officer compensation that is based on the profitability or performance of Lockheed Martin's space business. Additionally, the proposed Consent Order would require Lockheed Martin to reduce its investment in Loral Space to 20% if, due to a repurchase by Loral Space of its outstanding common stock shares, or for any other reason, Lockheed Martin's interest in Loral Space is effectively raised above 20%. Finally, the proposed Consent Order prohibits Lockheed Martin's military aircraft and unmanned aerial vehicle divisions from gaining access to any non-public information that certain Lockheed Martin divisions will receive after the acquisition from competing military aircraft manufacturers or unmanned aerial vehicle manufacturers.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to a January 8, 1996 cash tender offer, Lockheed Martin agreed to acquire one hundred percent of the voting securities of Loral for approximately $9.1 billion. As part of the transaction, Loral's space and telecommunications businesses, including its 33% ownership interest in Space Systems/Loral, a direct satellite competitor of Lockheed Martin, will be transferred to a new entity, Loral Space. In addition, Lockheed Martin will purchase a 20% convertible preferred stock interest in Loral Space which effectively amounts to a 6.6% interest in the competing Space Systems/Loral business. Lockheed Martin also agreed to provide Loral Space with technical support services, including research and development support, at cost upon request by Loral Space. Finally, Bernard Schwartz, Chairman of the Board of Directors and Chief Executive Officer of Loral Space, will be appointed to the position of Vice Chairman of the Board of Directors of Lockheed Martin.

The proposed Complaint alleges that the transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following markets:

(1) the research, development, manufacture and sale of air traffic control systems;

(2) the research, development, manufacture and sale of commercial low earth orbit (''LEO'') satellites;

(3) the research, development, manufacture and sale of commercial geosynchronous earth orbit (''GEO'') satellites;

(4) the research, development, manufacture and sale of military aircraft; and

(5) the research, development, manufacture and sale of unmanned aerial vehicles.

The proposed Consent Order would remedy the alleged violations in each market. First, Lockheed Martin is currently a supplier of SETA services to the FAA under the NISC Services Contract and Loral is the largest supplier of air traffic control systems to the FAA. In its capacity as an FAA SETA contractor, Lockheed Martin is responsible for, among other things, developing technical and other specifications for FAA procurements, assessing bid and other proposals submitted by companies competing for FAA procurements, testing and evaluating equipment and systems supplied to the FAA, and evaluating the cost and quality performance of FAA contractors. Following the acquisition, Lockheed Martin would be both an FAA SETA contractor and the largest supplier of air traffic control systems to the FAA and would be in a position to gain access to its air traffic control systems competitors' competitively sensitive cost and design information and disadvantage its competitors and the FAA in a number of ways. For instance, with access to its competitors' cost and design information, Lockheed Martin would be able to raise its bid price for procurements of air traffic control systems if, based on this information, it determined that it was the low-cost supplier or that it had the superior technological approach. Moreover, access to its competitors' proprietary technical information could also allow Lockheed Martin to ''free-ride'' off its competitors' research and development efforts thereby reducing the incentive for those competitors to invest in future innovations. Finally, Lockheed Martin could disadvantage its competitors or raise their costs by setting unfair procurement specifications or submitting unfair proposal or performance evaluations.

The proposed Consent Order requires Lockheed Martin to divest all of the assets relating to the provision of FAA SETA services within six (6) months of the date it signed the proposed Consent Order. The proposed Consent Order states that this divestiture shall be to an acquirer or acquirers that receive the prior approval of the Commission. If Lockheed Martin fails to divest the assets within six (6) months, a trustee may be appointed to accomplish the divestiture. The proposed Consent Order also requires Lockheed Martin to provide technical assistance to the acquirer or acquirers for a period not greater than one (1) year, at the request of the acquirer or of the FAA. The purpose of the divestiture is to ensure the continued provision of FAA SETA services under the NISC Services Contract, to maintain the viability and marketability of the assets used to provide SETA services and to remedy the lessening of competition resulting from the acquisition in the market for the research, development, manufacture and sale of air traffic control systems. Recently, in *Litton Industries, Inc.*, File No. 961–0022 (accepted, subject to final approval, by the Commission on February 15, 1996 and awaiting public comments), the Commission voted unanimously to accept a Consent Order following an acquisition that raised similar competitive concerns. In that matter, the Consent Order required Litton, who is one of only two manufacturers of Aegis Destroyers, to divest assets used to provide Aegis

Destroyer SETA services in order to remedy the anticompetitive effects resulting from its acquisition of PRC Inc., a long-standing provider of SETA services to the U.S. Navy.

Second, after the transaction, Lockheed Martin and Loral Space, through its 33% ownership of Space Systems/Loral, will be two of the leading competitors in the markets for commercial LEO and commercial GEO satellites. These markets are highly concentrated and significant barriers to entry exist. Lockheed Martin has agreed to purchase a 20% convertible preferred stock interest in Loral Space which effectively amounts to a 6.6% interest in Space Systems/Loral. In addition, Lockheed Martin has agreed to provide technical assistance, including research and development support, at cost upon request from Loral Space. Finally, Bernard Schwartz, Chairman of the Board of Directors and Chief Executive Officer of Loral Space, will be appointed to the position of Vice Chairman of the Board of Directors of Lockheed Martin.

The acquisition as structured is likely to lead to anticompetitive effects in the commercial LEO and GEO satellite markets. The technical services agreement creates an ongoing relationship between Lockheed Martin and Loral Space which could be used as a mechanism for Lockheed Martin to monitor Loral Space's competitive activities or as a signaling device for Loral Space to alert Lockheed Martin as to the satellite procurements where it expects to submit a bid. As such, the agreement could facilitate coordinated interaction between the companies.

The technical services agreement would also likely reduce Loral Space's incentives to invest in commercial LEO and GEO satellite research and development. If, pursuant to the technical services agreement, Loral Space would be able to obtain proven technologies from Lockheed Martin at cost, it would have little incentive to undertake expensive and risky investment in commercial LEO and GEO satellite research and development. Thus, the agreement would likely lead to a reduction in innovation competition between the companies. Because the technical services agreement between Lockheed Martin and Loral Space, two of the leading competitors in the highly concentrated commercial LEO and GEO satellite markets, creates the potential for the exchange of competitively sensitive information and could lead to a reduction in Loral Space's incentives to innovate, the agreement is likely to result in anticompetitive effects.

Mr. Schwartz's service as an officer or director of competing companies does not violate Section 8 of the Clayton Act because Lockheed Martin's sales in competition with Loral Space are less than 2% of Lockheed Martin's total sales. For this reason, Lockheed Martin meets the Section 8(a)(2)(B) *de minimus* exception to the statute. Nevertheless, Mr. Schwartz's positions with each company still raise significant competitive concerns. For example, by serving on the boards of both companies, Mr. Schwartz would have access to competitively sensitive information from Lockheed Martin and Loral Space, including information on bid strategies, pricing, and research and development plans. In addition, Lockheed Martin would be in a position to use Mr. Schwartz to exercise influence over Loral Space, thereby reducing head-to-head competition between the companies. Lockheed Martin could also offer Mr. Schwartz compensation based on the profitability of Lockheed Martin's space business, thereby reducing his incentive to aggressively compete Loral Space against Lockheed Martin.

In order to remedy the acquisition's anticompetitive effects in the commercial LEO and commercial GEO satellite markets, the proposed Consent Order prohibits Lockheed Martin's space business from providing technical services, personnel, information or facilities, pursuant to the technical services agreement, to Space Systems/Loral. The proposed Consent Order would also prohibit any person who is simultaneously a board member or officer of Lockheed Martin and a board member or officer of Loral Space, including Mr. Schwartz, from: (1) participating in any matters involving Lockheed Martin's space business; (2) having access to any non-public information relating to Lockheed Martin's space business; or (3) providing any non-public information relating to Space Systems/Loral to Lockheed Martin. Further, the proposed Consent Order would prohibit Lockheed Martin from providing to any such common board member or officer compensation that is based on the profitability or performance of Lockheed Martin's space business. Additionally, if Lockheed Martin's interest in Loral Space is effectively raised above 20% due to a stock repurchase by Loral Space, or for any other reason, the proposed Consent Order would require Lockheed Martin to reduce its investment in Loral Space back down to 20%.

Third, Lockheed Martin is a significant competitor in the research, development, manufacture and sale of military aircraft and Loral is the sole supplier of a number of critical systems used on or with military aircraft, including simulation and training systems, the NITE Hawk forward-looking infrared targeting system, electronic countermeasures and mission computers. Following the acquisition, Lockheed Martin would be the sole source supplier for a number of these systems, as well as a competitor in the military aircraft market. In order to integrate or interface these critical systems with a military aircraft, a military aircraft manufacturer will have to provide a wide range of competitively sensitive proprietary information to the Lockheed Martin divisions that manufacture these systems. As a result, the proposed acquisition increases the likelihood that competition between military aircraft suppliers would decrease because Lockheed Martin's military aircraft division could gain access to its competitors' proprietary information, which could affect the prices and services that Lockheed Martin would offer. In addition, advancements in military aircraft research, innovation and quality would be reduced because Lockheed Martin's military aircraft competitors would fear that Lockheed Martin could ''free ride'' off of their technological developments.

To remedy the proposed acquisition's likely anticompetitive effects in the military aircraft market, the proposed Consent Order preserves the confidentiality of military aircraft suppliers' proprietary information by prohibiting Lockheed Martin's divisions that provide these critical systems from making any proprietary information from competing aircraft manufacturers available to Lockheed Martin's aircraft division. Under the proposed Consent Order, Lockheed Martin may only use such information in its capacity as a provider of these military aircraft systems. Non-public information in this context includes any information not in the public domain that is designated as proprietary information by any military aircraft manufacturer that provides such information to Lockheed Martin as well as information not in the public domain provided by any military aircraft manufacturer to Loral prior to the acquisition. The purpose of the proposed Consent Order is to preserve the opportunity for full competition in the market for the research, development, manufacture and sale of military aircraft. The Commission has issued similar orders limiting potentially anticompetitive information transfers following mergers or acquisitions, including *Martin Marietta*

Corp., (C3500) (June 28, 1994), *Alliant Techsystems Inc.*, (C3567) (April 7, 1995), and *Lockheed Martin Corp.*, (C3576) (May 9, 1995). Industry participants have indicated that these prior orders have been effective in protecting their confidential information and preserving competition. In addition, the Department of Defense has stated that the proposed Consent Order resolves all of the competitive issues that they have identified.

Finally, Lockheed Martin is a significant competitor in the market for the research, development, manufacture and sale of unmanned aerial vehicles and Loral is the sole supplier of integrated communications systems, a critical unmanned aerial vehicle component. After the acquisition, Lockheed Martin would be the sole supplier of integrated communications systems for unmanned aerial vehicles and also a competitor in the unmanned aerial vehicle market. Because unmanned aerial vehicle manufacturers will have to provide proprietary information to the Lockheed Martin division that manufactures integrated communication systems, Lockheed Martin's military aircraft division, which manufactures unmanned aerial vehicles, could gain access to competitively sensitive non-public information relating to competing unmanned aerial vehicles. As a result, the proposed acquisition increases the likelihood that competition between unmanned aerial vehicle suppliers would decrease because Lockheed Martin would have access to its competitors' proprietary information, which could affect the prices and services that Lockheed Martin would offer. In addition, advancements in unmanned aerial vehicle research, innovation and quality would be reduced because Lockheed Martin's unmanned aerial vehicle competitors would fear that Lockheed Martin could ''free ride'' off of their technological developments.

To remedy the proposed acquisition's likely anticompetitive effects in the unmanned aerial vehicle market, the proposed Consent Order preserves the confidentiality of unmanned aerial vehicle suppliers' proprietary information by prohibiting Lockheed Martin's communications systems divisions from making any proprietary information from competing unmanned aerial vehicle manufacturers available to Lockheed Martin's military aircraft division. Under the proposed Consent Order, Lockheed Martin may only use such information in its capacity as a provider of integrated communications systems. Non-public information in this context includes any information not in the public domain that is designated as proprietary information by any unmanned aerial vehicle manufacturer that provides such information to Lockheed Martin as well as information not in the public domain provided by any unmanned aerial vehicle manufacturer to Loral prior to the acquisition. The purpose of the proposed Consent Order is to preserve the opportunity for full competition in the market for the research, development, manufacture and sale of unmanned aerial vehicles.

Under the provisions of the proposed Consent Order, Lockheed Martin is required to deliver a copy of the Order to any United States military aircraft manufacturer and to any United States unmanned aerial vehicle manufacturer prior to obtaining any information from them that is outside the public domain. The Order also requires Lockheed Martin to provide the Commission a report of compliance with the provisions of the Order relating to its divestiture of its FAA SETA services assets within forty-five (45) days following the date the Order becomes final, and every forty-five (45) days thereafter until it has completed the required divestiture of its FAA SETA services assets. In addition, the Order also requires Lockheed Martin to provide the Commission a report of compliance with all other provisions of the Order within sixty (60) days following the date the Order becomes final, and annually for the next (10) years on the anniversary of the date the Order becomes final.

In order to preserve competition in the relevant markets during the period prior to the final acceptance of the proposed Consent Order (after the 60-day public notice period), Lockheed Martin has entered into an Interim Agreement with the Commission in which it has agreed to be bound by the proposed Consent Order as of the date the Commission accepted the proposed Consent Order subject to final approval.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–10560 Filed 4–26–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to Section 13 of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Annual Reports prepared for the public by the committees set forth below have been filed with the Library of Congress:

Health Care Policy and Research Special Emphasis Panel
Health Care Technology Study Section
Health Services Research and Developmental Grants Review Committee
Health Services Research Dissemination Study Section
National Advisory Council for Health Care Policy, Research, and Evaluation

Copies of these reports, prepared in accordance with Section 10(d) of the Federal Advisory Committee Act, are available to the public for inspection at: (1) The Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9:00 a.m. and 4:30 p.m.; and (2) the Information Resource Center, Agency for Health Care Policy and Research, Suite 501, 2101 East Jefferson Street, Rockville, Maryland, on weekdays between 9:00 a.m. and 4:30 p.m.

Copies may be obtained by mail request from the Committee Management Officer, Agency for Health Care Policy and Research, Suite 309, 6000 Executive Boulevard, Rockville, Maryland 20852.

Dated: April 17, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–10486 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–90–M

Agency for Toxic Substances and Disease Registry

[ATSDR–112]

Quarterly Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice is a quarterly announcement which contains the following: A list of sites for which ATSDR has completed public health assessments, or issued an addendum to

a previously completed public health assessment, during the period October–December 1995. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and a site for which an assessment was prepared in response to a request from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments and public health assessments with addenda was published in the Federal Register on February 14, 1995 [61 FR 5787]. The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. A charge is applied by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses following the site name.

Public Health Assessments or Addendum Completed or Issued

Between October 1, 1995 and December 31, 1995, public health assessments were issued for the sites listed below:

NPL Sites

California

Frontier Fertilizer—Davis—(PB96–125596)

Indiana

Fisher Calo—Kingsbury—(PB96–128079)

Iowa

Mason City Coal Gasification Plant—Mason City—(PB96–107289)

Massachusetts

Industri-Plex Site—Woburn—(PB96–136445)

Wells, G and H—Woburn—(PB96–136411)

Michigan

Lower Ecorse Creek Dump—Wyandotte—(PB96–128061)

New York

Pfohl Brothers Landfill—Cheektowaga—(PB96–118641)

Port Washington Landfill—North Hempstead—(PB96–115688)

Tennessee

USA Defense Depot Memphis—Memphis—(PB96–117908)

Washington

Hanford 1100-Area (USDOE)—Richland—(PB96–125521)

McChord Air Force Base Wash Rack/Treatment)—American Lake Gardens/Mchord Air Force Base (a/k/a McChord Air Force Base Area ''D'')—Tacoma—(PB96–131909)

Non-NPL Petitioned Site

Georgia

Southern Wood Piedmont Company—Augusta—(PB96–127675)

Dated: April 22, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 96–10503 Filed 4–26–96; 8:45 am]

BILLING CODE 4163–70–P

[ATSDR–108]

Notice of the Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) revise the Priority List of Hazardous Substances to include additional substances most commonly found at facilities on the CERCLA National Priorities List (NPL). This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available to ATSDR and EPA. This revised priority list includes newly listed substances that have been determined to pose the most significant potential threat to human health at or around NPL hazardous waste sites. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

ADDRESSES: Requests for a copy of the 1995 CERCLA Priority List of Hazardous Substances That Will Be The Subject of Toxicological Profiles and Support Document or comments on this notice should bear the docket control number ATSDR–108, and should be submitted to: ATSDR, Division of Toxicology, Emergency Response and Scientific Assessment Branch, Mail Stop E–29, 1600 Clifton Rd., NE., Atlanta, GA 30333.

This is an informational notice only, and comments are not being solicited at this time. However, any comments received will be placed in a publicly accessible docket; therefore, please do not submit confidential business information.

Electronic Availability: The 1995 Revised Priority List will be available as an electronic file on the Federal Bulletin Board on or near the day of publication in the Federal Register. By modem, dial (202) 512–1387 and set your parity to None, Data Bits to 8, and Stop Bit to 1 (N,8,1). To access the Federal Bulletin Board via Internet, use the telnet command to fedbbs.access.gpo.gov. This file is available in WordPerfect 5.1, Dbase IV, and ASCII. The top 20 substances from the priority list are also listed on ATSDR's Home Page on the World-Wide Web located at http://atsdr1.atsdr.cdc.gov:8080/atsdrhome.html.

FOR FURTHER INFORMATION CONTACT: ATSDR, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Rd., NE., Mailstop E–29, Atlanta, GA 30333, telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances that are most commonly found at facilities on the CERCLA NPL. Section 104(i)(2) of CERCLA, as amended [42 U.S.C. 9604(i)(2)], requires that the two agencies prepare a list, in order of

priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, are determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990; 56 FR 52166, October 17, 1991). CERCLA also requires that ATSDR and EPA shall, not less often than once every year thereafter, revise the list to include additional hazardous substances that are determined to pose the most significant potential threat to human health. In 1995, the agencies decided to alter the publication schedule of the priority list by moving to a 2-year publication schedule, reflecting the stability of this listing activity (see 60 FR 16478, March 30, 1995). As a result, the priority list is now on a 2-year publication schedule with a yearly informal review and revision. Each substance on the CERCLA Priority List of Hazardous Substances is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

The previous priority lists of hazardous substances were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information on the frequency of occurrence and the potential for human exposure to substances at NPL sites became available for use in the 1991 priority list with the development of ATSDR's HazDat database. Additional information from HazDat became available for the 1995 listing activity.

In the initial listing activities (1987–1990), new substances were added to the end of the list, without a comparative reranking. A notice announcing the intention of ATSDR and EPA to revise and rerank the Priority List of Hazardous Substances was published on June 27, 1991 (56 FR 29485). In the 1995 listing activity, as in the previous three years, new candidate substances (substances found at three or more NPL sites) were assigned a toxicity/environmental score (TES) using the EPA Reportable Quantity methodology, and were added to the group of substances previously considered for the list. All substances were then evaluated together for consideration on the priority list.

The approach used to generate the 1991 revised priority list was summarized in the ''Revised Priority List of Hazardous Substances'' (56 FR 52166, October 17, 1991). The same approach and the same algorithm were used in the 1995 listing activity. As a result, more than 750 candidate substances have been ranked to create the current list of 275 substances.

The additional information used in the 1995 listing activity has been entered into ATSDR's HazDat database since the development of the 1993 Priority List of Hazardous Substances. As with other site-specific information used in the listing activity, this information has been collected from ATSDR public health assessments and from site file data packages used in the development of public health assessments. The new information includes more recent NPL frequency of occurrence data, additional concentration data, and more information on exposure or potential exposure to substances at NPL sites.

At this time the list includes 275 substances that ATSDR and EPA have determined to pose the most significant potential threat to human health based on the criteria of CERCLA Section 104(i)(2) [42 U.S.C. 9604(i)(2)]. All candidate substances have been analyzed and ranked with the current algorithm, and may become the subject of toxicological profiles in the future.

The addition of approximately 14,000 contaminant data records to the HazDat database since the 1993 listing activity has allowed the agencies to better assess the potential for human exposure to substances at NPL hazardous waste sites. With these additional data, 23 substances have been replaced on the list of 275 substances. Of the 23 replacement substances, 12 are new candidate substances, and 11 are substances that were previously under consideration. These changes in the order of substances appearing on the CERCLA Priority List of Hazardous Substances will be reflected in the program activities that rely on the list for future direction. These changes reflect the dynamic nature of scientific data on substances present at NPL hazardous waste sites.

This evaluation activity and announcement of a revised Priority List of Hazardous Substances fulfills the conditions of CERCLA Section 104(i), as amended. ATSDR and EPA intend to publish the next revised list of hazardous substances in two years, with an informal review and revision performed in one year. These revisions will reflect changes and improvements in data collection and availability. Additional information on the existing methodology used in the development of the CERCLA Priority List of Hazardous Substances can be found in the Federal Register notices mentioned previously.

Administrative Record

ATSDR and EPA are establishing a single administrative record entitled ATSDR–108 for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file, which is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal legal holidays, at the Agency for Toxic Substances and Disease Registry, #4 Executive Park Drive, Suite 2400, Atlanta, Georgia (not a mailing address).

Dated: April 22, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 96–10502 Filed 4–26–96; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

Advisory Committees; Annual Reports; Notice of Availability

Notice is hereby given that pursuant to Section 13 of Public Law 92–463 (5 U.S.C. Appendix 2), the Fiscal Year 1995 annual reports for the following Federal advisory committees used by the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry have been filed with the Library of Congress:

Advisory Committee for Energy-Related Epidemiologic Research

Advisory Committee for Injury Prevention and Control

Advisory Committee on Childhood Lead Poisoning Prevention

Advisory Committee on Immunization Practices

Advisory Committee to the Director, Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, National Center for Infectious Diseases

Board of Scientific Counselors, National Institute for Occupational Safety and Health

Breast and Cervical Cancer Early Detection and Control Advisory Committee

CDC Advisory Committee on the Prevention of HIV Infection

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Hanford Health Effects Subcommittee
Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Savannah River Site
Clinical Laboratory Improvement Advisory Committee
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel
Hanford Thyroid Morbidity Study Advisory Committee
Hospital Infection Control Practices Advisory Committee
Injury Research Grant Review Committee
Interagency Committee on Smoking and Health
Mine Health Research Advisory Committee
National Committee on Vital and Health Statistics
Safety and Occupational Health Study Section
Technical Advisory Committee for Diabetes Translation and Community Control Programs
Workers' Family Protection Task Force

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room LM 133, Madison Building, 101 Independence Avenue, SE, Washington, DC 20540–4760, telephone 202/707–5690. Additionally, on weekdays between 8 a.m. and 4:30 p.m., copies will be available for inspection at the Centers for Disease Control and Prevention (CDC), Committee Management Office, 4 Executive Park Drive, Suite 1117, Atlanta, Georgia 30329, telephone 404/639–6389. Copies may also be obtained by writing to the Centers for Disease Control and Prevention (CDC), Committee Management Office M/S E–72, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Dated: April 23, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–10476 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–18–M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Refugee Assistance-by-Nationality Report—ORR–10.

OMB No.: 0970–0044.

Description: The Office of Refugee Resettlement uses the ORR–10 (Refugee Assistance-by-Nationality Report) to collect information about refugee receipt of public assistance. Section 412(a)(3) of the Immigration and Nationality Act requires ORR to compile and maintain data, by State of residence and nationality, on the number of refugees receiving cash or medical assistance. To satisfy this requirement, ORR requires each State that participates in the Refugee Resettlement program to enumerate, by nationality, its refugee caseload of Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) as of June 30 of each year. ORR then consolidates all responses and reports these data in Appendix A of the annual Report to Congress.

Program managers use data on public assistance utilization by nationality groups to: (1) Plan employment services for refugee populations, (2) gauge the relative need for specialized services of different refugee populations in different areas of the country, and (3) determine whether newly arriving populations have adjusted to the American economy.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
ORR–10	50	1	.417	135.8

Estimated Total Annual Burden Hours: 135.8.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending a message to rkatson@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments 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 technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 22, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–10531 Filed 4–26–96; 8:45 am]

BILLING CODE 4184–01–M

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Refugee State-of-Origin Report.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-or-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires ORR to compile and maintain data on the secondary migration of refugees within the United States after arrival.

In order to meet this legislative requirement, ORR requires each State participating in the Refugee

Resettlement Program to submit an annual report with a count of the number of refugees receiving cash and medical assistance or social services who were initial resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the social security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its refugee arrival totals for each State in order to calculate the social services allocation formula.

Respondents: State Governments.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–11	50	1	.434	217

Estimated Total Annual Burden Hours: 217.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending a message to rkatson@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments 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 technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 22, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–10532 Filed 4–26–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 93D–0025]

Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products; Guidance Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised guidance document entitled ''Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products (Lactating and Non-lactating Cow Products)'' prepared by the Center for Veterinary Medicine (CVM). This guidance document serves to interpret statutory and regulatory requirements and outlines general procedures for conducting evaluations for anti-microbials being considered for approval.

DATES: Written comments on the guidance document may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the revised guidance document entitled, ''Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products'' to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the revised guidance document entitled ''Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products (Lactating and Non-lactating Cow Products)'' prepared by CVM. The guidance document is intended to be used by the pharmaceutical industry for information regarding the types of data that will demonstrate that an anti-microbial mastitis product is safe and effective for both lactating and non-lactating cows. In the Federal Register of February 10, 1993 (58 FR 7893), FDA issued a notice of availability of the CVM draft guideline entitled ''Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Anti-Infective Bovine Mastitis Products.'' Comments by interested persons were requested.

In response to the February 19, 1993, notice, the Animal Health Institute (AHI) notified CVM, by letter dated June 28, 1993, of its intent to form a working group, the Dairy Industry Consortium (DIC), to address the draft CVM guideline ''Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing

Studies for Anti-Infective Bovine Mastitis Products.'' Comments and alternative proposals from the AHI/DIC were forwarded to FDA/CVM in a letter dated May 24, 1994.

Because AHI/DIC put forth extensive complex scientific comments, CVM agreed to participate in a workshop to further discuss and clarify the AHI/DIC comments. FDA/CVM representatives participated in the workshop, which was held on June 2, 1994, in Alexandria, VA. The objective of this workshop was to hold a public meeting to allow for the discussion of AHI/DIC comments. The draft guideline was discussed at the workshop. In a letter dated July 14, 1994, AHI circulated minutes of the workshop to all attendees. In a letter dated August 11, 1994, CVM provided comments on the July 14, 1994, AHI minutes of the workshop. As a result of CVM's comments, a subsequent meeting was held on September 23, 1994, between representatives of FDA/CVM and AHI/DIC to clarify scientific points made in the minutes of the workshop.

No other comments on that draft guideline were received by the agency. The comments on the draft guideline from AHI/DIC are discussed below:

1. General Issues

It was recommended that the final guidance document encompass only the efficacy and target animal safety of anti-infective bovine mastitis products. The draft guideline provided a discussion on other components of the new animal drug application (NADA).

CVM concurs with this comment. The guidance document will mainly address efficacy and target animal safety. Other components of the NADA will be addressed under separate guidance documents (e.g., environmental assessment and manufacturing).

2. Enrollment in Study for Clinical Infectious Mastitis

It was recommended that the enrollment of a clinical mastitis case in an efficacy study include the presence of abnormal milk and/or udder clinical signs at enrollment as the primary element. The presence of microorganisms should be strictly secondary. The experimental unit should be the lactating dairy cow with clinical mastitis (abnormal milk and/or udder clinical signs). For future clinical studies, only cows with a single quarter with clinical mastitis should be enrolled. CVM should use this single quarter data base to infer efficacy to all cows with mastitis in one or more quarters. The diagnosis of clinical mastitis should be the only signalment needed for enrollment in the study. Prior to treatment, single samples for microbiologic and somatic cell count (SCC) assessment should be obtained. Only the single affected quarter will be treated. Any cow developing mastitis in additional quarters during her enrollment should be dropped from the study and not considered failure. Cows requiring and/or receiving treatment in an additional mastitic quarter should be excluded from consideration in the study. Only clinical cases of mastitis in which a mastitis pathogen is isolated in the pretreatment sample should be used to calculate cure rate. It should be necessary to submit to CVM the pre and posttreatment bacteriological culture data from those cows that were initially enrolled in the study but subsequently cultured negative on the pretreatment sample.

CVM agrees with these comments. The guidance document has been revised to reflect these comments.

3. Definition of Cure

It was recommended that the definition of cure should include two parts, a clinical portion and a bacteriological portion. The current definition of cure lacks the clinical assessment. The cure should be assessed between 14 and 28 days posttreatment based on the negative control study design. Clinically, a cured quarter should have normal milk and no clinical signs of mastitis in that quarter. Microbiologically, the mastitis pathogen isolated in the pretreatment sample should be absent from two posttreatment test samples. A minimum of two single microbiology test samples should be obtained at least 5 days apart during the assessment period (14 to 28 days posttreatment). Two single SCC samples should be obtained at the same time. SCC should not be used in the determination of cure for the individual cow. SCC results should only be used as a check of the numerical trend between the means of SCC for ''cured'' and ''not-cured'' cows within each treatment group to determine if other studies are needed for inflammation and safety.

CVM agrees with the proposed definition of cure. The guidance document has been revised to reflect these comments.

4. Enrollment in Study for Subclinical Mastitis

It was recommended that all new anti-infective products for mastitis in the lactating dairy cow must show efficacy for clinical mastitis. No new product should be licensed with subclinical data as in the old guidelines. CVM should consider alternative approaches with adequate justification. To obtain a subclinical indication, additional subclinical data should be required. With acceptable clinical mastitis efficacy results, the subsequent subclinical mastitis study should require that the new therapy demonstrate efficacy but at a lower probability level ($p<0.10$). This should require fewer cows to be necessary for the subclinical study because elimination of the pretreatment pathogen is required in the clinical study. Subclinical trial(s) should select cows with a positive quarter, thus fewer cows may be needed. The subclinical study should be a randomized study. Prior to treatment, two single microbiology and SCC samples should be obtained at a 24-hour interval. At 14 to 28 days posttreatment, two single microbiologic and SCC samples should be obtained at least 5 days apart. In the subclinical study, only one quarter from any cow would be treated. For cows infected in multiple quarters, the quarter to be treated would be randomly selected. The other quarters would not be treated. If additional quarters of clinical mastitis requires additional treatment, the cow would be ineligible for inclusion in the study. Definition of cure for the subclinical study constitutes the elimination of the bacteria isolated in both pretreatment samples. SCC results should be used similarly in subclinical studies as for clinical studies to detect changes and perhaps indicate possible safety problems. Products with acceptable efficacy data from both clinical and subclinical studies should receive the following indication: ''Effective for the treatment of clinical and subclinical mastitis caused by* * *''.

CVM agrees with these comments. The guidance document has been revised to incorporate these comments.

5. Design of Field Studies

It was recommended that clinical efficacy studies would be multilocation/multiherd studies. CVM should eliminate the requirement that a study herd must have a 20 percent incidence of clinical mastitis to participate. Herds participating in a clinical study should have a sufficient number of clinical mastitis cases to fill an adequate number of blocks. Obtaining an adequate number of pathogens may involve multiple locations to fulfill the number needed for each block within the study. In the clinical study, the distribution of mastitis pathogens from the study should be utilized to determine the label efficacy statement. An example for an effective antibiotic for staph and strep mastitis pathogens would be:

''Effective for the treatment of clinical and subclinical mastitis caused by *Staphylococcus* species such as *Staphylococcus aureus*, and *Streptococcus* species such as *Streptococcus agalactiae, Streptococcus uberis*.''

This would eliminate the need in a clinical study to enroll 100 clinical cases per pathogen per treatment group. The study would need to demonstrate adequate power to detect an overall treatment-cure rate above that of the untreated control group. This would take into account spontaneous cure rates.

CVM considered the above comments and has revised the guidance document accordingly in light of CVM's position on this issue. CVM believes that under current regulations, use of positive control studies are permitted, however, CVM is trying to determine what constitutes ''efficacy threshold.'' CVM would still require a negative controlled study in order to separate the spontaneous cure rate from the cure rate attributable to the drug. If a sponsor is considering a positively controlled study, the sponsor should provide a basis for the need to have such a study, and thus be exempted from this standard. It should be discussed with and approved by CVM prior to the study. The design of the positively controlled study needs to be such that depending on the spontaneous cure rates, the study would detect an overall cure rate for the treatment group of 65 to 70 percent per pathogen.

6. Minimum Inhibitory Concentration/Pharmacokinetic Data (MIC/PK Data)

The comment stated that utilization of MIC/PK data for intramammary/mastitis products is still in the scientific discovery stage. The basis for correlating milk residue/efficacy/MIC data to draw a reasonable scientific conclusion is unavailable.

CVM agrees with the above comment, however, the use of MIC/PK data for intramammary products should be addressed when CVM considers the flexible labeling issues and should not be addressed in this current anti-infective bovine mastitis drug guidance document.

7. Non-lactating Treatment and Prevention Products

The comment stated that separate studies would be necessary to obtain a treatment and prevention label claim.

CVM agrees with the comment and has revised the draft guidance to indicate that separate studies would be necessary to obtain a treatment and prevention label claim for use in the dry cow. For the prevention claim, the sponsor would need to establish, through a negative controlled group, the new infection rate (estimates are approximately 2 to 3 percent) and demonstrate at least a 50 percent reduction in the rate of new infections. The criteria for defining a cure is as for clinical mastitis in the lactating cow, i.e., no clinical signs and negative culture at time of freshening.

Guidelines are generally issued under §§ 10.85(a) and 10.90(b) (21 CFR 10.85(a) and 10.90(b)). The agency is now in the process of revising §§ 10.85(a) and 10.90(b). Therefore, this guidance document is not being issued under §§ 10.85(a) and 10.90(b), and it does not bind the agency, and does not create or confer any rights, privileges, or benefits for or on any person. However, it represents the agency's current thinking on this issue. A person may follow the guidance document or may choose to follow alternative procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter with FDA/CVM to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable. When a guidance document states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guidance document.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 1996.

William K. Hubbard,

Association Commissioner for Policy Coordination.

[FR Doc. 96–10485 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F-0102]

Ciba-Geigy Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4361), filed by Ciba-Geigy Corp., proposing that the food additive regulations be amended to provide for safe use of the reaction product of 4,4′-isopropylidenediphenol-epichlorohydrin resin, 4,4′-isopropylidenediphenol bis[(2-glycidyloxy-3-n-butoxy)-1-propyl ether], and 4,4′-isopropylidenediphenol as a component of coatings for food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 19, 1993 (58 FR 21173), FDA announced that a food additive petition (FAP 3B4361) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of the reaction product of 4,4′-isopropylidenediphenol-epichlorohydrin resin, 4,4′-isopropylidenediphenol bis[(2-glycidyloxy-3-n-butoxy)-1-propyl ether], and 4,4′-isopropylidenediphenol as a component of coatings for food-contact use. Ciba-Geigy Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7)

Dated: April 10, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–10547 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–01–F

1996 Gene Therapy Conference: Development and Evaluation of Phase I Products and Workshop on Vector Development; Notice of Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public conference entitled ''1996 Gene Therapy Conference: Development and Evaluation of Phase I Products and Workshop on Vector Development.'' The objective of this conference is to educate investigators on the

investigational new drug (IND) process, points-to-consider documents, resources available from the National Institutes of Health (NIH) to bring gene therapy from the research laboratory to clinical trials, and to conduct a series of workshops on various issues concerning the development, production, and use of viral vectors for gene therapy. FDA believes that the conference will benefit interested parties, including industry, NIH, and FDA, involved in this rapidly advancing and changing field of gene therapy.

DATES: The public conference will be held on Thursday and Friday, July 11 and 12, 1996, 8 a.m. to 5 p.m. Preregistration is requested by June 28, 1996. Registration will be held on both days from 7:30 a.m. to 8 a.m.

ADDRESSES: The public conference will be held at NIH, Bldg. 45, Natcher Auditorium, 9000 Rockville Pike, Bethesda, MD. There is no registration fee. For a complete description of the conference, agendas, speakers, and session chairs check the FDA Biologics Home Page at http://www.fda.gov/cber/cberftp.html. The home page will be updated as the conference gets closer.

FOR FURTHER INFORMATION CONTACT:

Regarding information on registration: Margaret Fanning, NCI–FCRDC, P.O. Box B, Frederick, MD 21702–1201, 301–846–5865, or FAX 301–846–5866.

Regarding information on the conference agenda: Bette A. Goldman, Center for Biologics Evaluation and Research (HFM–500), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2860.

SUPPLEMENTARY INFORMATION: Gene therapy is a dynamic and rapidly advancing field of scientific study. The purpose of this conference is twofold. On July 11, 1996, FDA hopes to provide the gene therapy community with an education and understanding of the IND review process. Many academic investigators and researchers involved in the research and development of gene therapies are not familiar with the regulatory process for the review of IND's. This lack of knowledge of the IND process may decrease the efficiency of pre-IND meetings and increase the review burden on FDA staff. In order to address this problem, the conference will include a description of the IND process, the use of ''points-to-consider'' and guideline documents, and resources available from NIH to bring gene therapy from the research laboratory to clinical trials. On July 12, 1996, the conference will serve as an opportunity for FDA to hear concerns, issues, and ideas from the gene therapy community. There will be presentations of the available scientific data from various groups, followed by discussions, in order to improve understanding of scientific issues that are the foundation of regulatory guidelines. Breakout sessions will address the following: Adenoviral vectors, ancillary products, facilities and manufacturing, information on getting started in gene therapy development, retroviral vectors, pharmacology, toxicology, and the development of new vector systems.

The information obtained from this conference may assist in the development of future scientific and regulatory policy or guidance.

Dated: April 19, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–10484 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement and Proposed Project Requirements and Review Criteria for Cooperative Agreements for Partnerships for Health Professions Education for Fiscal Year 1996

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1996 Cooperative Agreements for Partnerships for Health Professions Education. This model/demonstration program will be jointly funded under sections 738(b) (Minority Faculty Fellowship Program), 739 (Centers of Excellence in Minority Health Professions Education), and 740 (Health Careers Opportunity Program) of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. The goal of this program is to establish and test a comprehensive model program in a geographically defined area (e.g., region, state, metropolitan or rural area), that incorporates a variety of educational and community-based entities in a formal continuum of activities to increase the number and quality of: (1) Minority and disadvantaged health professionals to provide health services to underserved populations and (2) minority faculty serving in health professions schools. No comprehensive model currently exists.

Rationale

The rationale for conducting this model project is to:

1. Test the feasibility and effectiveness of executing a comprehensive program in a defined geographic area, which encompasses a dynamic coordinated educational continuum designed to increase the number and quality of minority/disadvantaged health professionals and minority faculty for health professions schools. This program includes formal linkages among several community-based entities and educational institutions.

2. Compare performance outputs of a comprehensive approach versus the output of several independent projects operating in a defined geographic area as is currently practiced.

3. Assess the cost effectiveness of a comprehensive model versus a multiple independent projects approach (testing the hypothesis that approximately one third of the costs for personnel and overhead expenditures would be saved through a comprehensive administrative infrastructure).

4. Determine the potential for several community and educational entities forming a unified, effective, multi-dimensional, comprehensive educational continuum under the umbrella of a single lead institution.

5. Test the relative soundness of a cooperative comprehensive approach versus that of several projects acting independently. This would facilitate tracking, monitoring and retaining targeted individuals through the educational pathway to become health professionals and/or faculty in health professions schools.

This program announcement is subject to reauthorization of the legislative authorities and to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriations for title VII programs, the amount of available funding for this specific cooperative agreement cannot be estimated.

Purpose

The purposes of this program are to: (1) Assist schools in supporting programs of excellence in health

professions education for minority students, (2) assist individuals from disadvantaged backgrounds to undertake education to enter and graduate from a health professions school and (3) to assist schools in increasing the number of underrepresented minority faculty members at such schools. Applicants are required to meet the statutory requirements identified in sections 738(b), 739, and 740. Definitions regarding each of these programs have been published at 60 FR 62097, dated December 4, 1995. In addition, applicants must meet the requirements of regulations as set forth in 42 CFR part 57, subparts S and V. Applicants may request funding for up to three years. In making awards, consideration will be given to an equitable geographic distribution of projects.

Eligibility

Applicants eligible to apply for this model/demonstration program are accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, public health, veterinary medicine, optometry, allied health, chiropractic, podiatric medicine, clinical psychology, health administration and other public or private nonprofit health or education entities located in a State as defined in section 799.

Proposed Project Requirements

The following project requirements are proposed:

1. The Partnerships for Health Professions Education cooperative agreement is to include efforts to increase the numbers and quality of:

(a) Minority and disadvantaged health professionals who provide health services to underserved populations and

(b) Minority faculty serving in health professions schools.

This would be accomplished through comprehensive geographically defined cooperative initiatives involving several educational and community-based institutions and organizations. Specifically, the project is to establish and test a model comprehensive program in a defined geographic area (e.g. region, state, metropolitan or rural area). The project would bring together a variety of educational and community entities into a formal educational continuum that addresses:

(a) The needs of minority and disadvantaged students through graduation from a health professions school, and

(b) Junior minority faculty aspiring to senior faculty positions in health professions schools.

2. The proposed model must encompass formulation of academic-community educational partnerships including:

(a) Formal linkages among health profession and prehealth profession schools, where both have strong histories and established administrative infrastructures for addressing the types of purposes proposed in this model program;

(b) Linkages among health professions schools and community based health care entities serving underserved populations. This would allow targeted health professions school students to be offered experiences in the delivery of health services in community-based facilities located at sites remote from the institution; and

c. Consortium arrangements (where appropriate) among participating health professions schools.

4. The Partnerships for Health Professions Education Programs shall, for a geographically prescribed area establish:

(a) An educational and non-educational support system designed to improve the quality of the minority applicant pool involving preliminary education, facilitating entry (including post baccalaureate projects where appropriate) and retention activities at the health professions school level. There should be an uninterrupted continuum to assist students through graduation from a health professions school. This would be accomplished through development and implementation of activities related to all the purposes identified in sections 738(b), 739, and 740 of the PHS Act.

(b) Minority faculty development initiatives designed to recruit and provide a formal structured program of preparation in such areas as pedagogical skills, program administration, grant writing and publication skills, research methodology, development of research proposals and community service abilities under a senior faculty mentor. It should involve pre-faculty appointment, faculty fellowship opportunities and retention for junior minority faculty in health professions schools;

(c) Information resources and curricula addressing minority health issues and clinical education at community based sites remote from the health professions school that predominantly serve underserved populations; and

(d) Faculty and student research on health issues particularly affecting minority groups.

5. Measurable, outcome oriented and time framed performance outcome standards will be used to evaluate the project.

6. All award recipients must agree to maintain institutional expenditures of non-Federal funds in an amount not less than the previous fiscal year.

7. Program activities and experiences related to the establishment of the Partnerships for Health Professions Education Program must be documented in a format that would allow for future duplication by other institutional organizations.

Substantial Federal Programmatic Involvement

It is anticipated that the Federal government will have substantial programmatic involvement with the planning, development and administration of the Partnerships for Health Professions Education Program and its outputs by:

1. Providing technical assistance, guidance and reviewing changes needed to conduct the project.

2. Reviewing and advising regarding training content and methodologies and formal faculty development regimens.

3. Providing advice regarding formal linkage and consortium arrangements which have been established for the purpose of conducting the Partnerships for Health Professions Education Program.

4. Assisting in the modification of student participant selection criteria and processes.

5. Providing information relative to proven evaluation methods, including data collection methods, data analysis techniques and participant tracking systems.

6. Reviewing and advising on program evaluation methods, including data collection activities, data analysis techniques and participant tracking systems.

7. Reviewing and advising on the documentation of the activities and experiences related to establishment of the Partnerships for Health Professions Education Program.

8. Providing data and information about Federal programs that may impact the Partnerships for Health Professions Education Program.

9. Participating in the review of subcontracts awarded under the Cooperative Agreement.

Proposed Review Criteria

The following criteria are proposed for review of applications for this program:

1. The relationship of the applicants proposal to the purposes stated for the Partnerships for Health Professions Education Program, the

comprehensiveness and geographic base of the proposed project, the extent to which linkages with community entities and institutions are documented, and the degree to which the proposed project plans are transferable to other institutions.

2. The extent, institutional commitment and outcomes of past efforts and activities of the institution in conducting minority/disadvantaged programs, the extent to which applicant data indicate trends, the numbers and type (race/ethnicity, gender) of individuals that can be expected to benefit from the project, and suitability of participant eligibility requirements, selection criteria, and process.

3. The relevance of objective(s) to the stated problem and need, and to model purposes; their measurability and attainability within a specific time frame; and the extent to which they represent outcome measures.

4. The scope of specific activities and their relevance to the stated objectives and projected outcomes; their appropriateness for a Partnership for Health Professions Education Program; their soundness in terms of the extent and nature of the academic content and non-academic services; and their validity as to the methodologies, logic and sequencing proposed.

5. The administrative and managerial capability of the applicant to conduct the project, qualifications of the staff and faculty, their academic and experiential background and time commitment, the nature and degree of their involvement, and their experience in working with the proposed target group.

6. The appropriateness of the budget for assuring effective utilization of cooperative agreement funds and the institutional or organizational plan for phasing-in income from other sources and developing self-sufficiency for continuing the program after Federal funding.

7. The degree to which the applicant has made significant efforts to increase the number of minority individuals serving in faculty or administrative positions at the health professions school.

8. Techniques and methods to be employed in evaluating the project.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of *Healthy People 2000*. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Additional Information

Interested persons are invited to comment on the proposed project requirements and review criteria. The comment period is 30 days. All comments received on or before May 29, 1996 will be considered before the final project requirements and review criteria are established. Written comments should be addressed to Dr. Ciriaco Q. Gonzales, Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holiday excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Availability

Application materials are available on the World Wide Web at address: http://www.os.dhhs.gov/hrsa/bhpr. Click on the file name you want to download to your computer. It will be saved as a self-extracting WordPerfect 5.1 file. Once the file is downloaded to the applicant's PC, it will still be in a compressed state. To decompress the file, go to the directory where the file has been downloaded and type in the file name followed by a <return>. The file will expand into a WordPerfect 5.1 file. Applicants are strongly encouraged to obtain application materials from the World Wide Web via the Internet.

However, for applicants who do not have Internet capability, application materials are also available on the Bureau of Health Professions (BHPr) Bulletin Board. Use your computer and modem to call (301) 443–5913. Set your modem parameters to 2400 baud, parity to none, data bits to 8, and stop bits to 1. Set your terminal emulation to ANSI or VT–100.

Once you have accessed the BHPr Bulletin Board, you will be asked for your first and last name. It will also ask you to choose a password. *Remember Your Password!* The first time you logon you ''register'' by answering a number of other questions. The next time you logon, BHPr's Bulletin Board will know you.

Press (F) for the (F)iles Menu and (L) to (L)ist Files. Press (L) again to see a list of numbered file areas. To see a list of files in any area, type the number corresponding to that area. Competitive application materials for grant programs administered by the Bureau of Health Professions are located in the File Area item ''B'' titled Grants Announcements.

To (R)ead a file or (D)ownload a file, you need to know its exact name as listed on BHPr's Bulletin Board. Press (R) to (R)ead a file and type the name of the file. Press (D) to (D)ownload a file to your computer. You need to know how your communications software accomplishes downloading.

When you have completed your tour of BHPr's Bulletin Board for this session, press (G) for (G)oodbye and press <enter>.

If you have difficulty accessing the BHPr Bulletin Board, please try the Internet address listed above. If you do not have Internet capability and need assistance in accessing the BHPr Bulletin Board or technical assistance with any aspect of the BHPr Bulletin Board, please call Mr. Larry DiGiulio, Systems Operator for the BHPr Bulletin Board at (301) 443–2850 or ''ldigiuli@hrsa.ssw.dhhs.gov''.

Questions regarding grants policy and business management issues should be directed to Ms. Wilma Johnson, Acting Chief, Centers and Formula Grants Section (wjohnson@hrsa.ssw.dhhs.gov), Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. If you are unable to obtain the application materials electronically, you may obtain application materials in the mail by sending a written request to the Grants Management Branch at the address above. Written requests may also be sent via FAX (301) 443–6343 or via the Internet listed above. Completed

applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact Dr. Ciriaco Q. Gonzales, Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–17, 5600 Fishers Lane, Rockville, Maryland 20857.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is July 12, 1996. Applications will be considered to be ''on time'' if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health System Reporting Requirements.

Dated: April 17, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–10483 Filed 4–26–96; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, contact the SAMHSA Reports Clearance Officer on (301) 443–0525.

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 technology.

Proposed Project

National Household Survey on Drug Abuse—Revision—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the Unitied States, age 12 and over. The data are used to determine the prevalence of use of cigarettes, alcohol, and illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources. For 1997, the core NHSDA questionnaire will remain unchanged; however, several special topic modules are expected to change. The total annual burden estimate is 30,220 hours as shown below:

	Number of respondents	Number of responses per respondent	Average burden per response (hrs.)	Total burden (hrs.)
Household screener	53,082	1	0.05	2,654
NHSDA questionnaire	23,320	1	1.18	27,566

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 23, 1996.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 96–10501 Filed 4–26–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

PRT–813910

Applicant: Dr. Michael I. Kelrick, Northeast Missouri State University, Kirksville, Missouri.

The applicant requests a permit to take (collection of seed, stems, leaves) Missouri bladderpod (*Lesquerella filiformis*) at the Wilson's Creek National Battlefield, Republic, Missouri, for the purpose of enhancement of species through propagation and scientific research.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: April 23, 1996.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–10500 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[OR–050–1110–00:G6–0127]

Closure of Public Lands; (Prineville District) Oregon; Correction

April 18, 1996.

This action corrects a Notice in FR Doc. 96–7629, on Friday, March 29, 1996.

On page 14158, third column, following the **ACTION** paragraph, insert the following omitted paragraph:

SUMMARY: Notice is hereby given that effective immediately, the following described roads and trails are closed to all motorized vehicle use year-long.

Dated: April 18, 1996.

James G. Kenna,

Deschutes Resource Area Manager, Prineville District Office.

[FR Doc. 96–10499 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–33–M

[NV–943–1430–01; N–59593]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale of public lands in Clark County, Nevada.

SUMMARY: The following described public land in the City of Mesquite, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 13 S., R. 70 E.
Sec. 24, lot 2;
T. 13 S., R. 71 E.
Sec. 18, lot 9,
Containing 7.72 acres, more or less.

This parcel of land, situated in Mesquite, NV is being offered as a direct sale to the City of Mesquite.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, 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. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to an easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

1. Those rights for highway right-of-way purposes which have been granted to the Nevada Department of Transportation by Permit Nos. Nev–065014, N–125, and Nev–07427 under the Act of August 27, 1958 (072 Stat. 0892; 23 U.S.C. {a} and {d}).

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: April 19, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–10448 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession and Control of the Santa Fe National Forest, United States Forest Service, Santa Fe, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession and control of the Santa Fe National Forest, United States Forest Service, Santa Fe, NM.

A detailed assessment of the human remains was made by Peabody Museum professional staff, Museum of New Mexico professional staff, United States Forest Service professional staff in consultation with representatives of the Pueblo of Cochiti, the Pueblo of Santo Domingo, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan, the Pueblo of Zia, and the Pueblo of Jemez.

In 1908, human remains representing five individuals were recovered from the Yapashi site during legally authorized excavations. No known individuals were identified. No associated funerary objects are present.

The Yapashi site has been identified as late Anasazi period (1250–1475 AD) through architecture, ceramics, and site organization. Ethnographic records, technological continuity, and similarities between the site and present-day pueblos of Cochiti, Santo Domingo, San felipe, Santa Ana, San Ildefonso, Santa Clara, Pojoaque, Tesuque, Nambe, San Juan, and Zia indicate continuity of both occupation and culture between the Yapashi site and these pueblos. Oral traditions of

these present-day pueblos indicate occupation of this particular area during this period.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the United States Forest Service have further determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of Cochiti, the Pueblo of Santo Domingo, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan, and the Pueblo of Zia.

In 1912, human remains representing two individuals were recovered from the Pueblo Kotyiti site during legally authorized excavations. No known individuals were identified. The three associated funerary objects include a ceramic pipe, mineral pigment, and a stone tool.

The Pueblo Kotyiti site has been identified as the fortified pueblo occupied during 1680–1696 (the Great Pueblo Revolt) by the ancestral community of the present-day Pueblo of Cochiti. This identification is supported by historical and ethnohistoric records of the Pueblo Revolt era, continuities of architecture and ceramics between the site and the Pueblo of Cochiti. The oral tradition of the Pueblo of Cochiti also supports their affiliation to the Pueblo Kotyiti site.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the United States Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the United States Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Cochiti.

In 1934, human remains representing three individuals from site LA 340 were donated to the Museum of New Mexico by the Fry family. Accession records indicate the Fry family apparently collected these remains without a valid antiquities permit. No known individuals were identified. No associated funerary objects were present.

Site LA 340 has been identified as Anasazi period (1100–1540 AD) through architecture, ceramics, and site organization. Ethnographic records, technological continuity, and similarities of the site with the present-day pueblos of San Ildefonso, Santa Clara, Pojoaque, Tesuque, Nambe, and San Juan indicate cultural affiliation with this site. The oral traditions of these six Pueblos also indicate affiliation with sites in this particular area during this period.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the United States Forest Service have further determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan.

In 1980, human remains representing six individuals from site AR–03–10–03–401 were confiscated by Forest Service Law Enforcement from Kyle and Mary Martin. No known individuals were identified. The 200 associated funerary objects include pottery sherds, stone tools and flakes, corn cobs and husks, sandal fragments, charcoal, non-human bones and teeth, and seeds.

Ethnographic and ethnohistoric records, ceramics, and the association of the rock shelters with an ancestral Jemez Pueblo site indicate cultural affiliation of the present-day Pueblo of Jemez to site AR–03–10–03–401. The oral traditions of the Pueblos of Jemez support this affiliation to the site during this period.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the United States Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 200 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the United States Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Jemez.

This notice has been sent to officials of the Pueblo of Cochiti, the Pueblo of Santo Domingo, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan, the Pueblo of Zia, and the Pueblo of Jemez. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave. SW, Albuquerque, NM 87102; telephone: (505) 842–3238, fax: (505) 842–3800 before May 29, 1996. Repatriation of the human remains and associated funerary objects to the Pueblo of Cochiti, the Pueblo of Santo Domingo, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of San Ildefonso, the Pueblo of Santa Clara, the Pueblo of Pojoaque, the Pueblo of Tesuque, the Pueblo of Nambe, the Pueblo of San Juan, the Pueblo of Zia, and the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: April 24, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology & Ethnography Program

[FR Doc. 96–10543 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I)

Notice is hereby given that, on April 15, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the International Pharmaceutical Aerosol Consortium for

Toxicology Testing of HFA–134a (''IMPACT–I'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a new member. 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, Astra AB, Sodertalje, Sweden, became a new member of IPACT–I on February 2, 1996.

No other changes have been made in either the membership or planned activity of IPACT–I. Membership in this ground research project remains open, and IPACT–I intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, IPACT–I 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 September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on May 25, 1995. A notice has not yet been published in the Federal Register.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10481 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture for Development and Manufacture of Glass Panels and Funnels for Use in Cathode Ray Tubes

Notice is hereby given that, on July 12, 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''), Sony Electronics Inc. (''Sony''), for itself and on behalf of the parties identified below, filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative research and production venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Sony Electronics Inc., Park Ridge, NJ, owned by Sony Corporation, Tokyo, JAPAN; Corning Inc., Corning, NY; Asahi Glass America, Inc., New York, NY, owned by Asahi Glass Company, Ltd., Tokyo, JAPAN; Corning Asahi Corporation, Corning, NY, owned by Corning Inc. and Asahi Glass America, Inc.; American Video Glass Company, Mount Pleasant, PA, owned by Sony Electronics Inc. and Corning Asahi Corporation; and Corning Asahi Video Products Company, Corning, NY, owned by Corning Inc. and Asahi Glass America, Inc.

The area of planned activity is cooperation in the exchange of information concerning, and the development and manufacture of, glass panels and funnels for use in cathode ray tubes.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10480 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on April 9, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 95–02, titled ''Basic Principles and Control of Crude Oil Emulsion Formation-Part 3,'' have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in project membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become members in the PERF Project: Marathon Oil Company, Littleton, CO; Mobil Technology Company, Paulsboro, NJ; and Texaco, Inc., Houston, TX.

No other changes have been made in either the membership or the planned activities of the Project. Membership remains open, and the participants intend to file additional notifications(s) disclosing all changes in membership in this Project.

On November 30, 1995, PERF Project No. 95–02 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 January 31, 1996 (61 FR 3464).

Information regarding participation in PERF Project No. 95–02 may be obtained from Ms. Catherine Peddie, Shell Oil Products Company, Houston, TX.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10482 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Juveniles Taken Into Custody Reporting Program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) 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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Joseph Moone (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Joseph Moone, 202–397–5929, Office of Juvenile Justice and Delinquency Prevention, Office of

Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) Title of the Form/Collection: Juveniles Taken Into Custody Reporting Program

(3) Agency form numbers, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms JTIC–1A, jtic–1b, JTIC–1C. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked to required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. To enumerate and describe annual movements of juvenile offenders through state correctional systems. It will be used by the Department of Justice for planning and policy affecting states. Providers of data are personnel in state departments of corrections and juvenile services.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 51 respondents with an average 12 hours per respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 628 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 24, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–10472 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,879; Rayloc, Atlanta, GA

TA–W–32,025; Winona Knitting Mills, Berwick Knitwear (Formerly Komar & Sons Berwick Knitwear), Berwick, PA

TA–W–31,975; Modine Manufacturing Co., Clinton, TX

TA–W–31,899; Marion Plywood Corp., Coreline Div., Shawano. WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,993; Aeroil Products Co., Inc., South Hackensack, NJ

TA–W–32,118; James River Corp. Packaging Business, Wausau, WI

TA–W–31,995; ABC Rail Products Corp., Anderson, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,065 & A, B, C, D; Ames Department Stores, Inc., Skowhagen, Caribou, Houlton, Madawaska & Presque Island, ME

TA–W–31,889; Kids Today, Ltd, New York, NY

TA–W–32,067; Segerman International, Inc., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–31843; Pauline Handbags, New York, NY

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decine during the relevant period as required for certification.

TA–W–31,928; Hobet Mining, Inc., Madison, WV

U.S. imports of coal are negligible through the relevant period.

TA–W–31,942; Carter-Wallace, Inc, Trenton, NJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–31,919; Toymax, Inc., Westbury, NY

The investigation revealed that criterion (1) and criterion (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–31,933; Victory Corrugated Container Corp. of New Jersey, Roselle, NJ: February 9, 1995.

TA–W–32,237; Intercontinental Branded Apparel, Hialeah, FL: April 8, 1995.

TA–W–33,039; Turbine Engine Components Textron, Danville, PA: March 8, 1995.

TA–W–32,085; Alcoa Electronic Packaging, San Diego, CA: March 7, 1995.

TA–W–32,019; Simpson Paper Co., West Linn, OR: February 20, 1995.

TA–W–32,088; Mobil Corp., Mobil Research & Development Corp., Princeton, NJ: March 4, 1996.

TA–W–31,812; Dalow Industries, Inc., Long Island City, NY: January 15, 1995.
TA–W–31,883; States Nitewear, Inc., New Bedford, MA: December 15, 1994.
TA–W–31,847: Burton Golf, Inc., Jasper, AL: January 10, 1995.
TA–W–31,855; Kiddie Kloes, Inc., Lansford, PA: January 4, 1995.
TA–W–31,867; Leggoons Sportswear, Inc., Vandalia, MO: January 9, 1995.
TA–W–31,873; Briggs Industries, Inc., Robinson, IL: January 12, 1995 .
TA–W–31,881; Herman Kay Co., Inc., Secaucus, NJ: January 22, 1995.
TA–W–31,965; Delsey Luggage, Inc., Denton, MD: February 12, 1995.
TA–W–31,964; D&A Textiles, Fairview, NJ: February 9, 1995.
TA–W–32,016, TA–W–32,016; Fremont Sawmill, A Division of Ostrander Resources Co., Inc., Lakeview, OR & Paisley, OR: April 5, 1996.
TA–W–31,915; Imperial Bondware Corp., Lafayette, GA: January 1, 1995.
TA–W–32,000; Red Kap, Industries, Booneville, MS: February 22, 1995.
TA–W–31,916; Imperial Wallcoverings, Inc., (a Collins & Aikman Co), Hammond, IN: January 19, 1995.
TA–W–32,142; Stephenson Enterprises, Inc., Folkston, GA: March 19, 1995.
TA–W–31,906; H.H. Cutler Co., Oxford, MS: January 18, 1995.
TA–W–31,913, The Florsheim Shoe Co., Cape Girardeau, MO: May 17, 1995.
TA–W–31,992; Decaturville Manufacturing, Decaturville, TN: February 20, 1995.
TA–W–32,006, Kendall Healthcare Products Co., Cumberland, RI: February 15, 1995.
TA–W–31,892; Augat, Inc., Mashpee, MA: February 2, 1995.
TA–W–31,902; Globe Business Furniture, Inc., Franklin, KY: January 10, 1995.
TA–W–31,909 & A; Whispering Pines Sportswear, Inc., Pageland, SC & Whispering Pines Sportswear, II, Patrick, SC: January 19, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00873; Gen/RX, Inc., (AKA Apotex), American Veterinary Products, Fort Collins, CO
NAFTA–TAA–00857 & A, B; Decaturville Manufacturing Decaturville, TN, Scotts Hill, TN, Parsons, TN
NAFTA–TAA–00831; Hines Oregon Millwork Enterprises, Hines, OR
NAFTA–TAA–00866; Alliant Techsystems, Inc., Accudyne Operations, Janesville, WI
NAFTA–TAA–00850; American Electric Power, Ohio Power Co., Cardinal Plant, Fossil and Dydro Operations, Brilliant, OH
NAFTA–TAA–00864; American Banknote Co., Bedford Park, IL
NAFTA–TAA–00838; Winona Knitting Mills, Berwick Knitwear (formerly Komar & Sons Berwick Knitwear), Berwick, PA
NAFTA–TAA–00876; Keystone Brewers, Inc., d/b/a Pittsburgh Brewing Co., Pittsburgh, PA
NAFTA–TAA–00849; IPM Products Corp., Hybritex Automotive Controls, EL Paso, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00852; Simpson Paper Co., West Linn, OR: February 23, 1995.
NAFTA–TAA–00804; Imperial Wallcoverings, Inc. (A Collins & Aikman Co), Hammond, IN: January 19, 1996.
NAFTA–TAA–00870 & A; Ostrander Resources Co., Inc. d/b/a Fremont Sawmill, Lakeview, OR & Paisley, OR: February 22, 1995.
NAFTA–TAA–00855; Harvard Industries, Harman Automotive Sevierville, TN: February 26, 1995.
NAFTA–TAA–00877; AlliedSignal Aerospace, Government Electronics System, South Montrose, PA: March 1, 1995.
NAFTA–TAA–00871; Breed Technologies, Inc., Breen Automotive, L.P., Brownsville, TX: March 1, 1995.
NAFTA–TAA–00887; Turbotville Dress, Inc., Turbotville, PA: March 1, 1995.

I hereby certify that the aforementioned determinations were issued during the month of April 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 17, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–10514 Filed 4–26–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training

Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject mater of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 2000 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of April, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/15/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,204	CENEX, Inc. (Comp)	Bakersfield, CA	03/25/96	Crude Oil, Natural Gas.
32,205	Progressive Knitting Mill (UNITE)	Philadelphia, PA	03/27/96	Bathing Suits.
32,206	General Cable Corp. (Wkrs)	Newport, AR	04/01/96	Various Types of Wire.
32,207	Dolphin International (Comp)	The Dalles, OR	04/01/96	Window/Door Components.
32,208	El Paso Natural Gas (Wkrs)	El Paso, TX	04/01/96	Natural Gas Distribution.
32,209	HIS (Wkrs)	Clinton, KY	02/23/96	Jeans & Shorts.
32,210	Blue Mountain Forest Prod (Wkrs)	Pendleton, OR	03/30/96	Lumber.
32,211	Georgia Girl (Wkrs)	Smithfield, TN	04/02/96	Bottoms—Pants, Skirts, Shorts.
32,212	Montana Power Co. (Wkrs)	Colstrip, MT	03/27/96	Electricity.
32,213	Kellogg Company (U)	San Leandro, CA	04/01/96	Ready To Eat Cereal.
32,214	Layne Inc (Wkrs)	Clarks Summit, PA	03/19/96	Rods, Coupling Box & Pins.
32,215	Pile Manufacturing Corp (Comp)	Troy, AL	03/29/96	Work Shirts.
32,216	Barrett Refining Corp (Wkrs)	Thomas, OK	01/26/96	Diesel Fuel, Jet Fuel.
32,217	C.R. Bard (Wkrs)	Nogales, AZ	04/03/96	Catheters.
32,218	Connors Footwear (Wkrs)	Lisbon, NH	03/28/96	Ladies' Shoes.
32,219	Pelican Seafoods (ILWU)	Pelican, AK	03/14/96	Processed Frozen Fish.
32,220	International Paper Co. (IAM)	Reedsport, OR	03/27/96	Logs.
32,221	J.C. Decker (Wkrs)	Montgomery, PA	03/28/96	Pet Supplies.
32,222	American Screen Printers (Comp)	Mt. Pleasant, NC	03/26/95	Screened Garments.
32,223	Freedom Textile Chemical (OCAW)	Conshohocken, PA	03/15/96	Speciality Chemicals.
32,224	A & C Enterprises (Comp)	Carthage, TN	03/08/96	Ladies' House Robes.
32,225	Movie Star, Inc. (Wkrs)	New York, NY	03/15/96	Ladies' Sleepwear and Loungewear.
32,226	Spencer Industries (Wkrs)	Gainesville, GA	01/16/96	Men's & Ladies' Pant Bottoms.
32,227	Ralph Lauren Womenswear (UNITE)	New York, NY	03/27/96	Ladies' Sportswear.
32,228	Quintana Petroleum (Wkrs)	Houston, TX	03/15/96	Oil and Gas.
32,229	Fashion Development Cntr (Comp)	El Paso, TX	03/28/96	Jeans & Jackets.
32,230	Rexham Graphs (Wkrs)	South Hadley, MA	03/30/96	Microflim.
32,231	Roseburg Forest Products (LSW)	Roseburg, OR	03/27/96	Lumber, Plywood and Particle Board.
32,232	The Timken Company (USWA)	Columbus, OH	03/30/96	Bearings for Railroad Cars.
32,233	Dataproducts Corp. (Comp)	Norcross, GA	04/01/96	Computer Printer Ribbons.
32,234	Carborundum Co. (The) (Comp)	Niagara Falls, NY	03/29/96	Ceramic Products & Offices.
32,235	Zenith Electronics (Wkrs)	El Paso, TX	03/27/96	Television Cable Boxes.
32,236	Salvatrice Shoe, Inc (Comp)	Blackshear, GA	03/29/96	Ladies' Sport & Casual Shoes.
32,237	Intercontinental Branded (Wkrs)	Hialeah, FL	04/08/96	Men's Suits.

[FR Doc. 96–10513 Filed 4–26–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of April, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/08/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,155	Chel-Mar Manufacturing (Wkrs)	Tremont, PA	03/25/96	Shirts—Thermal Sweatshirts.
32,156	Lucia, Inc. (Comp)	Winston-Salem, NC	03/21/96	Ladies' Sportswear.
32,157	FASCO Motors Group (Wkrs)	Tipton, MO	02/29/96	Small Electric Motors.
32,158	Redco Foods, Inc. (Wkrs)	Little Falls, NY	03/25/96	Tea.
32,159	Olympus America, Inc. (Wkrs)	Rio Rancho, NM	03/22/96	Medical Lights.
32,160	Casablance Fan Company (Comp)	Cty of Industry, CA	03/12/96	Ceiling Fans.
32,161	Palm Beach Co. (Wkrs)	Knoxville, TN	03/14/96	Men's Suits, Sport Coats, Trousers.
32,162	Joe Benbasset, Inc. (Comp)	New York, NY	02/23/96	Ladies' Slacks, Skirts & Jackets.
32,163	Barber Rose, Inc. (UNITE)	Eynon, PA	03/22/96	Wedding Gowns.
32,164	Square Sales Corp. (Wkrs)	New York, NY	02/27/96	Sales Office—Knit Fabrics.
32,165	Merit Mills, Inc. (Wkrs)	Eastchester, NY	02/27/96	Knit Fabrics—Converter.
32,166	Tifton Apparel Mfg. (Wkrs)	Tifton, GA	03/12/96	Men's Work Pants, Lab Coats & Aprons.
32,167	Red Kap Industries (Wkrs)	Tupelo, MS	02/20/96	Uniform Pants and Shirts.
32,168	Thompson Co. (UNITE)	Thompson, GA	03/26/96	Men's Dress and Casual Slacks.
32,169	Diversified Apparel (Comp)	Pulaski, VA	03/21/96	Infant and Children's Knit and Denim Wear.
32,170	A–1 Manufacturing (UNITE)	Louisville, AL	03/26/96	Men's Coveralls.
32,171	L. Chessler, Inc. (UNITE)	Philadelphia, PA	03/25/96	Belts & Suspenders.
32,172	Bates of Maine, Inc. (UNITE)	Lewiston, ME	03/27/96	Bedspreads.
32,173	Exxon Company USA (Comp)	Houston, TX	03/26/96	Crude Oil.
32,174	Suzette Fashions (UNITE)	Jersey City, NJ	03/19/96	Ladies' Coats.
32,175	Berkley Medical Resources (UNITE)	Uniontown, PA	03/27/96	Surgical Face Mask.
32,176	Advance Transformer Co. (Comp)	Plattevile, WI	03/29/96	Electronic and Magnetic Lighting Ballasts.
32,177	EMI Company (Wkrs)	Erie, PA	03/21/96	Hub & Wheel Assemblies.
32,178	Kentucky Apparel, LLP (Wkrs)	Burkesville, KY	03/11/96	Denim Jeans.
32,179	Dallco Industries, Inc. (Comp)	Hustontown, PA	03/12/96	Ladies' and Childrens' Apparel.
32,180	The Majestic Products Co. (Comp)	Austin, TX	03/20/96	Fireplaces.
32,181	Centry Pine Products (Comp)	Redmond, OR	03/25/96	Cutstocks—Windows, Doors, Moldings.
32,182	Bend Wood Products (Wkrs)	Bend, OR	03/20/96	Secondary Wood Products.
32,183	Thomas and Betts Corp. (Wkrs)	Montgomeryville, PA	03/18/96	Plastic Components—Elec. Equipment.
32,184	Timber Products Company (Wkrs)	Eugene, OR	03/19/96	Logs.
32,185	Bugle Boy Industries (Wkrs)	N. Little Rock, AR	03/15/96	Men's Pants and Shirts.
32,186	Osram Sylvania (Wkrs)	St. Marys, PA	03/26/96	Lamps.
32,187	Benkel Mfg. Co. (UNITE)	Brooklyn, NY	04/02/96	Hats and Caps.
32,188	Kalkstein Silk Mills, Inc. (UNITE)	Paterson, NJ	04/02/96	Silk and Polyester Upholstery Fabrics.
32,189	Meren Industries, Inc. (UNITE)	Newark, NJ	04/02/96	Fabric Hats and Visors.
32,190	Northeast Lumber Co. (Comp)	Chester, ME	03/11/96	Dimension Lumber.
32,191	General Electric Dist. Ctr. (Wkrs)	Little Rock, AR	03/08/96	Warehouse and Distribution.
32,192	Stafford Blaine Designs (Wkrs)	Minneapolis, MN	03/19/96	Screened T-Shirts.
32,193	GPM Gas Corp. (Wkrs)	Odessa, TX	03/21/96	Natural Gas and Natural Gas Liquids.
32,194	McGill Electric Switch (Comp)	Valparaiso, IN	03/25/96	Switches—Thermoplastic Components.
32,195	CTS (Wkrs)	Bentonville, AR	02/28/96	DIP Switches.
32,196	Liz Claiborne, Inc. (Wkrs)	North Bergen, NJ	03/23/96	Ladies' Sportswear, Offices, Warehouse.
32,197	Sea Isle Sportswear (Comp)	New York, NY	03/26/96	Girl's Blouses, Knit Tops, Shorts.
32,198	E.I. du Pont de Nemours (Comp)	Wilmington, DE	03/28/96	Nylon and Polyester Yarns.
32,199	E.I. du Pont de Nemours (Comp)	Martinsville, VA	03/28/96	Nylon and Polyester Yarns.
32,200	E.I. du Pont de Nemours (Comp)	Lugoff, SC	03/28/96	Nylon and Polyester Yarns.
32,201	E.I. du Pont de Nemours (Comp)	Athens, GA	03/28/96	Nylon and Polyester Yarns.
32,202	E.I. du Pont de Nemours (Comp)	Chattanooga, TN	03/28/09	Nylon and Polyester Yarns.
32,203	Textile Networks, Inc. (Comp)	Knoxville, TN	11/04/95	Tee Shirts.

[FR Doc. 96–10512 Filed 4–26–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–044]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

DATES: May 10, 1996, 9:00 a.m. to 5:00 p.m.

ADDRESSES: Washington Room, Atlanta Hilton and Towers Hotel, 255 Courtland Street, N.E., Atlanta, GA 30303.

FOR FURTHER INFORMATION CONTACT: Dr. Sam L. Pool, Code SD, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 713–483–7109.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Friday, May 10, 1996, from 4:30 p.m. to 5:00 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of NASA Responses to Findings and Recommendations from the Previous Meeting of September 27–28, 1995
—Overview of Plans for the National Space Biomedical Institute
—Medical Operations Update STS and Mir Missions
—Overview of Crew Health Care System and Human Research Facility
—Status of the Brody Committee—Best Clinical Practices
—Discussion of Action Items
—Summary of Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to a sign a visitor's register.

Dated: April 19, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–10487 Filed 4–26–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Number 50–160]

Georgia Institute of Technology Research Reactor Establishment of Temporary Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has designated the Decatur Library, Decatur, Georgia, as a temporary local public document room (LPDR) for the proposed license renewal of the Georgia Institute of Technology research reactor located on the Atlanta, Georgia, campus.

Members of the public may now inspect and copy documents related to the license renewal proceeding at the Decatur Library, 215 Sycamore Street, Decatur, Georgia 30030. The library is open on the following schedule: Monday through Thursday 9:00 a.m. to 9:00 p.m.; Friday and Saturday 9:00 a.m. to 5:00 p.m.; and Sunday 1:00 p.m. to 5:00 p.m.

For further information, interested parties in the Atlanta area may contact the LPDR directly through Mr. Bob Caban, Reference Department, telephone number (404) 370–3070. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 415–7170 or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, this day of April, 1996.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–10489 Filed 4–26–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC- 21910; File No. 812–9834]

The Travelers Insurance Company, et al.

April 22, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: The Travelers Insurance Company (''Company''), The Travelers Fund ABD for Variable Annuities (''Fund ABD'') and Tower Square Securities, Inc. (''TSSI'').

RELEVENT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants and any other separate account established by the Company (''Other Accounts,'' together with Fund ABD, ''Accounts'') seek an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Accounts under certain flexible premium deferred variable annuity contracts issued by the Company.

FILING DATE: The application was filed on October 27, 1995, and amended and restated on March 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 17, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing my request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, The Travelers Life and Annuity Company, One Tower Square, Hartford, Connecticut 06183, Attention: Kathleen A. McGah, Counsel and Assistant Secretary.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Company, a stock life insurance company organized under the laws of the State of Connecticut in 1864, is a wholly-owned subsidiary of The Travelers Insurance Company, which is an indirect wholly-owned subsidiary of Travelers Group, Inc. The Company currently is licensed to do business in all states of the United States, the District of Columbia, Puerto Rico, Guam, the U.S. and British Virgin Islands, and the Bahamas.

2. Fund ABD was established on October 17, 1995, as a separate account under the laws of the State of Connecticut to fund individual and group flexible premium deferred variable annuity contracts and certificates to be issued by the Company (''Current Contracts''). Fund ABD currently is divided into six subaccounts, each of which invests its assets exclusively in the shares of four open-end management investment companies.

3. In the future, the Company may issue through Fund ABD or the Other Accounts other contracts (''Future Contracts'') that are materially similar to the Contracts. (Future Contracts and Current Contracts are hereinafter referred to collectively as ''Contracts.'')

4. TSSI, a broker-dealer registered with the SEC under the securities Exchange Act of 1934, is a member of the National Association of Securities Dealers, Inc. TSSI is an affiliate of the Company and an indirect wholly-owned subsidiary of Travelers Group, Inc. TSSI will be the distributor of the Contracts.

5. The Contracts are designed to provide retirement payments and other benefits for persons covered under plans qualified for federal income tax advantages available under the Internal Revenue Code of 1986, as amended, and for persons desiring such benefits who do not qualify for such tax advantages. Under group contracts, purchase payments will be made by or on behalf of a participant who is covered under a retirement plan. The Contracts provide for allocation of purchase payments to the subaccounts and/or to a fixed account. Upon retirement, annuity payments will be made on a fixed or variable basis. Fixed payments are based on the tables shown in the Contract; however, if a more beneficial payment table is in effect at the time the first payment is being determined, it will be used. Once payments are determined they will be assured throughout the payout period and are fixed in nature. Variable annuity payments will increase or decrease during the payout period. The first variable payment is based on the tables shown in the Contract, but subsequent payments will increase or decrease depending on the net investment performance of the underlying mutual funds chosen for investment during the annuity period. If the annuitant dies before the maturity date of the Contract, the Company will pay a death benefit. Before annuity or income payments begin, however, Contracts owners may transfer all or part of their contract value from one subaccount to another without fees, penalty or charge. There are currently no restrictions on the frequency of transfers, but the Company reserves the right to limit transfers to no more than one in any six month period.

6. The company will assess an annual contract administrative charge of $30 for the Contracts. This charge will not be assessed after an annuity payout has begun, at the death of the annuitant or the Contract owner, or if the Contract owner has a contract value greater than $40,000 on the assessment date. The Company also will assess the subaccounts of Fund ABD a daily asset charge at an effective rate of 0.15% per annum for administrative expenses. These charges cannot be increased during the life of the Contract. These charges represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts. The Company will not profit from these charges.

7. The Company will deduct certain state and local government premium taxes. These deductions may be made when the Contract is purchased, when the Contract is surrendered, when retirement payments begin, or upon payment of a death benefit. Current these taxes range from 0.5% to 5% and depend on the state in which the Contract owner resides or the Contract was sold.

8. To compensate itself for assuming mortality and expense risks, the Company will assess the subaccounts of Fund ABD an amount equal on an annual basis to 1.25% of the daily net asset value of the subaccounts. Approximately 0.9375% of the daily net asset value of the subaccounts is for assumption of the mortality risk, and 0.3125% is for assumption of the expense risk. These charges cannot be increased during the life of the Contracts.

9. The Company assumes certain mortality risks by its contractual obligation to continue to make annuity payments for the life of the annuitant, under annuity options that involve life contingencies. The Company assumes additional mortality and expense risks by its contractual obligation to pay the death benefit if either the annuitant or the Contract owner dies prior to the maturity date. The Company assumes an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. Although, the Company does not expect to profit from the mortality and expense risk charge, any profit would be available to the Company for any proper corporate purpose, including payment of distribution expenses.

10. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A contingent deferred sales charge (''Surrender Charge'') will be assessed upon certain full or partial surrenders. A Surrender Charge applies if all or part of the contract value is surrendered during the first seven years following a purchase payment. The Surrender Charge starts at 6% of a purchase payment in the first and second years following the purchase payment, and reduces to 5% in the third and fourth years, 4% in the fifth year, 3% in the sixth year, and 2% in the seventh year following the payment. There is no charge after eight years following a purchase payment.

11. After the first contract year, Contract owners may surrender up to 10% of their contract value (as of the beginning of the contract year) without incurring a Surrender Charge (the ''Free Withdrawal Amount''). The Free Withdrawal Amount applies to partial surrenders of any amount and to full surrenders, except where the contract value is directly transferred to annuity contracts issued by other financial institutions.

12. There is no charge on contract earnings, which equal: (1) the contract value; minus (2) the sum of all purchase payments received that have not been previously surrendered; minus (3) the 10% Free Withdrawal Amount, if applicable. To determine the amount of

any Surrender Charge, surrenders will be deemed to be taken first from any applicable Free Withdrawal Amount, next from purchase payments (on a first-in, first-out basis), and finally from contract earnings (in excess of any Free Withdrawal Amount). The Company does not expect that the Surrender Charge will cover sales and distribution expenses incurred in connection with the Contracts.

13. Prior to a Contract's maturity date, all or part of the contract value may be transferred between the subaccounts without penalty, fee, or charge. Although currently there are no restrictions on the frequency of transfers, the Company reserves the right to limit transfers to no more than one in any six-month period.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to do so.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expenses risk charge from the assets of the Accounts under the Contracts.

4. Applicants state that the terms of the relief requested with respect to any Future Contracts funded by the Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants represent that the Future Contracts to be funded by the Accounts will be materially similar to the Current Contracts. Applicants state that without the requested relief, the Company would have to request and obtain exemptive relief for the Accounts to fund each Future Contract. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application, and that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the Applicants' need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources.

5. Applicants represent that the 1.25% mortality and expense risk charge for the Contracts is reasonable in relation to the risks assumed by the Company under the Contracts and is within the range of industry practice for comparable annuity contracts, based on a review of the publicly available information regarding products of other companies. The Company represents that it will maintain at its principal offices, and make available upon request to the Commission or its staff, a memorandum detailing the variable annuity products analyzed, and the methodology used in, and the results of, the comparative review.

6. Applicants acknowledge that the Surrender Charge may be insufficient to cover all distribution costs, and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Surrender Charge. Notwithstanding this, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Fund ABD, the Other Accounts,[1] and Contract owners. The basic for such conclusion is set forth in a memorandum which will be maintained by the Company at its home office, and will be available to the Commission or its staff upon request.

7. The Company also represent that the Accounts will invest only in underlying mutual funds which have undertaken to have a board of directors or a board of trustees, as applicable, a majority of whom are not ''interested persons'' of such Accounts within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 (under the 1940 Act) to finance distribution expenses.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10468 Filed 4–26–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicants represent that they will amend the application during the notice period to include the Other Accounts.

[Rel. No. IC–21909; File No. 812–9836]

The Travelers Life and Annuity Company, et al.

April 22, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: The Travelers Life and Annuity Company (''Company''), The Travelers Fund ABD II for Variable Annuities (''Fund ABD II'') and Tower Square Securities, Inc. (''TSSI'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants and any other separate account established by the Company (''Other Accounts,'' together with Fund ABD, ''Accounts'') seek an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Accounts under certain flexible premium deferred variable annuity contracts issued by the Company.

FILING DATE: The application was filed on October 27, 1995, and amended and restated on March 28, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 17, 1996 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, The Travelers Life and Annuity Company, One Tower Square, Hartford, Connecticut 06183, Attention: Kathleen A. McGah, Counsel and Assistant Secretary.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Company, a stock life insurance company organized under the laws of the State of Connecticut in 1973, is a wholly-owned subsidiary of The Travelers Insurance Company, which is an indirect wholly-owned subsidiary of Travelers Group, Inc. The Company currently is licensed to do business in all states except Alabama, Hawaii, Kansas, Maine, New Hampshire, New Jersey, North Carolina, Tennessee, Texas, Wyoming and New York, and currently is seeking licensure in the remaining United States except New York.

2. Fund ABD II was established on October 17, 1995, as a separate account under the laws of the State of Connecticut to fund individual and group flexible premium deferred variable annuity contracts and certificates to be issued by the Company (the ''Current Contracts''). Fund ABD II currently is divided into six subaccounts, each of which invests its assets exclusively in the shares of four open-end management investment companies.

3. In the future, the Company may issue through Fund ABD II or the Other Accounts other contracts (''Future Contracts'') that are materially similar to the Contracts. (Future Contracts and Current Contracts collectively are referred to as ''Contracts.'')

4. TSSI, a broker-dealer registered with the SEC under the Securities Exchange At of 1934, is a member of the National Association of Securities Dealers, Inc. TSSI is an affiliate of the Company and an indirect wholly-owned subsidiary of Travelers Group, Inc. TSSI will be the distributor of the Contracts.

5. The Contracts are designed to provide retirement payments and other benefits for persons covered under plans qualified for federal income tax advantages available under the Internal Revenue Code of 1986, as amended, and for persons desiring such benefits who do not qualify for such tax advantages. Under group contracts, purchase payments will be made by or on behalf of a participant who is covered under a retirement plan. The Contracts provide for allocation of purchase payments to the subaccount and/or to a fixed account. Upon retirement, annuity payments will be made on a fixed or variable basis. Fixed payments are based on the tables shown in the Contract; however, if a more beneficial payment table is in effect at the time the first payment is being determined, it will be used. Once payments are determined, they will be assured throughout the payout period and are fixed in nature. Variable annuity payments will increase or decrease during the payout period. The first variable payment is based on the tables shown in the Contract, but subsequent payments will increase or decrease depending on the net investment performance of the underlying mutual funds chosen for investment during the annuity period. If the annuitant dies before the maturity date of the Contract, the Company will pay a death benefit. Before annuity or income payments begin, however, Contract owners may transfer all or part of their contract value from one subaccount to another without fees, penalty or charge. There currently are no restrictions on the frequency of transfers, but the Company reserves the right to limit transfers to no more than one in any six month period.

6. The Company will assess an annual contract administrative charge of $30 for the Contracts. This charge will not be assessed after an annuity payout has begun, at the death of the annuitant or the Contract owner, or if the Contract owner has a contract value greater than $40,000 on the assessment date. The Company also will assess the subaccount of Fund ABD II a daily asset charge at an effective rate of 0.15% per annum for administrative expenses. These charges cannot be increased during the life of the Contract. These charges represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts. The Company will not profit from these charges.

7. The Company will deduct certain state and local government premium taxes. These deductions may be made when the Contract is purchased, when the Contract is surrendered, when retirement payments begin, or upon payment of a death benefit. Currently these taxes range from 0.5% to 5% and depend on the state in which the Contract owner resides or the Contract was sold.

8. To compensate itself for assuming mortality and expense risks, the Company will assess the subaccount of Fund ABD II an amount equal on an annual basis to 1.25% of the daily net asset value of the subaccount. Approximately 0.9375% of the daily net asset value of the subaccount is for assumption of the mortality risk, and 0.3125% is for assumption of the expense risk. These charges cannot be increased during the life of the Contracts.

9. The Company assumes certain mortality risks by its contractual obligation to continue to make annuity payments for the life of the annuitant, under annuity options that involve life contingencies. The Company assumes additional mortality and expense risks by its contractual obligation to pay the death benefit if either the annuitant or the Contract owner dies prior to the maturity date. The Company assumes an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. Although the Company does not expect to profit from the mortality and expense risk charge, any profit would be available to the Company for any proper corporate purpose, including payment of distribution expenses.

10. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A contingent deferred sales charge (''Surrender Charge'') will be assessed upon certain full or partial surrenders. A Surrender Charge applies if all or part of the contract value is surrendered during the first seven years following a purchase payment. The Surrender Charge starts at 6% of a purchase payment in the first and second years following the purchase payment, and reduces to 5% in the third and fourth years, 4% in the fifth year, 3% in the sixth year, and 2% in the seventh year following the payment. There is no charge after eight years following a purchase payment.

11. After the first contract year, Contract owners may surrender up to 10% of their contract value (as of the beginning of the contract year) without incurring a Surrender Charge (the ''Free Withdrawal Amount''). The Free Withdrawal Amount applies to partial surrenders of any amount and to full surrenders, except where the contract value is directly transferred to annuity contracts issued by other financial institutions.

12. There is no charge on contract earnings, which equal: (1) The contract value; minus (2) the sum of all purchase

payments received that have not been previously surrendered; minus (3) the Free Withdrawal Amount, if applicable. To determine the amount of any Surrender Charge, surrenders will be deemed to be taken first from any applicable Free Withdrawal Amount, next from purchase payments (on a first-in, first-out basis), and finally from contract earnings (in excess of any Free Withdrawal Amount). The Company does not expect that the Surrender Charge will cover sales and distribution expenses incurred in connection with the Contracts.

13. Prior to a Contract's maturity date, all or part of the contract value may be transferred between the subaccount without penalty, fee, or charge. Although there currently are no restrictions on the frequency of transfers, the Company reserves the right to limit transfers to no more than one in any six-month period.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to do so.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expenses risk charge from the assets of the Accounts under the Contracts.

4. Applicants state that the terms of the relief requested with respect to any Future Contracts funded by the Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants represent that the Future Contracts to be funded by the Accounts will be materially similar to the Current Contracts. Applicants state that without the requested relief, the Company would have to request and obtain exemptive relief for the Accounts to fund each Future Contract. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application, and that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the Applicants' need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources.

5. Applicants represent that the 1.25% mortality and expense risk charge for the Contracts is reasonable in relation to the risks assumed by the Company under the Contracts, and is within the range of industry practice for comparable annuity contracts, based on a review of the publicly available information regarding products of other companies. The Company represents that it will maintain at its principal offices, and make available upon request to the Commission or its staff, a memorandum detailing the variable annuity products analyzed, and the methodology used in, and the results of, the comparative review.

6. Applicants acknowledge that the Surrender Charge may be insufficient to cover all distribution costs, and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Surrender Charge. Notwithstanding this, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Fund ABD II, the Other Accounts,[1] and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its home office and will be available to the Commission or its staff upon request.

7. The Company also represents that the Accounts will invest only in underlying mutual funds which have undertaken to have a board of directors or a board of trustees, as applicable, a majority of whom are not ''interested persons'' of such Accounts within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 (under the 1940 Act) to finance distribution expenses.

[1] Applicants represent that they will amend the application during the notice period to include the Other Accounts.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10469 Filed 4–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37138; File No. SR–Amex-96–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange Board of Governors

April 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Articles II, III, and XII of the Exchange Constitution relating to the Board of Governors (''Board''), including the appointment of a second Vice-Chairman, the inclusion of the second highest ranking Exchange executive officer on the Board, and the eligibility of Governors for nomination to a third term. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

Board Position Amendments

Article II, Section 2 of the Exchange Constitution currently calls for the appointment of one Vice-Chairman from among the Exchange members serving on the Board, and it has been customary over the years to rotate between the trading floor and ''upstairs'' communities as the source of that Vice-Chairman. Given the importance of both these communities to the Exchange, it is desirable to be able to have one Vice-Chairman from each constituency. Accordingly, the proposed amendments will permit (but not require) the appointment of two member Vice-Chairmen, and will specify that if there are two Vice-Chairmen, one must come from the trading floor and one from upstairs.

The Exchange would also like to create a new position of Executive Vice-Chairman, who will be the second highest ranking officer of the Exchange and who will serve as a member of the Board of Governors. If the Executive Vice-Chairman position is not filled and the Exchange has a President, then the President will serve on the Board.[1] If at any time neither of those offices are filled, then the Chief Executive would be the only non-elected member of the Board.

Third Term Amendment

It has become apparent that at times the special limitations in the Constitution relating to which kind of Governors can serve third terms at any given time could be a limitation on having the best possible slate of public Governor candidates. Accordingly, it is proposed that the Exchange increase from two to three the maximum number of third term Governors who can be representatives of the public. There is no change to the overall limitation that no more than four third-term Governors may be serving at one time.

2. *Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–14 and should be submitted by May 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

[FR Doc. 96–10493 Filed 4–26–96; 8:45 am]

BILLING CODE 8010–01–M

[1] The Exchange is also proposing to amend Article XII, Section 2 of the Exchange Constitution, Composition of the Emergency Committee (''Committee''). This Section currently provides that the Committee is to be composed of the Chairman of the Board of Governors, the Vice-Chairman of the Board, and the three senior members of the Board who are regular, options, principal, associate or allied members of the Exchange (''Trading Members''). The proposed amendment would change the composition of the Committee such that any Executive Vice-Chairman or President would be on the Committee, and thus only two Trading Members would be on the Committee.

[2] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Computer Matching Program (SSA/Health Care Financing Administration (HCFA))

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, this notice announces a computer matching program that SSA plans to conduct with HCFA.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of

1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: April 16, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) with the Health Care Financing Administration (HCFA)

A. Participating Agencies

SSA and HCFA.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions under which HCFA agrees to the disclosure of Medicaid facility admission and billing data. SSA will use the match results to verify the eligibility of, and the correct amount of benefits payable to, individuals under the supplemental security income (SSI) program, which provides payments under title XVI of the Social Security Act (the Act) to aged, blind and disabled recipients with income and resources below levels established by law and regulations, and federally administered supplementary payments under Section 1616 of the Act, including payments under section 212 of Pub. L. 93–66, 87 Stat. 152. Admission to a Medicaid facility would, under certain circumstances, subject the amount of SSI which an individual could receive for any month throughout which the individual is in such a facility to specific statutory limitations.

C. Authority for Conducting the Matching Program

Section 1611(e) (1) (B) and 1631 (f) of the Act (42 U.S.C. 1382(e) (1) (B) and 1383 (f)).

D. Categories of Records and Individuals Covered by the Match

SSA will provide HCFA with identifying information with respect to applicants for and recipients of SSI benefits extracted from SSA's Supplemental Security Income Record to identify individuals potentially subject to benefit reductions or termination of payment eligibility under the statutory provisions listed above. HCFA will match the SSNs, names, date of birth, sex and race on this finder file with its Medicaid Statistical Information System File and provide a reply file of SSNs common to both files. HCFA will also provide SSA with the Medicaid facility name, address and telephone number for SSN's common to both files.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after a copy of the agreement, as approved by the Data Integrity Boards of both agencies, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement) or 30 days after publication of this notice in the Federal Register, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 96–10488 Filed 4–26–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2372]

United States International Telecommunications Advisory Committee, Radiocommunications Sector, Study Group 8—Mobile Services Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 8—Mobile Services will meet on 16 May 1996 at 10 AM to 1 PM, in room 3524 at the Department of State, 2201 C Street, N.W., Washington, DC 20520.

Study Group 8 studies and develops recommendations concerning technical and operating characteristics of mobile, radiodetermination, amateur and related satellite services.

This May meeting will continue preparations for the October 28, 1996 international meeting of Study Group 8. It will also review activities concerning the Inter-American Telecommunication Commission Permanent Consultative Committee III—Radiocommunications, and begin preparations for the August 19–23 meeting of PCC.III.

A meeting of U.S. Working Party 8E dealing with the Amateur Radio service will be convened by Mr. Paul Rinaldo beginning at 1:30 P.M. in room 3524.

Members of the General Public may attend these meetings and join in the discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: If you wish to attend please send a fax to 202–647–7407 not later than 24 hours before the scheduled meeting. On this fax, please include subject meeting, 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 your picture on it, 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: April 18, 1996.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunication Sector.

[FR Doc. 96–10449 Filed 4–26–96; 8:45 am]

BILLING CODE 4710–45–M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Proposed Conversion of the Tennessee Valley Authority Bellefonte Nuclear Power Plant

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) for the proposed conversion and operation of the unfinished Bellefonte Nuclear Power Plant as a fossil-fueled power plant. Bellefonte Nuclear Power Plant is located near the cities of Hollywood and Scottsboro in northeast Alabama. The proposed action would undertake conversion, modification and addition of equipment; the construction of new facilities; and the subsequent operation of the Bellefonte facility as a fossil-fueled power plant with an approximate electric capacity between 450 megawatts (MW) and 3,000 MW, dependent on the conversion alternative selected. Fossil fuels to be considered are natural gas, coal, and petroleum

coke. Plant conversion technologies to be considered in detail include coal gasification, combustion turbine combined cycle, pressurized fluidized bed combustion, and chemical coproduction.

The Department of Energy (DOE) will act as a cooperating agency for development and review of the environmental impact statement to the extent that the proposed site could be a demonstration site for technologies, such as integrated gasification combined cycle modules and advanced combustion turbines.

The ownership and operation of some facilities at Bellefonte may include entities in addition to TVA under some alternatives.

DATES: Comments on the scope of the EIS must be postmarked no later than May 29, 1996. TVA plans to conduct a public meeting in the vicinity of the Bellefonte plant in May 1996 to discuss the project and to obtain comments on the scope of the EIS. The time and location of this meeting will be announced in local news media.

ADDRESSES: Written comments should be sent to Dale Wilhelm, National Environmental Policy Act Liaison, Tennessee Valley Authority, mail stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may also be e-mailed to gaskew@mhs-tva.attmail.com.

FOR FURTHER INFORMATION CONTACT: Roy Carter, Environmental Research Center, Tennessee Valley Authority, mail stop CEB 4C, Muscle Shoals, Alabama 35662–1010. E-mail may be sent to rvcarter@aol.com.

SUPPLEMENTARY INFORMATION:

Background

Construction began on TVA's Bellefonte Nuclear Plant in 1974. The plant is a pressurized water reactor design with two units. The nuclear steam supply system was designed and supplied by Babcock & Wilcox, Inc. A final EIS was issued for the Bellefonte Nuclear Plant in 1974. Completion of construction was deferred in 1988 because TVA power system requirements grew slower than projected.

TVA's Integrated Resource Plan

TVA's integrated resource plan and programmatic environmental impact statement, *Energy Vision 2020,* was completed in December 1995. *Energy Vision 2020* contains recommendations for meeting the future TVA power system capacity requirements. The short-term action plan of *Energy Vision 2020* recommended the following concerning the unfinished Bellefonte Nuclear Plant: ''Converting the Bellefonte Nuclear Plant to a combined cycle plant utilizing natural gas or gasified coal as the primary fuel has been identified as one of the most viable alternatives. Such an alternative provides the opportunity to utilize a substantial portion of the Bellefonte non-nuclear plant equipment. However, there is a degree of uncertainty and market risk associated with this alternative which requires further in-depth engineering and financial examination.''

Conversion Alternatives

The conversion alternatives expected to be addressed in this EIS are described below:

Pressurized Fluidized Bed Combustion (PFBC)

The PFBC alternative would consist of 8 modules, each consisting of one PFBC unit, one advanced combustion turbine, and one heat recovery steam generator (HRSG). The steam produced by the 8 modules would be routed to Bellefonte's existing steam turbine-generator systems. The net electric output of this alternative is expected to be 2,400 MW.

Natural Gas Combined Cycle (NGCC)

The NGCC alternative would consist of 8 to 10 modules, each consisting of one combustion turbine and one HRSG. The steam produced would be routed to Bellefonte's existing steam turbine-generator systems. The net electric output of this alternative is expected to be 2,600 MW.

Integrated Gasification Combined Cycle (IGCC)

The IGCC alternative would consist of 8 modules, each consisting of one coal gasification plant, one advanced combustion turbine, and one HRSG. The steam produced would be routed to Bellefonte's existing steam turbine-generator systems. The net electric output of this alternative is expected to be 2,720 MW.

Integrated Gasification Combined cycle (IGCC) With Chemical Coproduction

This alternative would consist of 4 coal gasification plants, one advanced combustion turbine, one HRSG, and chemical production plants. Approximately 70 percent of the synthesis gas produced by the 4 coal gasification plants would be routed to the chemical production plants. The remaining synthesis gas would serve the combustion turbine. The net electric output of this alternative is expected to be 450 MW.

Combination NGCC and IGCC Alternative

This alternative would combine the configuration of NGCC and IGCC with chemical coproduction in a phased manner. The first phase of this alternative would consist of a 335 MW NGCC demonstration module consisting of one natural gas-fired advanced combustion turbine and one HRSG. The steam produced would be routed to Bellefonte's existing steam turbine-generator system (unit 2). In the next phase, a 340 MW IGCC facility would be constructed. This IGCC facility would consist of one coal gasification unit, one advanced combustion turbine, and a HRSG. The steam produced would be routed to the existing steam turbine-generator (unit 2). After construction of the IGCC facility, an IGCC chemical coproduction facility may be constructed. The coproduction facility would consist of 3 coal gasification units and related chemical production plants. Excess steam would be routed to the existing steam turbine-generator system (unit 2). Net electric output at the end of this phase would be 785 MW. In the final phase, an NGCC facility would be added. This facility would consist of 5 to 8 natural gas-fired modules each consisting of one advanced combustion turbine and one HRSG. The steam produced would be routed to the other existing steam turbine-generator system (unit 1). Net electric output at the end of this final phase is expected to be approximately 2,600 MW.

Other Conversion Alternatives to be Considered

Certain emerging technologies may also be addressed as possible conversion alternatives. For example, the use of natural gas fired heaters to supply either high temperature pressurized water or a high temperature heat transfer fluid to the existing nuclear steam supply system steam generators may be analyzed. The use of a coal refinery as a companion process to gasification may also be analyzed. The coal refinery process would produce chemical products and supply char to an integrated gasification combined cycle process.

No Action Alternative

As discussed in TVA's Integrated Resource Plan, the no action alternative to conversion of Bellefonte to a fossil-fuel power plant would be the continued deferral of the Bellefonte plant. TVA would continue to explore entering into arrangements with outside entities to complete these units as

nuclear facilities in partnership with TVA. Further environmental review, if any, beyond the existing final EIS for Bellefonte Nuclear Units 1 and 2 for operation as a nuclear facility would coincide with consideration of such a proposed arrangement.

Proposed Issues to be Addressed

The EIS will describe the existing environmental, cultural, and recreational resources that may be potentially affected by construction and operation of the project. TVA's evaluation of potential environmental impacts due to project construction and operation will include, but not necessarily be limited to the impacts on air quality, water quality, aquatic ecology, endangered and threatened species, wetland resources, aesthetics and visual resources, noise, land use, cultural resources, fuel transportation, and socioeconomic resources. TVA's Integrated Resource Plan, *Energy Vision 2020,* identifies and evaluates TVA's need for additional energy resources.

Air quality will likely be one of the most important potential impact areas. Air pollutant emissions from fossil fuel combustion would include nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide. Because the proposed project is to be located on a previously disturbed site, the issues of terrestrial wildlife, vegetation, and land use are not likely to be important.

Natural gas is one of the candidate conversion fuels. However, there is currently no supply of natural gas in the vicinity of the Bellefonte plant. Therefore, the EIS will assess the construction and operation of a natural gas pipeline by considering several alternative pipeline corridors.

The results from evaluating the potential environmental impacts related to these issues and other important issues identified in the scoping process together with engineering and economic considerations will be used in selecting a preferred alternative for the Bellefonte conversion.

Scoping Process

Scoping, which is integral to the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of title significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate draft EIS are avoided. TVA's NEPA procedures require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in a draft EIS will be determined, in part, from written comments submitted by mail, and comments presented orally or in writing at a public meeting. The preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. TVA considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant study and new matters may be identified for potential evaluation.

The scoping process will include both interagency and public scoping. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice and/or attend a public meeting in May that will be announced in area news media. Federal and state agencies to be included in the interagency scoping include U.S. Department of Energy, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Alabama Department of Environmental Management, and Alabama Historical Commission.

Upon consideration of the scoping comments, TVA will develop a range of alternatives and identify important environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be announced, written comments on the draft solicited, and information about possible public meetings to comment on the draft EIS will be published at a future date. TVA expects to release a final EIS by October 1997.

Dated: April 23, 1996.

Kathryn J. Jackson,

Senior Vice President, Resource Group.

[FR Doc. 96–10515 Filed 4–26–96; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending April 19, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1276
Date filed: April 17, 1996
Parties: Members of the International Air Transport Association
Subject:
TC23 Mail Vote 790
Europe-Japan/Korea Amending Reso
Intended effective date: April 29, 1996

Docket Number: OST–96–1277
Date filed: April 17, 1996
Parties: Members of the International Air Transport Association
Subject:
TC2 MV/P 0532 dated March 22, 1996 r-1 - r-17
TC2 MV/P 0533 dated March 22, 1996 r-18 - 21
Within Europe Resolutions
Intended effective date: May 1, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–10521 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 19, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1261
Date filed: April 15, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 13, 1996
Description: Application of Sobelair N.V./S.A., pursuant 49 U.S.C. 41302 and Subpart Q of the Regulations, applies for a foreign air carrier permit, to provide, commencing on or about May 3, 1996, charter foreign air transportation of persons, property, and mail between any point in Belgium or the United States via intermediate points to any point in the United States or any point in Belgium and beyond, respectively, and other charters subject to 14 CFR Part 212.

Docket Number: OST–96–1274
Date filed: April 17, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 15, 1996

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and 41108 and Subpart Q of the Regulations, applies for renewal of temporary authority to provide foreign air transportation on certain transatlantic routes named on segments 3, 9 and 11 of its Certificate of Public Convenience and Necessity for Route 616, as issued by Order 91–10–33 (October 25, 1991) in the Delta-Pan Am Route Transfer.

Docket Number: OST–96–1275

Date filed: April 17, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 15, 1996

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and 41108, and Subpart Q of the Regulations, applies for renewal of its Certificate of Public Convenience and Necessity for Route 617, authorizing Delta to engage in foreign air transportation of persons, property and mail between the terminal points New York City, New York/Newark, New Jersey and Ottawa/Montreal, Canada. Delta's certificate for Route 617 expires on October 17, 1996. Delta requests renewal of its certificate for a term of indefinite duration.

Docket Number: OST–96–1279

Date filed: April 18, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 16, 1996

Description: Application of Orient Avia Airlines, pursuant to 49 U.S.C. 41301, and Subpart Q, requests a foreign air carrier permit, to operate scheduled and charter services carrying passengers, cargo and/or mail between points in Russia and Honolulu, Hawaii.

Docket Number: OST–96–1281

Date filed: April 19, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 17, 1996

Description: Application of Sun Pacific International, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, seeks to amend its certificate of public convenience and necessity (Interstate air transportation), granted by Order 96–3–35, to eliminate the single aircraft restriction contained in its certificate; and Motion to Shorten the Answer date until May 10, 1996.

Docket Number: OST–96–1282

Date filed: April 19, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 17, 1996

Description: Application of Sun Pacific International, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, seeks to amend its certificate of public convenience and necessity (foreign air transportation), granted by Order 96–3–35, to eliminate the single aircraft restriction contained in its certificate: Motion to shorten the Answer period May 10, 1996.

Docket Number: OST–96–1287

Date filed: April 19, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 17, 1996

Description: Application of USAir, Inc., pursuant to 49 U.S.C. 41102 and 41108, and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 613, authorizing USAir to engage in scheduled foreign air transportation of persons, property and mail between the coterminal points Washington, D.C./Baltimore, Maryland and Montreal/Ottawa, Canada. USAir requests that its certificate, which is set to expire on October 17, 1996, be renewed for a term of unlimited duration.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–10520 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

RTCA, Inc. Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held May 15–16, 1996, beginning at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Report of Working Group Activities: a. Working Group 1 Report (Operations Working Group); b. Working Group 2 Report (Technical Working Group); c. Working Group 3 Report (CDTI Working Group); (4) Review of Latest Version of the MASPS; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 24, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–10516 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–02–U–00–EUG) to Use the Revenue From a Passenger Facility Charge (PFC) at Eugene Airport/ Mahlon Sweet Field, Submitted by the City of Eugene, Eugene, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Eugene Airport/Mahlon Sweet Field under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 29, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Susan Weixelman, at the following address: City of Eugene, 28855 Lockheed Drive, Eugene, OR 97402.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Eugene Airport/ Mahlon Sweet Field, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Read, (206) 227–2661; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056. The

application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–U–00–EUG) to use PFC revenue at Eugene Airport/Mahlon Sweet Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 19, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the City of Eugene, Eugene, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 1, 1996.

Background Information

The original application was approved August 31, 1993, for a total of $3,729,699.00. This application is to obtain ''use'' authority on projects previously approved under ''impose only'' authority.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: November 1, 1993.

Proposed charge expiration date: December 1, 1998.

Total estimated PFC revenues: $350,000.00.

Brief description of proposed project: Land acquisition—Phase I.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: As approved in the Record of Decision dated August 31, 1993.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eugene Airport/Mahlon Sweet Field.

Issued in Renton, Washington on April 19, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–10518 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–02–U–00–HLN) to Use the Revenue From a Passenger Facility Charge (PFC) at Helena Regional Airport, Submitted by the Helena Regional Airport Authority, Helena, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Helena Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before may 29, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration Building, Suite 2; 2725 Skyway Drive; Helena, MT 59601.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ronald Mercer, Airport Director at the following address: Helena Regional Airport Authority, 2850 Skyway Drive, Helena, MT 59601.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Helena Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David Gabbert, (406) 449–5271; Helena Airports District Office, HLN–ADO; Federal Aviation Administration Building Suite 2; 2725 Skyway Drive; Helena, MT 59601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–U–00–HLN) to use PFC revenue at Helena Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 19, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Helena Regional Airport Authority, Helena, Montana, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 27, 1996.

Background Information

The original application was approved January 15, 1993, for a total of $1,056,190.00. This application is to obtain ''use'' authority on projects previously approved under ''impose only'' authority.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: April 1, 1993.

Proposed charge expiration date: July 1, 1999.

Total estimated PFC revenues: $962,828.00.

Brief description of proposed project: Overlay Runway 9/27 with porous friction course.

Class or classes or air carriers which the public agency has requested not be required to collect PFC's: Part 121 nonscheduled charter carriers as identified in the Record of Decision dated January 14, 1993.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Helena Regional Airport.

Issued in Renton, Washington on April 19, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–10517 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#96–02–U–00–GJT) To Use the Revenue From a Passenger Facility Charge (PFC) at Walker Field Airport, Submitted by the Walker Field Airport Authority, Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Walker Field Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 29, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn Street, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Marcel J. Theberge, A.A.E., at the following address: Walker Field Airport Authority, 2828 Walker Field Drive, Suite 211, Grand Junction, CO 81506.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Walker Field Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn Street, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–U–00–GJT) to use PFC revenue at Walker Field Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 19, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Walker Field Airport Authority, Grand Junction, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 20, 1996.

Background Information

The original application was approved January 15, 1993, for a total of $1,812,000.00. This application is to obtain ''use'' authority on projects previously approved under ''impose only'' authority.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: April 1, 1993.

Proposed charge expiration date: $267,000.00.

Brief description of proposed project: Rehabilitate Taxiway ''A''; Install precision approach path indicator (PAPI), Runway 11; Install visual approach descent indicators (VADI) and runway end identifier lights (REIL), Runway 4/22; Rehabilitate Runway 4/22; Install fencing.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: As approved in the Record of Decision dated January 15, 1993.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walker Field Airport.

Issued in Renton, Washington on April 19, 1996.

David A. Field,

Manger, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–10519 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Docket No. AB–167 (Sub-No. 1159)]

Consolidated Rail Corporation—Abandonment—in Union County, NJ

The Board has issued a certificate authorizing Consolidated Rail Corporation (Conrail) to abandon its 1.03-mile Sound Shore Industrial Track from milepost 0.29 to milepost 1.32, in Linden, Union County, NJ. The abandonment was granted subject to standard employee protective conditions.

The abandonment certificate will become effective 30 days after this publication unless the Board finds that a financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued.

Requests for public use conditions must be filed with the Board and Conrail within 10 days after publication.

Any offers of financial assistance must be filed with the Board and Conrail no later than 10 days from the publication date of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: ''Office of Proceedings, AB–OFA.'' Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10904 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: April 23, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–10539 Filed 4–26–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (the Board). This decision relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 22, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Customs Service (CUS)

OMB Number: 1515–0045.

Form Number: CF 7533–C.

Type of Review: Extension.

Title: U.S. Customs In-Transit Manifest.

Description: The CF 7533 is used by railroads to transport merchandise (products and manufactures) of the United States from one port to another port in the United States through Canada.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15 hours.

OMB Number: 1515–0059.

Form Number: CF 1303.

Type of Review: Extension.

Title: Ship's Stores Declaration.

Description: 19 U.S.C. 1446 allows ''ship's stores'' to remain on board a vessel without payment of duty. 19 U.S.C. 1431 allows Customs, by regulation, to prescribe how goods are to be manifested. The CF 1303 is used for audit cargo purposes so that the goods can be easily distinguished from other cargo. Respondents are master's, operators or owners to vessels.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (each transaction).

Estimated Total Reporting Burden: 26,000 hours.

OMB Number: 1515–0079.

Form Number: CF 4790.

Type of Review: Extension.

Title: Report of International Transportation of Currency or Monetary Instruments.

Description: The CF 4790 establishes a record of currency and negotiable instruments entering and departing the United States. The information is shared by Federal, state, local or foreign enforcement agencies to establish financial audit trails, which have a high degree of usefulness in the investigation of criminal, civil and regulatory violations.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 214,500.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 35,757 hours.

OMB Number: 1515–0117.

Form Number: None.

Type of Review: Extension.

Title: Establishment of a Container Station.

Description: A container station that is independent of either an importing carrier or a bonded carrier may be established at any port or portion thereof, where under the jurisdiction of a port director. This information collection is the application to establish such a container station.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 177.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 354 hours.

OMB Number: 1515–0121.

Form Number: None.

Type of Review: Extension.

Title: Establishment of a Bonded Warehouse.

Description: Owners and lessees desiring to establish a bonded warehouse must make written application to the port director for the warehouse, along with any applicable fee and any other documents required.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 45.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 135 hours.

OMB Number: 1515–0127.

Form Number: None.

Type of Review: Extension.

Title: Application for Bonding of Smelting.

Description: A manufacturer engaged in smelting and/or refining of metal-bearing materials shall submit an application for the bonding of the plant to the port director giving the location of the plant and the nature of the work performed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 6.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 576 hours.

OMB Number: 1515–0133.

Form Number: None.

Type of Review: Extension.

Title: Application to Receive Free Materials in a Bonded Manufacturing Warehouse.

Description: The proprietor of a bonded manufacturing warehouse must make application to the Customs port director to enter into that warehouse any domestic merchandise except merchandise which is subject to IRS tax, and which is to be used in connection with the manufacture of articles permitted to be manufactured.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 6.

Estimated Burden Hours Per Respondent: 30 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1515–0134.

Form Number: None.

Type of Review: Extension.

Title: Bonded Warehouses—Alterations, Suspensions, Relocations and Discontinuance.

Description: The proprietor of a bonded warehouse may wish to alter, relocate, or temporarily suspend all or part of a bonded space or discontinue the bonded status of the warehouse. The port director may approve these changes upon receipt of a written application by the proprietor.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 110.

Estimated Burden Hours Per Respondent: 1 hour, 10 minutes. Frequency of Response: On occasion.

Estimated Total Reporting Burden: 193 hours.

OMB Number: 1515–0138.

Form Number: None.

Type of Review: Extension.

Title: Permit to Transfer Containers to a Container Station.

Description: In order for a container station operator to receive a permit to transfer a container or containers to a container station, he/she must furnish a list of names, addresses, etc., of the persons employed by him/her upon demand of the port director.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 400 hours.

OMB Number: 1515–0194.

Form Number: None.

Type of Review: Extension.

Title: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

Description: Various products exported and brought back to the United States are eligible for reduced treatment under the HTSUS, provided certain conditions are met. The declaration by the owner, importer, consignee or agent states that these conditions have been met.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 750.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 575 hours.

Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management

and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–10494 Filed 4–26–96; 8:45 am].

BILLING CODE 4820–02–P.

Submission to OMB for Review; Comment Request

April 19, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0004.

Form Number: IRS Form SS–8.

Type of Review: Extension.

Title: Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

Description: This form is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal employment taxes and income tax withholding. IRS uses the information on Form SS–8 to make the determination.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 9,730.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—34 hr., 55 min.

Learning about the law or the form—12 min.

Preparing and sending the form to the IRS—46 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 349,210 hours.

OMB Number: 1545–0146.

Form Number: IRS Form 2553.

Type of Review: Extension.

Title: Election by a Small Business Corporation.

Description: This form is filed by a qualifying corporation to elect to be an S corporation as defined in Internal Revenue Code (IRC) section 1361. This information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 13 min.

Learning about the law or the form—3 hr., 5 min.

Preparing, copying, assembling, and sending the form to the IRS—3 hr., 18 min.

Frequency of Response: Other (once).

Estimated Total Reporting/ Recordkeeping Burden: 6,305,000 hours.

OMB Number: 1545–1394.

Form Number: IRS Form 1120–SF.

Type of Review: Revision.

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

Description: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be establishment by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—17 hr., 56 min.

Learning about the law or the form—.3 hr., 5 min.

Preparing the form—6 hr., 19 min.

Copying, assembling, and sending the form to the IRS—.48 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 28,140 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–10495 Filed 4–26–96; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

April 23, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below by the May 10, 1996 start-up date, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by April 29, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 96–012–G.

Type of Review: Revision.

Title: Internal Revenue Service Notice Redesign Survey/Experimental Design.

Description: The IRS Notice Redesign Team has been charged with redesigning all of IRS's notices, to make them easier to understand and less burdensome to taxpayers. Elements of their redesign efforts are the direct result of input already received from taxpayers in previous qualitative studies conducted by Value Tracking.

The Core Business System for Value Tracking has developed a survey instrument to rate the level of satisfaction of the redesigned notices. In addition, Value Tracking is proposing to conduct an experimental design to compare relative satisfaction levels of the old notices with the new ones.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,340.

Estimated Burden Hours Per Respondent:

Advance Letter—2 minutes.

Initial Mailing

—Intro Letter—2 minutes.
—Questionnaire—5 minutes.

Postcard Reminder—1 minute.

Second Mailing

—Intro Letter—2 minutes.
—Questionnaire—5 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 860 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–10496 Filed 4–26–96; 8:45 am]

BILLING CODE 4830–01–P

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Notice of Meeting

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on May 17, 1996 in Louisville, Kentucky. The session will be held from 10:00 a.m.–3:00 p.m. in Parlor A, Medallion Ballroom, The Seelbach Hotel, 500 Fourth Avenue, Louisville, Kentucky (Tel. (502) 585–3200.)

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Tel. (202) 622–0220.

SUPPLEMENTARY INFORMATION: The provisional agenda to be considered at the meeting is as follows:

1. The remote entry filing program: status and prospects
2. Courier issues under the Customs Modernization Act
3. The role of Regulatory Audit and the Account Manager
4. Current broker issues
   a. The new broker regulations
   b. Improved efficiency in issuance of permits
   c. Privatization of the broker examination process
5. How Customs will work with the smaller importers (not in the top 1000)

The provisional agenda may be amended prior to the meeting. The Committee, in its discretion, may take up other matters, time permitting.

The meeting is open to the public. However, participation in the discussion is limited to Committee members and Treasury and Customs staff. It is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give notice by contacting Ms. Theresa Manning no later than May 10, 1996 at 202–622–0220.

Dated: April 24, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–10490 Filed 4–26–96; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Proposed Collection; Comment Request for Regulations PS–264–82

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–264–82 (TD 8508), Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders. (Regulation §§ 1.1367–1(f), 1.1368–1(f)(2), 1.1368–1(f)(3), 1.1368–1(f)(4), 1.1368–1(g)(2)).

DATES: Written comments should be received on or before June 28, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders.

OMB Number: 1545–1139.

Regulation Project Number: PS–264–82 Final.

Abstract: The regulation provides the procedures and the statements to be filed by S corporations for making the election provided under Internal Revenue Code section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filed will be used to verify that taxpayers are complying with the requirements imposed by Congress.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 200 hours.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the 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 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 technology.

Approved: April 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–10545 Filed 4–26–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

U.S. Participation at Lisbon Expo '98

AGENCY: United States Information Agency.

ACTION: Seeking contributions.

SUMMARY: The United States Information Agency announces that the United States intends to participate at Lisbon Expo '98, a World Fair officially

sanctioned by the Bureau of International Expositions, to be held in Lisbon, Portugal from May 22–September 30, 1998. Participation will entail the design, fabrication and operation of a 12,000 square foot U.S. Pavilion focusing on the expo theme, ''The Oceans—A Heritage for the Future.'' Financing is being sought through cash and in kind contributions from the private sector, as well as state and local governments and other organizations.

FOR FURTHER INFORMATION CONTACT: Organizations wishing to contribute to, or participate in, this project should contact the United States Information Agency's Lisbon Expo Coordinator, Mr. James E. Ogul, by mail at U.S. Information Agency, E/SP, 301 Fourth St., S.W., Rm. 314, Washington, DC 20547, telephone: 202–260–6511, Fax: 202–401–5618, or the internet: JOGUL@USIA.GOV.

John G. Busch,

Chief, Products and Services Division, Office of Contracts.

[FR Doc. 96–10523 Filed 4–26–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0166.

Title and Form Number: Application for Ordinary Life Insurance (Age 70), VA Form 29–8701.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by the policyholder to apply for replacement insurance for Modified Life Reduced at Age 70.

Current Actions: The information collected on the form is used by VBA personnel to initiate the granting of coverage for which applied.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 350 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,200.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10454 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0032.

Title and Form Number: Veterans's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information requested is necessary for VBA to determine if it is economically feasible for a veteran to reside in specially adapted housing and to compute the proper grant amount.

Current Actions: Title 38, U.S.C., Chapter 21, authorizes a VA Program of grants for specially adapted housing for disabled veterans. The chapter specifically outlines those determinations that must be made by VA before such grant is approved for a particular veteran. VA Form 26–4555c is used to collect information that is necessary for VBA to meet the requirements.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 115 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 460.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: Apri 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10455 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: None assigned.

Title and Form Number: Direct Deposit Enrollment, VA Form 24–0296 (Test).

Type of Review: New collection.

Need and Uses: The form will be used to gather the necessary information required to enroll VA Compensation and Pension beneficiaries in the Direct Deposit/Electronic Funds Transfer (DD/EFT) program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

Current Actions: Regulatory authority contained in 31 CFR 209 provides the Secretary of Veterans Affairs the right to authorize the appropriate disbursing officer to make a recurring Federal payment to a beneficiary by sending to the financial institution designated by the beneficiary a payment that is drawn in favor of that institution and is for credit to the account of the beneficiary, in lieu of payment by check drawn to his order. To accomplish this, the beneficiary to whom the recurring payment will be made should provide VA with a written request on a form promulgated by the Treasury Department or such agency-adapted form for the purpose which designates the financial institution.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,800 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Responses: One-time.

Estimated Number of Respondents: 84,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the reports should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10456 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–M

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0086.

Title and Form Number: Request for Determination of Eligibility and Available Loan Guaranty Entitlement, VA Form 26–1880.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is completed by an applicant to establish eligibility for Loan Guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen. The information furnished on VA Form 26–1880 is necessary for VBA to make a determination on whether or nor the applicant is eligible for Loan Guaranty benefits.

Current Actions: The form used by VBA to determine an applicant—s eligibility for Loan Guaranty benefits, and the amount of entitlement available. Each completed form is normally accompanied by proof of military service. If eligible, VBA will issue the applicant a Certificate of Eligibility to be used in applying for Loan Guaranty benefits.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 117, 093 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 468,372.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10457 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before June 28, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0066.

Title and Form Number: Request to Employer for Employment Information in Connection with Claim for Disability Benefits, VA Form 29–459.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to request employment information in connection with a claim for disability insurance benefits.

Current Actions: The information collected on the form is used by VBA to establish the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 862 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: April 19, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–10458 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–P

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, in Room 930, from May 28, 1996, through May 30, 1996. The meeting will convene at 8:30 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits deliver, including, but not limited to, the following: education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: April 22, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–10459 Filed 4–26–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
April 29, 1996

Part II

Environmental Protection Agency

40 CFR Part 260, et al.

Requirements for Management of Hazardous Contaminated Media; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 268, 269 and 271

[FRL–5460–4]

RIN 2050–AE22

Requirements for Management of Hazardous Contaminated Media (HWIR-Media)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: As part of the President's regulatory reform initiative, the United States Environmental Protection Agency (EPA) is proposing new regulations for contaminated media, including contaminated soils, ground water, and sediments, that are managed during government-overseen remedial actions. The proposed rule would address contaminated media that are currently subject to regulation as ''hazardous waste'' under the Resource Conservation and Recovery Act (RCRA). The rule's purpose is to develop more flexible management standards for media and wastes generated in the course of site cleanups.

To accomplish the objective, the proposal would establish modified Land Disposal Restrictions (LDR) treatment requirements, and modified permitting procedures for higher-risk, contaminated media that remain subject to hazardous waste regulations; and give EPA and authorized States the authority to remove certain lower-risk, contaminated media from regulation as ''hazardous wastes'' under most of Subtitle C of RCRA. Under this proposal, many contaminated media management units would be relieved from the obligation to comply with Minimum Technological Requirements (MTRs). The State-authorization procedures for RCRA program revisions would be simplified for this proposed rule; the Hazardous Waste Identification Rule (HWIR-waste); and the Revised Technical Standards for Hazardous Waste Combustion Facilities. Today's proposal also proposes to withdraw the regulations for corrective action management units (CAMUs). In addition, dredged material permitted under CWA or MPRSA would be exempted from Subtitle C.

DATES: Written comments on this proposal should be submitted on or before July 29, 1996.

The Agency will hold a public hearing on this proposal on June 4, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–MHWP–FFFFF to: (1) If using regular US Postal service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460 or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: RCRA-Docket@epamail.epa.gov. These comments should be identified by the docket number F–96–MHWP–FFFFF, and submitted as an ASCII file to avoid the use of special characters and encryptions.

Please do not submit any Confidential Business Information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC) located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, please make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies will cost $.15/page.

The June 4, 1996 public hearing will be held at the Key Bridge Marriott, located at 1401 Lee Highway, Arlington, VA 22209. The main switchboard number for the hotel is (703) 524–6400. Individuals interested in more complete directions or room reservations should contact the hotel directly. Registration for the hearing will begin at 8:30 a.m.. The hearing will begin at 9:00 a.m. and end at 5:00 p.m. unless concluded earlier. Oral and written statements may be submitted at the public hearing. Time for the public hearing is limited; oral presentations will be made in the order that requests are received and will be limited to 15 minutes, unless additional time is available. Requests to speak at the hearing should be submitted in writing to: Carolyn Hoskinson (5303W) U. S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Please clearly mark your request as a request to speak at the public hearing and include both the scheduled date of the hearing (June 4, 1996) and the docket number (F–96–MHWP–FFFFF). Requests to speak may also be made on the day of the hearing by registering at the door; requests to speak by individuals who choose to register at the door on the day of the hearing will be granted in the order received, as time permits. Individuals are requested to provide a copy of their testimony for the record.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Carolyn L. Hoskinson, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (703) 308–8626. For further information on EPA's development of the guidance document ''Best Management Practices for Soils Treatment Technologies,'' contact Subijoy Dutta (703) 308–8608, (internet address: dutta.subijoy@epamail.epa.gov). For further information on EPA's development of a guidance document for sampling and analysis, which is associated with today's proposal, contact James R. Brown (703) 308–8656, (internet address: brown.jamesr@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: The index is available on the Internet. Please follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: (919) 558–0335

This report can be accessed from the main EPA Gopher menu in the directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Hazardous Waste/Corrective Action/(HWIRMDIA).

FTP: ftp.epa.gov
Login: anonymous
Password: Your Internet Address
Files are located in /pub/gopher/OSWRCRA

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, with all of the comments received in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA's responses to comments, whether written or electronic, will be printed in the Federal Register, or in a ''response to comments document'' placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to clarify electronic comments that may be garbled during transmission or conversion to paper form.

Outline

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1. Proposed Subpart S Corrective Action Requirements
2. Final Rules for Corrective Action Management Units (CAMUs)
3. Proposed Land Disposal Restrictions for Hazardous Soils
4. Deferral of the Toxicity Characteristic for Petroleum Contaminated Media and Debris from Cleanup of Releases from Underground Storage Tanks (USTs)
5. Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media (proposed rule)
6. Proposed Hazardous Waste Identification Rule (May 20, 1992)
7. Relationship to CERCLA
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III. EPA's Policy Objectives for the HWIR-media Rule
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I. Authority

These regulations are proposed under the authority of sections 2002(a), 3001, 3004, 3005, 3006, and 3007 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, 6924, 6925, 6926, and 6927.

II. Background

A. Purpose and Context for Today's Proposed Rule

Since 1980, the Environmental Protection Agency (EPA) has developed a comprehensive regulatory framework under Subtitle C of RCRA that governs the identification, generation, transportation, treatment, storage, and disposal of hazardous wastes. The RCRA program is generally considered prevention- rather than response-oriented. The regulations center around two broad objectives: to prevent releases of hazardous wastes and constituents through a comprehensive and conservative set of management requirements (commonly referred to as ''cradle to grave management''); and to minimize the generation and maximize the legitimate reuse and recycling of hazardous wastes.

The RCRA regulations constitute minimum national standards for management of hazardous wastes. In general, they apply equally to all hazardous wastes, regardless of where or how generated, and to all hazardous waste management facilities, regardless of how much government oversight any given facility receives. In order to ensure an adequate level of protection nationally, the RCRA regulations have

been conservatively designed to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies.

In the course of administering current RCRA regulations, to contaminated media generated during site cleanups, EPA and the States have recognized fundamental differences in both incentives and objectives for prevention- and cleanup-oriented programs. For example, the stringent treatment requirements established by RCRA land disposal restrictions (LDRs) have encouraged many generators to reduce the amount of hazardous waste they generate. On the other hand, when these requirements are applied in the context of site cleanup, they often provide a strong incentive to leave hazardous waste and contaminated media in place, or to select alternate remedies that will minimize the applicability of RCRA regulations. This can result in remedies that are less protective of human health and the environment. (See 54 FR 41566, October 10, 1989; 58 FR 8658, (February 16, 1993); and the information in the docket to today's proposed rule)).

In the administration of remedial programs such as Superfund and the RCRA corrective action program, EPA and the States are already faced with an unacceptable situation that must be remedied while operating within the technical and practical realities of the site. Remedial actions generally receive intensive government oversight, and remedial decisions are made by a State or Federal Agency only after site-specific conditions have been thoroughly investigated. In contrast, prevention-oriented hazardous waste regulations are generally implemented independently by facility owner/operators through compliance with national regulatory requirements.

In addition to differences in the incentives and objectives of cleanup- and prevention-oriented programs, EPA and the States recognize that frequently there are significant differences between ''as-generated'' process wastes and contaminated media or other remediation wastes. For example, contaminated media are often physically quite different from as-generated wastes. Contaminated soils often contain complex mixtures of multiple contaminants, and are highly variable in their composition, handling, and treatability characteristics. For this reason, treatment of contaminated soils can be particularly complex, involving one or a series of custom-designed treatment systems. As-generated wastes, however, are usually more consistent in composition, since they are derived from specific known manufacturing processes.

Historically, EPA and the States have sought to address the application of RCRA's prevention-oriented standards to remedial actions through a series of regulatory and policy directives. These policies aim at preserving RCRA's goal of protectiveness, while providing government regulators the flexibility and tools necessary to craft effective site-specific remedies. These include the ''Area of Contamination'' policy, the ''Contained-in'' policy, the presumption for LDR treatment variances for contaminated soils, and the regulations for Corrective Action Management Units and Temporary Units, which are discussed in section (V)(F) of this preamble. (See e.g., memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers, (March 13, 1996); section (V)(A)(4)(a) of today's preamble; 55 FR 8666, 8758–8760 (March 8, 1990); ''Superfund LDR Guide #6A (2nd Edition) Obtaining a Soil and Debris Treatability Variance for Remedial Actions'' EPA/Superfund Publication: 9347.3–06FS (September 1990); ''Superfund LDR Guide #6B Obtaining a Soil and Debris Treatability Variance for Removal Actions'' EPA/Superfund Publication: 9347.3–06BFS (September 1990); and 58 FR 8658 (February 16, 1993)).

With the exception of the Corrective Action Management Unit regulations, EPA is not proposing that this rulemaking withdraw any of these policies or directives.

Instead, EPA seeks to formally recognize the differences between as-generated waste and contaminated media, by creating a framework that: (1) Allows State and Federal regulators to impose site-specific management requirements on lower-risk contaminated media, and (2) modifies LDR treatment and other requirements that are applicable to higher-risk contaminated media. Since EPA proposes that higher-risk contaminated media remain subject to regulation as ''hazardous waste,'' management of these media would remain subject to most of the other applicable RCRA Subtitle C requirements.

EPA has found that the administrative procedures associated with issuance of RCRA permits can often significantly delay cleanup actions. To relieve this problem, EPA is also proposing to streamline the administrative requirements for hazardous waste permits that are needed for government-overseen remedial actions. In addition, the proposal contains provisions for State authorization not only for today's proposal, but for all RCRA program revisions, specifically including the Revised Technical Standards for Hazardous Waste Combustion Facilities and the HWIR waste proposals. These are much more streamlined than the RCRA program's current procedures.

In today's notice, EPA is also soliciting comment on an approach that would remove remediation wastes—defined broadly— from the definition of solid waste, if they were managed under a State or EPA-approved plan.

In another matter, today's proposal would exclude dredged material from RCRA Subtitle C when it is managed according to a permit under CWA or MPRSA.

Finally, EPA wishes to emphasize that this proposal and other alternatives discussed address only the management of wastes that are generated during cleanup actions—it does not consider issues associated with what wastes should be cleaned up, what the cleanup levels should be, or how remedies are selected. EPA believes that these and other ''how clean is clean'' issues are best determined by other State and Federal regulations and guidelines.

Throughout the development of today's proposal, EPA has worked very closely with States as ''co-regulators,'' and the Agency believes that most States share the views and goals expressed in these pages by EPA.

B. Relationship to Previous Regulatory Initiatives

As noted above, the need for an alternative regulatory scheme for management of contaminated media and remediation waste has been recognized for some time. In recent years, EPA has developed several regulatory initiatives to address that need. Today's proposal is intended to address the issues and problems discussed above in a single, comprehensive regulatory package. As such, it modifies and/or replaces many of the Agency's previous regulatory initiatives, as discussed below.

1. Proposed Subpart S Corrective Action Regulations

In July 1990, EPA proposed comprehensive regulations to address the substantive and procedural requirements for implementing corrective actions at RCRA facilities under the authorities of RCRA sections 3004(u) and 3004(v) (42 USC §§ 6924(u),(v)). Commonly known as the

''Subpart S proposal,'' the proposal discussed various technical issues associated with site cleanup including ''action levels'', cleanup standards, remedy selection, points of compliance and other cleanup requirements. The Subpart S proposal has been the primary guidance for the RCRA corrective action program since its publication.

In general, the Subpart S proposal contemplated that contaminated media would be subject to the same regulatory requirements that apply to as-generated wastes. Although EPA generally did not use the Subpart S proposal to address issues associated with contaminated media management, the Agency did introduce the concept of Corrective Action Management Units (CAMUs) and temporary units (TUs) as a means of providing some relief from the burdens that LDRs and other Subtitle C requirements can impose on cleanup activities. The CAMU concept is discussed more completely below, and in section (V)(F), of today's proposal.

Today's proposal would establish a more definitive and comprehensive set of requirements for the management of contaminated media—and provide considerably more regulatory relief—than the Subpart S proposal would have in this area. Currently EPA is reexamining the Subpart S proposal, and working to finalize and/or repropose some of those regulations in approximately 18 months. As a precursor to the Subpart S rulemaking, the Agency is issuing an Advanced Notice of Proposed Rulemaking (ANPRM). One of the purposes of the ANPRM is to describe the relationship of the Subpart S initiative to other Agency initiatives, including today's proposal. The Agency expects that if finalized, the HWIR-media rules will be an essential complement to and an integral part of the final RCRA corrective action regulations.

2. Final Rules for Corrective Action Management Units (CAMUs)

On February 16, 1993 EPA published final regulations for CAMUs and TUs (58 FR 8658). In essence, the CAMU concept provides considerable flexibility to EPA and implementing States to specify design, operating, and closure/post closure requirements for units used for land-based temporary storage, or for treatment of wastes that are generated during cleanup at an RCRA facility. The CAMU also specifies requirements for units that are used as long-term repositories for cleanup wastes. Decision criteria for the designation of CAMUs are specified in those rules. Most importantly, the placement of cleanup wastes into an approved CAMU does not trigger RCRA LDR requirements (40 CFR 264.552 (a)(1)). Thus, appropriate treatment requirements can be specified by the overseeing Agency [1] on a site- and waste-specific basis. In addition, the CAMU rule provides that consolidation or placement of cleanup wastes into a CAMU does not trigger RCRA section 3004(o) minimum technology requirements (MTRs) (40 CFR 264.552 (a)(2)).

The CAMU rule did not address, however, issues pertaining to the delay often caused by the need to obtain RCRA permits for cleanup actions. While the regulations provide relief from MTRs and LDRs, CAMUs must be approved by the same procedures used for approving other types of hazardous waste management units; i.e., through RCRA permits or permit modifications, or through orders.

The CAMU rule received broad support from many affected stakeholders. Since its adoption, EPA and the States have been using the CAMU rule to provide appropriate regulatory relief for cleanups conducted under RCRA, CERCLA, and State cleanup authorities. Some parties, however, have expressed concern that, according to the rule, LDRs do not apply to wastes managed in a CAMU. They have questioned whether the rule provides too much discretion to EPA and the States, and whether this discretion could result in unacceptably lenient treatment requirements. On May 14, 1993 these parties filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit which challenged both the legal and policy bases for the final CAMU rules. *Environmental Defense Fund* v. *EPA*, No. 93–1316 (D.C. Cir.).

As part of the dialogue that prefaced the creation of the HWIR Federal Advisory Committee (discussed more fully in section C, ''Origin of Today's Proposed Rule''), the Agency agreed to reexamine the CAMU regulations in the context of developing this proposal, which is intended to be a broader, more comprehensive response to the problems in applying traditional RCRA Subtitle C standards to the management of remediation wastes. As discussed in detail elsewhere in this preamble (see section (V)(F)), today's proposal would supersede the CAMU regulations. A more detailed discussion of the relationship between today's proposal and the CAMU regulation is presented in section (V)(F).

3. Proposed Land Disposal Restrictions for Hazardous Soils

On September 14, 1993 (58 FR 48092), EPA proposed the ''Phase II'' land disposal restriction regulations, which included provisions to establish constituent-specific treatment standards for soils contaminated with hazardous wastes. In that proposal, the Agency reiterated that combustion is not always the appropriate BDAT for soils, and proposed treatment standards tailored specifically to contaminated soils. The Agency acknowledged the limitations of the data available when the proposal was written regarding the levels that can be achieved by treating various matrices of contaminated soils with available technologies (58 FR 48092, 48125 (September 14, 1993)). Because of these uncertainties, the Agency outlined several options to establish treatment standards for contaminated soils. Two options described in the proposal's preamble would have based soil treatment standards on some multiplier of the universal treatment standards for hazardous wastes (which were included in the same proposal). Another proposed option was based on a simple 90% reduction standard. The Phase II proposal also contained provisions for codifying the RCRA ''contained-in'' policy for soils. This policy, which is discussed in detail in section (V)(A)(4)(a) of this preamble, is based on the concept that environmental media (e.g., soils, ground water) that are contaminated with listed hazardous wastes or that exhibit a hazardous characteristic are not of themselves hazardous. However, these media must be regulated under Subtitle C because they contain hazardous wastes; conversely, once they are determined to no longer contain hazardous wastes, the media are generally no longer regulated under RCRA Subtitle C.

EPA received a number of comments on the proposed soil treatment standards, many of which strongly urged the Agency to address LDR treatment standards for contaminated

[1] Throughout this notice, EPA uses the term ''overseeing agency'' to mean either EPA or the State authorized for the HWIR-media program. Most States are authorized for the RCRA base program, and so would be eligible, as appropriate, to receive authorization for the HWIR-media program if they chose to do so (for a discussion of authorization for LDRs under this proposal, see the State authorization discussion in this preamble). For those States not authorized for the RCRA base program, EPA would operate the HWIR-media program in that State, just as it operates the rest of the RCRA program in that State. Also, EPA might run a cleanup program (e.g., RCRA Corrective Action or Superfund) in a State that receives authorization for the HWIR-media program. In that case, EPA would consult with or seek approval from the State, as appropriate, in order to approve the RMP. The Agency hopes that the EPA Regions and States will develop agreements regarding how this approval will take place.

soils and codification of the contained-in policy in the context of HWIR-media regulations, rather than as part of the LDR Phase II rule. The Agency agreed with those who commented, and in a subsequent Federal Register notice (58 FR 59976, November 12, 1993) announced its intention to use the HWIR-media rule as the vehicle for promulgating these standards. That notice also extended the deadline for comments and data concerning Phase II provisions for hazardous soils to March 18, 1994. The Phase II final rule (minus the soil treatment standards) was promulgated on September 19, 1994 (59 FR 47980).

4. Deferral of the Toxicity Characteristic for Petroleum Contaminated Media and Debris From Cleanup of Releases From Underground Storage Tanks (USTs)

On February 12, 1993, EPA published a proposal to defer the applicability of the toxicity characteristic (TC) rule for petroleum contaminated media and debris that are generated during underground storage tank cleanups. This was a follow-up proposal to the Agency's original temporary deferral, which was part of the final rulemaking for the toxicity characteristic (55 FR 11798, 11862, March 29, 1990). The Agency will be assessing studies to support a final decision as to whether UST petroleum contaminated media and debris should be regulated as hazardous wastes under RCRA Subtitle C. Today's proposal does not address whether or not this material should be regulated as hazardous waste; thus, the temporary exclusion described here will remain in effect until the Agency publishes a separate final rulemaking determination. (Note that because today's proposal does not address this issue, it does not reopen the comment period for the February 12, 1993 proposal.)

5. Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media (Proposed Rule)

On December 24, 1992, EPA proposed to suspend temporarily the applicability of the toxicity characteristic (TC) to media contaminated with releases of petroleum from sources other than underground storage tanks. This proposal was developed in response to petitions from a number of States. Their contention was that exempting petroleum contaminated media from UST cleanups—while cleanup of petroleum releases from other sources (such as aboveground tanks) remained subject to Subtitle C—made little sense.

In December 1992, EPA answered the States' petitions, and announced its intention to suspend the applicability of the toxicity characteristic to all petroleum contaminated media (57 FR 61542). The suspension would have taken effect only in States that certified that they had effective authorities and programs in place that could compel cleanup and regulate the management of such petroleum contaminated media in a protective manner. Also, the suspension would only apply to media generated during State or Federally supervised cleanup actions. EPA proposed that the suspension be effective for three years, during which time the Agency would conduct more thorough studies to determine whether or not—and how—petroleum contaminated media should be regulated under RCRA.

After the proposed suspension was published, it became clear that many issues addressed in that proposal applied not only to media contaminated by petroleum releases, but also to the management of all types of contaminated media. The issues associated with judging the adequacy of State cleanup programs and whether such programs can ensure protective management of cleanup wastes outside of the Subtitle C system were also recognized as relevant to other regulatory initiatives involving State authorization under RCRA.

Soon after the publication of the proposed suspension, the Agency, in concert with the States and other stakeholders, launched a major, comprehensive effort to address the regulation of contaminated media under Subtitle C. (See the following discussion of the HWIR-media rulemaking proposal). EPA and the others recognized that these more comprehensive HWIR-media rules would have to deal essentially with the same set of issues addressed in the proposed suspension for petroleum contaminated media. Thus, finalizing the proposed suspension would have required reaching decisions on a number of issues common to both rules.

In effect, finalizing the TC suspension rule would have preempted the HWIR-media process in many respects. To preserve the process, and to avoid the redundancy of developing two regulations to address the same basic problems, EPA decided not to proceed with finalizing the TC Suspension. Instead, the Agency chose to address those issues in the broader context of the HWIR-media rulemaking process.

The Agency believes that the flexibility introduced into Subtitle C requirements in today's proposal sufficiently addresses the issues raised under the proposed ''Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media,'' and therefore believes that if the HWIR-media rule is finalized, it will not be necessary to finalize the TC suspension. The Agency requests comments on whether additional flexibility (beyond that provided for in today's proposal) is necessary for non-UST petroleum contaminated media.

6. Proposed Hazardous Waste Identification Rule (May 20, 1992)

Shortly after the publication of the proposed TC suspension, the Agency completed a separate (but related) rulemaking proposal, commonly referred to as the Hazardous Waste Identification Rule (HWIR) (57 FR 21450, May 20, 1992). This proposed rule was issued in response to the U.S. Court of Appeals, District of Columbia Circuit's vacature of the mixture and derived from rules (*Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991)), which were issued in 1980 as part of the original RCRA hazardous waste regulations. In that HWIR proposal, EPA outlined alternative regulatory approaches for establishing ''exit'' levels for hazardous wastes (i.e., concentration levels below which listed hazardous wastes would no longer be subject to Subtitle C jurisdiction). The primary focus of the HWIR proposal was on the ''exit'' of as-generated hazardous wastes from the Subtitle C system. However, a separate portion of the proposal outlined conceptual approaches for revising Subtitle C requirements as they currently apply to the management of contaminated media (57 FR 21450, 21463, May 20, 1992).

The HWIR proposal received considerable interest. A number of commenters expressed strong concerns about the proposal as a whole, and the process that was used to develop it. Some of the concerns focussed on EPA's failure to consult with the States and the public prior to issuing the very complex and significant proposal. Because of process related issues, the strong views expressed by the States, and the importance of the rulemaking, EPA decided that a more deliberate and inclusive process was needed for developing the regulations. On October 5, 1992 the Agency formally announced its intention to withdraw the May 20, 1992 proposal, and start a series of discussions with various stakeholders to develop a new, carefully considered approach to crafting both exit levels for ''as-generated'' wastes and management standards for cleanup of contaminated media.

7. Relationship to CERCLA

The rule being proposed today would be expected to have a significant impact at sites being addressed under CERCLA. Superfund sites generate large quantities of remediation waste, and compliance with RCRA requirements in the management of this waste has been a recurring concern. The substantive requirements of RCRA Subtitle C, including land disposal restrictions, apply to hazardous wastes at these sites, and permits are required for off-site actions.

Under the approach proposed today, the flexibility being provided for management of remediation waste would be available to CERCLA responses. It should be noted, however, that CERCLA responses must comply with all ''applicable'' or ''relevant and appropriate'' requirements, both Federal and State. Therefore, until a RCRA authorized State is authorized for the HWIR-media rule, the State's existing RCRA regulatory system would be applicable (or relevant and appropriate) to Superfund actions in the State.

8. Relationship to HWIR-waste Rule (Dec. 21, 1995)

See preamble section (IV)(C).

9. Relationship to RCRA Legislative Reform

On March 16, 1995 the President committed to identify high cost, low benefit provisions of the Resource Conservation and Recovery Act (RCRA) for legislative reform. After an extensive stakeholder outreach process, the Administration selected two issues. The first issue for legislative reform, an exemption for certain low risk wastes from costly regulation under RCRA's land disposal restrictions program, was signed into law—the Land Disposal Flexibility Act—by the President on March 26, 1996.

The second topic identified for legislative reform was the application of RCRA hazardous waste management requirements to cleanup wastes. The Administration currently is discussing with stakeholders and Congress the possible development of bipartisan legislation to expedite the safe and cost-effective management of cleanup wastes that are currently subject to RCRA hazardous waste management requirements. In addition to RCRA cleanup sites, the type of reform being discussed would benefit site cleanups under Superfund, Brownfields and State voluntary programs. EPA has requested comment on a range of alternatives to today's proposal that are consistent with the range of alternatives being discussed for legislative reforms.

C. Origin of Today's Proposed Rule

In order to facilitate discussions with various stakeholders, EPA established a formal advisory Committee, chartered under the Federal Advisory Committee Act (FACA). Chaired jointly by the Director of the Office of Solid Waste and the Commissioner of the Oregon Department of Environmental Quality (representing the States as ''co-regulators''), the HWIR FACA Committee included representatives from industry, environmental organizations, the States, and other affected organizations.

One of the initial decisions reached by the FACA Committee was to create separate sub-groups to address the two major components of the rule—the provisions for contaminated media, and the provisions for as-generated wastes. Since then, these two efforts have proceeded in parallel, and have evolved into separate but obviously related rulemakings. A more complete description of the proceedings of the HWIR FACA Committee and subsequent deliberations of its two sub-groups can be reviewed in the Docket for this rule, and the HWIR-waste rule (60 FR 66344–469, Dec. 21, 1995).

In July 1993 the FACA Committee developed and approved a conceptual framework for the HWIR-media rule. Commonly referred to as the ''Harmonized Approach,'' this framework embodied a number of compromises reached among the participants in the process. It was recognized by the Committee that the Harmonized Approach was only a conceptual outline for crafting a proposed HWIR-media rule, and that a number of important issues remained to be resolved. However, the participants agreed that EPA, in partnership with the States, should begin the formal rulemaking process with the objective of assessing the remaining issues, determining the viability of such a rule from a legal, technical, and policy standpoint, and if possible, developing a proposed rule that embodied the general concepts and directions outlined in that approach. Today's proposal represents the culmination of those efforts.

It should be understood that this proposal, which is patterned after the Harmonized Approach, represents the Agency's best efforts to fulfill the directive of the HWIR FACA Committee. In developing the proposal it was necessary to make decisions on a number of important issues, some of which were not specifically addressed in the Harmonized Approach, including some issues that were not identified during the FACA process. The Agency recognizes that although tentative consensus was reached by the FACA Committee on the harmonized approach, it cannot be assumed that today's proposal will meet with the approval of all members of the Committee. In fact, some stakeholders have already expressed concerns with some of the specifics of today's proposal.

It is the Agency's view that today's proposal would offer many benefits beyond the present regulatory situation. However, it is quite possible that other, different regulatory approaches could achieve the same objectives and levels of protection, and might offer other advantages in terms of simplicity, cost-effectiveness and/or ease of implementation. A discussion of possible alternative approaches to today's proposed rule is presented in sections IV and VI of this preamble.

In any case, EPA in consultation with the States, will continue to seriously examine the strengths and weaknesses of the proposal presented in today's notice, and of the alternatives discussed. The Agency specifically requests comments on the approaches taken in today's proposed rule, and the specific strengths and weaknesses of the proposed options as well as the alternatives discussed in section VI of this preamble.

Alternative regulatory approaches, and any advantages they may have in comparison to today's proposal, will be very carefully considered. The Agency is committed to issuing a final HWIR-media rule that achieves as much desirable regulatory relief as possible, that is protective of human health and the environment, and that can be easily understood and implemented.

III. EPA's Policy Objectives for the HWIR-Media Rule

In developing today's proposal, EPA, in consultation with the States, identified several key policy objectives. These are discussed below.

Special Requirements Should Be Developed That Are Appropriate for Management of Contaminated Media

As discussed above, based on their experiences overseeing and implementing environmental cleanups, EPA and the States believe that many of the current prevention-oriented regulations under RCRA are inappropriate for regulating the management of contaminated media. EPA and the States have found that these prescriptive standards can create disincentives for action, and constrain the range of options available to

environmental remediators. Thus, in order to better align the regulatory controls for the unique challenges associated with contaminated media, existing Subtitle C requirements should be modified to create a more flexible and common-sense regulatory system for management of contaminated media.

Requirements for Management of Contaminated Media Should Be Flexible and Should Reflect Actual Media Cleanup Site Conditions and the Characteristics of the Contaminated Media

EPA and the States have found that cleanup of hazardous waste sites often requires regulators to make numerous site- and media-specific cleanup decisions that can be at odds with RCRA's uniform national standards. Although some may argue that applying uniform national LDR treatment standards and other national standards is appropriate for contaminated media, EPA is persuaded that for the most part, site-specific flexibility is necessary to ensure the most effective management of these wastes. EPA further believes that EPA and/or State oversight of media management activities will ensure that this additional flexibility will not be abused.

State and Federal Cleanup Programs That Have Adequate Authorities and That Are Responsibly Administered Can and Should Be Relied Upon To Exercise Sound Professional Judgment in Implementing HWIR-Media Regulations

For some time many States have been successfully operating cleanup programs under State authorities. These States have often completed cleanups at substantial numbers of sites, and have demonstrated a capability for overseeing technically complex cleanups while ensuring adequate protection of human health and the environment. Many of these programs are patterned after existing Federal programs such as CERCLA or RCRA corrective action. EPA is confident, therefore, that many States will be able to effectively implement these new regulations, and exercise sound judgment in making site-specific management decisions.

HWIR-Media Regulations Should to the Extent Possible Remove Administrative Obstacles To Expedite Cleanups, and Provide Incentives for Voluntary Initiation of Cleanup by Responsible Parties

The obstacles posed by RCRA permit requirements for cleanups that involve on-site treatment, storage or disposal of contaminated media, and other cleanup wastes have been recognized for some time. EPA believes that today's proposal would provide considerable relief from these administrative obstacles. At the same time, adequate opportunities for public participation must be maintained. EPA believes that the new administrative procedures presented in today's proposal for remedial actions that would otherwise require traditional RCRA permits would meet the goal of streamlining the process, while maintaining opportunities for public participation.

Because this proposal would provide considerable substantive relief (through more flexible management standards), and relief from administrative obstacles, EPA believes that the rule would have the additional benefit of stimulating voluntary initiation of cleanup actions by owners and operators of contaminated properties.

Authorizing States for HWIR-Media Regulations Should Be Streamlined and Simplified To Save Time and Resources

The process for authorizing States for the RCRA Subtitle C program has been characterized by lengthy procedures, large resource expenditures, and detailed, line-by-line reviews of State authorization applications. The goal of these procedures has been to ensure before the State may receive authorization, that State programs are equivalent—in the strictest sense of the word—to the Federal program. EPA views the HWIR-media regulations as an opportunity to rethink the State authorization process, with the goal of creating a new approach that relies on less up-front review by EPA, a greater reliance on certification by States, and more credible and effective sanctions on States that do not effectively implement the regulations for which they are authorized. EPA expects that this new approach to State authorization will be applied to other parts of the RCRA program. If it is successful, the approach may become the template for the RCRA program as a whole. (This is discussed in more detail in section (V)(E).)

The Regulations Should Be Easy To Understand

The RCRA Subtitle C program has been criticized by many for being overly complex and thus difficult to comply with. This rule is not intended to fix all of the program's complexities; however, a primary objective in creating this new regulatory framework for management of contaminated media was to ensure that the new regulations are as easy to understand—and implement—as possible.

IV. Introduction and Overview of Today's Proposal and Alternatives to Today's Proposal

A. Today's Proposed Approach

Today's proposal would establish two new regulatory regimes for management of contaminated media that would otherwise be subject to regulation under the current RCRA Subtitle C regulations, if the media are managed under the oversight of EPA or an authorized State. The rule would establish a ''Bright Line''—a set of constituent-specific concentrations—to distinguish between those two regimes based on whether media are more highly contaminated, or contaminated at lower levels.

Media which were contaminated with constituent concentrations below Bright Line values would be eligible to exit from Subtitle C regulation if the State or EPA determined that the media did not contain waste that present a hazard (i.e., hazardous waste). (See RCRA § 1004(5)). Most management requirements for contaminated media that do not contain hazardous wastes would be specified by the overseeing Agency on a case-by-case basis.

Today's proposal also addresses application of the Land Disposal Restrictions (LDRs) to both hazardous and non-hazardous contaminated media. Hazardous contaminated media are environmental media that contain hazardous wastes or exhibit a hazardous characteristic and have not been determined, pursuant to § 269.4, to no longer contain hazardous wastes. Non-hazardous contaminated media are media determined, pursuant to § 269.4, not to contain hazardous waste. LDRs apply to media contaminated by hazardous wastes when the wastes were land disposed after the effective date of the applicable land disposal prohibitions. When the wastes that are contaminating the media were land disposed before the effective date of the applicable land disposal prohibitions, LDRs attach to the media when the media are removed from the land, unless the media have been determined not to contain hazardous wastes before they are removed from the land. Media subject to the LDRs must be treated to meet LDR treatment standards prior to placement, or re-placement, in a land disposal unit (except a no-migration unit). As stated above, media contaminated by hazardous wastes placed before the effective dates of the applicable land disposal prohibitions and determined to no-longer contain hazardous waste before they are removed from the land are not subject to the land disposal restrictions.

In some cases, hazardous contaminated media may be determined to no-longer contain hazardous waste, but may remain subject to the land disposal restriction treatment standards. As discussed more completely later in today's preamble, this is based on the logic that, once attached, the obligation to meet land disposal restriction treatment standards continues even if a waste is no longer considered hazardous under RCRA Subtitle C.

Under current regulations, media subject to the land disposal restriction treatment standards must meet the standards for the hazardous wastes contained (or, in some cases, formerly contained) in the media, that is, the same treatment standard the contaminating hazardous wastes would have to meet if they were newly generated. Today's proposal would modify the land disposal restriction treatment standards for media subject to the LDRs so that the treatment standards reflect the site-specific nature of cleanup activities and media treatment technologies and strategies more accurately and appropriately. Today's proposal also establishes new Media Treatment Variances to ensure that, when the generic LDR treatment standards are technically impracticable or inappropriate or, for contaminated media with all constituent concentrations below the Bright Line, when the statutory LDR standard can be met with less treatment than required by the generic LDR treatment standards, appropriate treatment will be required. When contaminated media determined by a State or EPA to no-longer contain hazardous waste is still subject to the LDRs, today's proposal establishes a policy that site-specific Media Treatment Variances would be appropriate.

Contaminated media that contain hazardous wastes would continue to be regulated as hazardous wastes, but certain Subtitle C requirements would be modified. Most importantly, the LDR treatment standards for media would be amended, to account for the highly variable characteristics of media (such as soils) that are mixed with hazardous wastes, and the technical uncertainties involved with treating such heterogeneous materials. One of the primary objectives of the proposed rule is to replace generic, national standards with more tailored and flexible requirements for contaminated media. The rule would establish a new mechanism for imposing these site-specific requirements—remediation management plans (RMPs). These plans would be the vehicle for imposing (and enforcing) the new requirements, while ensuring public participation in the decision making process. An approved RMP would be required for both wastes that contain hazardous wastes and those determined not to contain hazardous wastes. Thus, the regulations would not be self-implementing—the increased flexibility allowed under the new rules would be available to owner/operators and other responsible parties only when there is sufficient government oversight to ensure that such flexibility is not abused.

The use of RMPs should accelerate and streamline cleanup actions in several ways. First, an approved RMP would be considered a RCRA permit, eliminating the need to issue traditional, time-intensive RCRA permits for cleanup actions. Second, the procedures for reviewing and approving RMPs would be considerably less complex than those required for RCRA permits. Third, RMP's would not trigger the requirement for facility-wide (and beyond facility boundary) corrective action requirements under § 3004(u) and (v) of RCRA. Thus, the delays and other disincentives that have often been caused by the need to obtain a RCRA permit for certain cleanup activities should be significantly eased.

It should be noted that certain types of remediation wastes, such as sludges, debris, and other non-media remediation wastes, would not be subject to the more flexible treatment standards specified in the proposal and could not exit from hazardous waste regulation through a contained-in determination. Such materials would be subject to the traditional Subtitle C regulations, including LDR requirements. However, RMPs could be used (at the discretion of the overseeing Agency) to address all types of remediation wastes.

Today's proposal would also replace the current regulations for CAMUs, which were promulgated on February 16, 1993. New CAMUs could not be approved after the publication date of the final HWIR-media rule; however, existing CAMUs would be ''grandfathered'', and could continue operating for the duration of the remedial operations. For situations in which cleanup wastes are simply stored or treated in piles as part of cleanup activities, a new type of unit—a remediation pile—could be used without triggering LDRs and MTRs. A significant difference between the requirements for these remediation piles and the current CAMU requirements is that these piles would be only temporary and could not be used as a disposal option for remediation wastes. Remediation piles could only be used during the duration of the cleanup activities at the site.

Another important feature of this proposal is it's new approach to authorizing States for the rule, which would be much more streamlined than existing authorization procedures. Under the new approach, States would certify that they have an equivalent program, and EPA would only do a very brief review prior to authorization, rather than a meticulous line-by-line review of the States' regulations to determine equivalence. Once authorized, EPA would monitor the State's implementation of the program. Ultimately, the Agency could revoke a State's authorization specifically for this rule, without having to revoke the State's entire RCRA program (as is currently the case).

B. Alternative Approaches Including Unitary Approach

The Agency also solicits comments regarding alternative approaches to implementing the objectives of today's proposal. An alternative that was originally suggested by Industry stakeholders has received attention and support from many stakeholders. This alternative approach is commonly referred to as the ''Unitary Approach.[2]'' The Unitary Approach would exempt all cleanup wastes (including contaminated media and non-media remediation wastes) from Subtitle C regulation if they meet certain conditions (the rule would thus be based on a conditional exclusion theory). The conditional exclusion requires that these remediation wastes be managed under an enforceable ''Remedial Action Plan'' or RAP approved by EPA or an authorized State program. The Unitary Approach would not include a Bright Line concept. All cleanup wastes would be subject to site-specific management requirements set by the overseeing Agency (EPA or State) in the RAP. EPA also believes that many of the key elements of different options and alternatives discussed in this proposal could be combined in different ways to construct an effective HWIR-media program. The following table illustrates three different combinations of the key elements, and is intended to facilitate comparison of options. A further discussion of alternative approaches and hybrids, is provided in section VI of the preamble to today's proposal.

[2] See letter from James R. Roewer, USWAG Program Manager, Utilities Solid Waste Activities Group, to Michael Shapiro, Director, Office of Solid Waste, EPA (September 15, 1995) in the docket for today's proposal.

TABLE 1

Key elements	Proposed option	Hybrid contingent management option	Unitary approach
Legal Theory	Contained-in	Conditional Exclusion for below the Bright Line.	Conditional Exclusion.
Scope	Media only	All remediation wastes	All remediation wastes.
Bright Line	Bright Line—10^{-3} and Hazard index of 10.	Bright Line (a) (for media) same as proposal, or (b) qualitative Bright Line[1].	No Bright Line.
Hazardous vs. Non-hazardous.	All media above Bright Line are subject to Subtitle C; below is site- specific decision.	All remediation wastes above Bright Line are subject to Subtitle C; below (when managed according to RAP or RMP) are not hazardous.	All remediation wastes managed according to RAP or RMP are not hazardous.
LDRs	LDRs required for media where LDRs attaches[2].	LDRs required for wastes where LDRs attaches[2].	LDRs required for wastes where LDRs attaches.[3]
Permitting	RMP serves as RCRA permit for media that remain subject to Subtitle C.	RMP serves as RCRA permit for wastes that are above the Bright Line; for wastes below the Bright Line, RMP does not have to serve as RCRA permit.	No requirement that RAP/RMP serve as RCRA permit, since wastes are not subject to Subtitle C.

[1] See discussion of qualitative Bright Line below.
[2] See discussion of applicability of LDRs in section (V)(C).
[3] See discussion of alternative option for LDR applicability in section (VI)(A)(3).

The Agency believes that the alternative approaches provide more flexibility than today's approach, and requests comments on the Unitary Approach as an alternative to today's proposal, as well as other options that combine different key elements.

C. Relationship to HWIR-Waste Rule

EPA recently proposed two approaches for exemptions from Subtitle C regulation that focus on listed hazardous wastes that are not undergoing remediation (60 FR 66344–469, Dec. 21, 1995). Under the ''HWIR-waste'' proposal, listed wastes, wastes mixed with listed wastes and wastes derived from listed wastes would be eligible for exemption from Subtitle C where tests show that all hazardous constituents fall below one of the two sets of ''exit levels'' set out in the proposal.

EPA's goal for the generic option was to identify levels of hazardous constituents that would pose no significant threat to human health or the environment regardless of how the waste was managed after it exited Subtitle C jurisdiction. EPA derived these exit levels by making reasonable worst case assumptions about releases from a variety of solid waste management units. The exit values are designed to be protective even if there is no further regulation or oversight by any Federal or State agency. Moreover, the proposal does not require any regulatory agency to review exit claims or make decisions as to whether an exit is warranted. As noted in that proposal, in addition to listed hazardous wastes, both contaminated media and wastes that do not contain media, but are undergoing cleanup, would be eligible to exit Subtitle C at these levels under this self-implementing process. However, since the exit levels do not account for site-specific factors that may exist at cleanup sites, large quantities of remediation wastes and contaminated media might not qualify for exit.

The second set of exit levels proposed in the HWIR-waste notice is somewhat less conservative because risk reduction credit is given for the conditions of the exemption, thus, adhering to the overall risk protection goal. These levels, however, would be available only to waste handlers that comply with specified conditions for the management of the exempted wastes. (The proposed option has a condition prohibiting management in land application units.) The notice also describes and requests preliminary comments on several other options for conditional exemptions with more extensive conditions that would increase risk protection and would, presumably, yield even less conservative exit levels. One of these options described could allow regulatory agencies to calculate exemption levels for individual waste management facilities using site-specific data. Waste that exited under this option would be subject to the conditions of the exit, enforced through ordinary, periodic compliance inspections, as opposed to special site-specific oversight.

Today's HWIR-media proposal, unlike the HWIR-waste generic option, does not seek to identify constituent concentrations that would be safe regardless of the manner in which the media is managed. Rather, it tries to distinguish between (1) contaminated media that are eligible to exit because it is likely that they can be managed safely under cleanup authorities outside of Subtitle C, and (2) media that contain so much contamination that Subtitle C management is warranted. For exempted media EPA is proposing to require that a regulatory agency make any appropriate site-specific decisions about the management of remediation wastes, and impose those decisions in an enforceable document. EPA also expects that States will conduct significant oversight of these requirements during the course of their remediation activities. This scheme provides for more extensive oversight than most of the conditional exemption options in the HWIR-waste proposal. Consequently, the ''Bright Line'' concentrations in this proposal (that identify media that are eligible for exclusion from Subtitle C) are not as conservative as either the generic or the proposed conditional exemption option in the HWIR-waste proposal. EPA anticipates that larger quantities of contaminated media will be eligible for exemption under this proposal than under the HWIR-waste proposal. (For a further discussion of the technical methodologies used for developing the HWIR-waste exit levels and the HWIR-media Bright Line levels see section (V)(A)(4)(c) of today's preamble and the background documents for the two proposals in the docket.)

Finally, this proposal, unlike the HWIR-waste proposal, provides additional flexibility for materials that remain subject to Subtitle C jurisdiction. For example, EPA is proposing special

permitting and land disposal restriction standards for proposed Part 269. EPA believes this relief will increase environmental protection by reducing regulatory disincentives to cleanup.

V. Section-by-Section Analysis

A. General Provisions

1. General Scope of Today's Proposal—§ 269.1

Today's proposal would establish a new Part 269 of 40 CFR, which would prescribe special standards for State or EPA-overseen cleanups managing contaminated media.

In § 269.1, today's proposed rule articulates several important provisions that apply generally to the Part 269 regulations, which are intended to clarify what these rules are intended to do. The following is a discussion of each of those provisions.

The first provision (§ 269.1(a)) clarifies that the rules (except the provisions for RMPs, in Subpart D) would apply only to materials that would otherwise be subject to Subtitle C hazardous waste regulations. The rules would not expand the coverage of Subtitle C regulations, or otherwise cause wastes to be considered hazardous that have not been so regulated before. In other words, contaminated media would have to be hazardous by characteristic, or be contaminated with a listed hazardous waste to become subject to this rule's provisions. Other contaminated media—regardless of constituent levels—would not have to be managed as hazardous wastes, and therefore, would not fall under the scope of this rule.

In discussions with various stakeholders, EPA has become aware that the ''coverage'' issue has been the source of some confusion. The rule has been perceived by some as applying to all media that might be managed as part of cleanup activities, rather than just those media that are currently subject to regulation as hazardous wastes. This provision is intended to clarify this point.

The second provision (§ 269.1(b)) is intended to explain that today's proposal would only affect certain specific Subtitle C regulations as they apply to hazardous contaminated media (i.e., media that contain hazardous waste). The primary effect of Part 269 concerning these media would be to replace the current LDR regulations (specified in Part 268) with modified treatment requirements, and to significantly streamline permit requirements. Other regulations that apply to treatment, storage, and disposal of hazardous wastes would continue to apply to hazardous contaminated media.[3] For example, if hazardous contaminated media were generated from cleanup activities—and subsequently stored in tanks or containers for greater than 90 days—the tanks and containers would have to comply with the Subparts I or J requirements of Part 264 (or Part 265, if at an interim status facility). Other Part 264 and 265 requirements would continue to apply in similar fashion.

The third provision (§ 269.1(c)) addresses the interplay between these HWIR-media rules and other cleanup-related laws and regulations. Specifically, it clarifies that remedy selection standards, other ''how-clean-is-clean'' standards, and guidelines that are specified in cleanup statutes and/or regulations, would not be affected by these rules. EPA wishes to emphasize that the proposed HWIR-media rules would not affect which media or wastes at a site must be cleaned up, or how much contaminated media should be excavated. Such decisions are usually made according to Federal or State cleanup laws and regulations, most of which specify certain guidelines or criteria for determining how sites are to be cleaned up. Only after those decisions are made would these HWIR-media regulations come into play.

The fourth provision (§ 269.1(d)) is meant to emphasize a very important point regarding the Bright Line, which is that the Bright Line values identified in the proposal are not designed as cleanup levels. As stated elsewhere in this preamble (see (V)(A)(4)(c)), the Bright Line concept has very little to do with setting cleanup levels or making other ''how-clean-is-clean'' decisions. Cleanup levels usually take into account various site-specific and contaminant-specific factors, and are meant to ensure that risks from exposure to residual contamination are at acceptable levels. Bright Line concentrations would determine only whether the overseeing Agency has the discretion to conclude that media no longer contain hazardous waste, and therefore decide what management standards would apply to that media if generated during a cleanup. The use of Bright Line concentrations as cleanup levels would generally be inappropriate.

The fifth, and final provision, (§ 269.1(e)) specifies that these rules would not be self-implementing. As explained elsewhere in this preamble, and in the proposed rule language (§ 269.1(e)), the provisions of Part 269 can only be implemented with oversight by EPA or an authorized State, by an approved Remediation Management Plan (RMP) or analogous document.

2. Purpose/Applicability—§ 269.2

As described above, this rule would modify the existing Subtitle C requirements for the management of more highly contaminated media, and would, in effect, exempt lesser contaminated media (that are determined not to contain any hazardous waste, and are managed in accordance with an approved Remediation Management Plan (RMP)) from most RCRA Subtitle C requirements. For such less-contaminated media, EPA and the States would impose appropriate management requirements on a site- and waste-specific basis, pursuant to authorities not reliant on the presence of RCRA hazardous waste.

The Agency is proposing to promulgate these regulations in a new Part (Part 269) of Title 40 of the Code of Federal Regulations. Issuing the rules for contaminated media management in a readily identified, discrete part of the Subtitle C regulations should help to make them clearer and easier to understand for both regulators and the regulated community. Although an alternate approach was considered that would have promulgated the rules as a series of amendments and modifications to the existing Subtitle C regulations (Parts 260 to 271), EPA believes such an alternative would be more difficult to understand, and would add to the complexity of an already complex body of rules.

Section 269.2 of today's proposal is intended to establish the general scope and applicability of these rules. As such, this part of the proposal addresses a number of important issues that were the subject of considerable debate during the FACA Committee process. The following is an explanation of how this proposal addresses those specific issues.

Section 269.2 specifies that Part 269 (except Subpart D) would apply only to hazardous contaminated media, not to all cleanup wastes. Therefore, non-media remediation wastes (e.g., excavated drum waste) would be subject to the same regulatory requirements that apply to as-generated hazardous wastes (with the exception of the Subpart D provisions for Remediation Management Plans). Likewise, hazardous debris under today's proposal would be subject to the existing LDR treatment standards

[3] Note that this only applies to hazardous contaminated media; media exempt from Subtitle C because of contained-in decisions (see § 269.4) would not be subject to any Subtitle C regulations except perhaps LDRs. (See discussion of LDRs in section (V)(C) of this preamble).

for debris, as well as other Subtitle C requirements.

The question of which types of remediation wastes should be covered under the HWIR-media rule was one of the major issues left unresolved by the FACA Committee under the Harmonized Approach. Although all parties on the Committee agreed that hazardous contaminated media (as defined in § 269.3—see ensuing preamble discussion) should be subject to this modified regulatory system, some groups argued that other types of remediation wastes, such as sludges, and other remediation wastes should also be covered by the rule. Those groups argued that separating media from non-media in this context is an artificial distinction that is inconsistent with the realities of managing wastes during cleanup operations. They contended that the rationale for modifying requirements for contaminated media applies equally to these non-media wastes (e.g., the presence of an overseeing agency, and disincentives for cleanup created by Subtitle C requirements). They maintained that the coverage of the rule should reflect the differences between cleanup- and prevention-oriented waste management, rather than create new categories of remediation wastes.

Other parties involved in the FACA Committee argued strongly that the rule should be narrower in scope, and should include only the types of remediation wastes that are clearly different in nature from newly-generated wastes. They said that because non-media remediation wastes (e.g., drummed wastes and sludges), are physically and chemically similar to as-generated hazardous wastes they should be subject to the same treatment standards and other requirements that apply to as-generated wastes. The fact that such wastes are managed as a result of cleanup actions (those parties argued) does not mean that they should be subject to the more flexible rules for remediation waste proposed today.

EPA decided to limit the scope of today's proposal to contaminated media for several reasons. First, the contained-in concept used in this proposal for exempting materials from Subtitle C only applies to media (and, as discussed below, debris). Thus, a different legal concept would have to be used to exempt other types of remediation wastes from Subtitle C. Further discussion of this issue is presented in section (VI)(A) of this preamble.

Another reason for limiting the applicability of the rule to contaminated media is that the cost-benefit analysis prepared for this rule indicates that, on a national basis, contaminated media comprise approximately 80% of the total volume of material that is typically managed at Superfund (Federal and State) sites, RCRA corrective action sites, and voluntary cleanup sites. The rule would thus provide a considerable amount of regulatory relief, thereby removing the disincentive for cleanup this rule is designed to address. It can also be argued that the need for regulatory relief, particularly from LDR requirements, is more acute for contaminated media than other remediation wastes. This is because, as discussed in section (II)(A) of this preamble, they are often more complex to treat effectively, since there are often large, heterogeneous volumes of media, with numerous types of contaminants present, requiring multiple types of treatment technologies. In addition, this rule, if finalized, will constitute a major change in the way the covered materials are regulated under RCRA and will require a ''break-in'' period while regulators and the regulated community adjust to the new system. Therefore, it may be prudent to limit the rule to cover only contaminated media, at least until EPA and the States have established a track record in implementing this new regulatory system.

By limiting the applicability of this proposed rule to contaminated media, EPA is not discounting the arguments of those who believe that the rule should be more expansive in scope. It is acknowledged that the rule as drafted may create complexities for site managers and regulators in distinguishing and separating media from other remediation wastes at a site, and then applying two different regulatory regimes to their management. The Agency also recognizes that at many cleanup sites, the issue of whether to pick up and manage remediation wastes or to leave them in place, involves old wastes, not media. The Agency has also found in the Cost/Benefit assessment for today's proposed rule that an alternative which would include all remediation wastes in the scope of this rule would provide significantly more cost savings than the proposed option. As discussed in section (VI)(A) of this preamble, the Agency is seriously considering applying the rule to all remediation wastes and specifically requests comments and factual data concerning whether it is appropriate to do so. Specifically, the Agency seeks comment on the benefits of including all cleanup wastes, and what types of implementation difficulties, if any, would be created by regulating hazardous contaminated media and other hazardous remediation wastes separately and how easy those problems are to overcome.

Debris. A related issue concerning the scope of today's proposal is whether the substantive portions of the rule should cover hazardous debris.[4] Although the FACA Committee did not examine this question in detail, individual members of the committee, as well as several other stakeholders (including several States) have recently contended that the rule should include debris and should allow it to be addressed under the same modified regulatory scheme as for media. These parties argue that although under today's proposal, requirements for debris could be addressed in an RMP, separate management standards (particularly the LDR treatment standards) for debris can complicate cleanups by requiring physical separation of debris from non-debris remediation wastes, and requiring different treatment technologies, where debris and media often can be handled together without compromising environmental protection.

Because this issue arose late in the preparation of today's proposed rule, EPA has decided, with a few exceptions,[5] not to include hazardous debris in the scope of today's proposal. However, should the Agency receive persuasive comments, it will consider including hazardous debris in the final rule.

EPA requests comment on whether hazardous debris should be included in the final Part 269 rule and, if debris is included, the management standards or combinations of management standards (e.g., some combination of the existing Debris Rule standards and the standards for contaminated media proposed today)

[4] Debris is defined in 40 CFR 268.2(g) as ''solid material exceeding a 60 mm particle size that is intended for disposal and that is: a manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: any material for which a specific treatment standard is provided in Subpart D, Part 268, namely lead acid batteries, cadmium batteries, and radioactive lead solids; process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by § 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.'' Hazardous debris is defined in 40 CFR 268.2(h) as ''debris that contains a hazardous waste listed in Subpart D of Part 261 of this chapter, or that exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 of this chapter.''

[5] The exceptions are today's proposed regulations for remediation management plans and remediation piles, as discussed in the applicable sections of today's preamble.

that should be imposed. EPA requests that commenters address the distinctions, if any, which should be made between naturally occurring debris (e.g., gravel, tree roots) and man-made debris (e.g., crushed drums, sorbants). For example, should naturally occurring debris be included in the final Part 269 rule and subject to the same standards as contaminated media because it is often co-located with media? While these issues were specifically raised in the context of petroleum contaminated debris, EPA believes they are also applicable to debris more generally.

Details associated with the potential application of today's proposed requirements for contaminated media to hazardous debris are discussed later in sections (V)(A)(4)(b) and (V)(C)(10) of this preamble.

Oversight. Section 269.2(b) specifies that the regulations of Part 269 would apply only to cleanup activities that are overseen by EPA or an authorized State agency, in accordance with an approved plan (i.e., a RMP). This limitation is a key feature of the proposal.

As discussed earlier, remedial actions under RCRA, CERCLA, and other Federal and State cleanup programs are typically conducted with substantial government oversight. Often this occurs because the implementing agencies have decided to make many decisions relating to cleanup on a site-specific basis rather than promulgating generally applicable regulations. Agencies have preferred site-specific decision-making in the area of cleanup because remedial management decisions are extremely complex, and because site-specific factors play very important roles in the design and implementation of protective remedies. It is the Agency's belief that the government agency overseeing a particular remedial action is generally best suited to make decisions concerning the management of the contaminated media from that site, because they would be most familiar with the site-specific conditions that would affect how the media should be properly managed. Thus, for the majority of media (i.e., those with all constituent concentrations below the Bright Line), today's proposal would allow EPA or the State to impose site-specific standards in lieu of most of the current Subtitle C requirements.

In many States, several cleanup programs are operated by different programs or agencies of the State government. It is the intention of the Agency to authorize for this rule, State RCRA programs that have incorporated the rule and plan to rely on companion authorities that are not reliant on the presence of hazardous wastes for jurisdiction (e.g., State solid waste laws, or State Superfund laws, and RCRA corrective action authority at TSDFs), and that are capable of assuring sound media management decisions for media determined to no longer contain hazardous wastes. EPA would then allow those States to determine which companion authority(s) should be used to define media management requirements at any specific site. Likewise, management standards for media determined to no longer contain hazardous wastes may be imposed, as appropriate, under Federal cleanup programs, such as Superfund or RCRA corrective action.

Since these proposed Part 269 regulations and appropriate site-specific management standards for media determined to no longer contain hazardous wastes would be implemented and enforced on a site-by-site basis, some mechanism must be available for the overseeing Agency to document the site-specific requirements, and thus provide a means to enforce compliance with those requirements. The proposal specifies that these rules will only apply when EPA or an authorized State approves a remediation management plan for the site. The requirements that contained-in decisions and appropriate non-Subtitle C management standards must be included in RMPs would also serve the very important purpose of providing the information necessary for the Agency to monitor whether an authorized State is implementing the HWIR-media rule in a protective manner (e.g., whether the State is making protective contained-in determinations). As discussed more fully in section (V)(E) below, today's proposal would allow EPA to withdraw a State's HWIR-media authorization if the Agency determines that the State is not managing the contaminated media addressed by the rule in a protective manner.

An approved RMP may also constitute a RCRA permit in cases where such permits are required specifically for cleanup activities. Further discussion of RMPs is presented elsewhere in this preamble.

§ 269.2(c) is designed to make clear that this rule does not expand the applicability of Subtitle C requirements to any materials for which Subtitle C would otherwise not apply. Materials and activities that are not already subject to Subtitle C would not be required to begin complying with Subtitle C standards. For example, if a site owner managed hazardous contaminated media under the 90-day accumulation provision of 40 CFR 262.34, this rule would not require him to obtain a RCRA Part B permit or a RMP. Similarly, if a site owner treats hazardous contaminated media *in situ* (i.e., without triggering the RCRA Land Disposal Restrictions), this rule would not subject him to the proposed media-specific LDR standards in Part 269.

3. Definitions—§ 269.3

Section 269.3 defines several important new terms that are unique to Part 269[6]. These terms are defined here, rather than in § 260.10 (where most of RCRA's regulatory terminology is defined), for the sake of convenience, and to emphasize that these are terms that would be specific only to this portion of the hazardous waste regulations. Of course, the definitions in § 260.10 would apply to Part 269 as well. The following is a discussion of each new term.

Bright Line Constituent. Today's proposal specifies the following definition:

> Bright Line constituent means any constituent found in media that is listed in Appendix A of this Part, and which is: (1) The basis for listing of a hazardous waste (as specified in Appendix VII of 40 CFR Part 261) found in that media; or (2) a constituent which causes the media to exhibit a hazardous characteristic.

This definition would be used to establish which constituent concentrations in the media must be measured against Bright Line concentrations, which in turn would determine whether the Director has the discretion to decide that the media do not contain hazardous waste. The Agency considered several approaches for defining this term, including defining it to include any constituent that: (1) May be present in the media, (2) may be present in the media and originated from hazardous waste, or (3) may be present in the media, originated from hazardous waste, and was a constituent that either formed the basis for the waste's hazardous waste listing or caused the media to exhibit a hazardous characteristic.

The Agency rejected the first option because it could be over inclusive; i.e., there could be concentrations of constituents in the media that exceed Bright Line concentrations, but did not originate from hazardous waste (e.g.,

[6] The term ''Director'' as used in today's proposed rule means ''Director'' as defined currently in 40 CFR 270.2. The HWIR-waste proposal (60 FR 66344–469, Dec. 21, 1995) would move that definition to 260.10, in which case the 260.10 definition would be sufficient to define ''Director'' for purposes of today's proposal. For that reason, today's rule does not propose a definition for ''Director.''

naturally occurring constituents). Since under the contained-in principle, media are only regulated under Subtitle C because they contain hazardous waste, this approach could inappropriately extend the reach of the Subtitle C regulations.

EPA chose the third option over the second reasoning that the use of the same constituents that have caused the wastes in the media to be regulated as hazardous form a sound basis for deciding whether those same media should be eligible to be ''deregulated.'' The sole purpose of the Bright Line is to determine whether the media should be eligible for a contained-in determination; the conclusion that all Bright Line constituents are below the Bright Line does not necessarily determine that the media no longer contain waste. If the media contain other constituents of concern, the Director could, where appropriate, use the constituents as the basis for denying a request that the media be determined to no longer contain hazardous wastes.

At some point in the site-cleanup process it would be necessary to determine which constituents in the media are Bright Line constituents. For media that exhibit a hazardous characteristic, the Bright Line constituents should be readily identified (i.e., by chemical analysis). For media contaminated with listed hazardous wastes, Appendix VII to 40 CFR Part 261 lists the constituents that were the basis for listing the waste as hazardous.

The Agency recognizes that identifying the presence of listed wastes (and thus the Bright Line constituents) in media is not always simple. It has been the Agency's longstanding policy that in cases where the origin of the contaminants is unknown, the lead agency may assume that contaminants in media did not originate from listed hazardous wastes. (See e.g., 55 FR 8666, 8758, March 8, 1990, and 53 FR 51394, 51444, (December 21, 1988)). It is generally the responsibility of the owner/operator or responsible party to make a good faith effort to determine whether hazardous constituents in media have originated from listed hazardous wastes. If the origin of constituents in media cannot be determined, and the media do not exhibit a hazardous characteristic, then the media would not be subject to Subtitle C regulations in the first place.

Although Bright Line constituents may help to determine the regulatory status of media they would not necessarily be the only constituents subject to LDR treatment standards. A discussion of how LDR standards would be applied to hazardous waste constituents in hazardous contaminated media is presented in section (V)(C) of this preamble.

The tables in Appendix A specify concentrations for 100 constituents for which verified human health effects data were available to the Agency at the time of the proposal's publication. These constituents are also the ones most commonly found in contaminated media at Superfund sites. EPA expects that Bright Line concentrations for additional constituents will be available before publication of the final Part 269 rules. However, it is likely that for some time Appendix A will be an incomplete list. Comment is invited as to whether this list should be updated, as data become available, to include as many constituents as possible, or whether for purposes of this regulation it is acceptable to have a Bright Line list that does not specify levels for every constituent that might be found at a cleanup site.

In cases where constituents are present in media but are not among those listed with concentration values in Appendix A to Part 269—the Director would have the discretion (but not the obligation) to specify site-specific or State-wide Bright Line concentrations. The Director's discretion to decide whether media contained hazardous wastes is unconstrained with respect to these constituents.

For constituents that do not have established Bright Line concentration values, EPA believes it would generally be appropriate to use similar assumptions to those used to establish the current Bright Line concentrations. The technical background documents which describe the assumptions, equations, and models used to set the Bright Line numbers are in the docket for today's rule.

Additional discussion of the Bright Line concept is presented in section (V)(A)(4)(c) of this preamble, including information on the specific numbers in Appendix A and how they were calculated. The Agency requests comments on this definition of Bright Line constituents. In particular, the Agency seeks comments on the approach of defining Bright Line constituents as those constituents that caused the waste to be hazardous in the first place. For example, would it make more sense to define Bright Line constituents as any constituents for which LDR treatment would be required? (Constituents that would be required to be treated for LDR are discussed in section (V)(C)(3) below.) This approach may be appropriate, since the owner/operator would already be addressing these constituents for LDR purposes. The Agency requests comments on approaches for making contained-in decisions for constituents that do not have levels specified in Appendix A.

Hazardous contaminated media. Today's rule proposes the following definition of hazardous contaminated media:

> Hazardous contaminated media means media that contain hazardous wastes listed in Part 261 Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in Part 261, Subpart C of this chapter, except media which the Director has determined do not contain hazardous wastes pursuant to § 269.4 of this Part (non-hazardous contaminated media).

This definition would be used to identify media that remain subject to regulation as hazardous wastes under RCRA Subtitle C.

Media. Today's rule proposes the following definition of media:

> Media means materials found in the natural environment such as soil, ground water, surface water, and sediments; or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. This definition does not include debris (as defined in § 268.2).

This definition is intended to include a broad range of naturally occurring environmental media that may become contaminated with hazardous wastes. Debris has not been included in this definition, for reasons cited in the earlier discussion of debris, section (V)(A)(2), although, as discussed in that section, EPA solicits comments on whether it should be. However, hazardous debris or other remediation wastes may be managed in remediation piles (see discussion of proposed § 264.554), and could be addressed in a remediation management plan under today's proposal.

Media Remediation Site. Today's rule proposes the following definition of media remediation site:

> Media remediation site means an area contaminated with hazardous waste that is subject to cleanup under State or Federal authority, and areas that are in close proximity to the contaminated area at which remediation wastes are being managed or will be managed pursuant to State or Federal cleanup authorities (such as RCRA corrective action or CERCLA). A media remediation site is not a facility for the purpose of implementing corrective action under § 264.101, but may be subject to such corrective action requirements if the site is located within such a facility (as defined in § 260.10).

EPA also proposes to amend the definition of facility in § 260.10 to

exclude media remediation sites (except those located at a TSDF).

The concept of a media remediation site is new in the RCRA context, although it is similar to the ''on-site'' concept that is defined in the Superfund program. Traditionally, RCRA has focused on ''facilities'' for purposes of applying hazardous waste regulations. These are generally properties where industrial operations manage hazardous wastes that they have generated, or where commercial hazardous waste treatment, storage, and/or disposal operations are conducted. For purposes of implementing corrective actions under § 3004 (u) and (v) and 3008(h), a facility is defined (see § 260.10) as ''all contiguous property under the control of the owner or operator'' where hazardous wastes are managed.

Applying this concept of a facility to cleanup actions can be problematic in some cases, particularly where cleanup activities are being conducted on property that was never before regulated under RCRA (e.g., land that became contaminated before RCRA regulations were promulgated). Under the current regulations, if the cleanup activities at such a site require a RCRA permit, the site would become a ''facility'' for RCRA purposes, and corrective action requirements would apply to all contiguous property that is under the control of the owner or operator. This has created disincentives for cleanups at properties not heretofore regulated under RCRA. For example, obtaining a permit can be a time- and resource-intensive undertaking, and the facility-wide corrective action requirements that attach once the permit is issued can also deter cleanups. Since a media remediation site would not be considered a facility for RCRA purposes, a RMP issued for the cleanup activities at the site would not trigger any of the RCRA corrective action requirements mandated by RCRA § 3004 (u) and (v).

EPA believes that using the concept of a media remediation site in applying Part 269 regulations, instead of calling them RCRA facilities, is sensible and consistent with the RCRA statute. The HWIR FACA Committee also supported this approach. As originally conceived, RCRA facilities were generally properties whose owners and operators were engaged in ongoing hazardous waste management. Requiring corrective action for such facilities (both facility-wide and beyond the facility boundary) was seen as a quid pro quo; i.e., one of the costs of doing business for those engaged in—and in some way profiting from—the management of hazardous wastes. In a remedial context, however, there is no profit or advantage gained by owners and operators from managing hazardous wastes; it is simply incidental to performing an act that is environmentally beneficial (i.e., cleaning up a site). Viewing cleanup sites as traditional hazardous waste facilities (and thus imposing additional cleanup responsibilities) can have the effect of penalizing those who wish to clean up their properties.

EPA does not believe that Congress intended for RCRA to create obstacles like this one to cleaning up contaminated sites. Under § 3004(u) of RCRA, the corrective action requirement applies to ''a treatment, storage, or disposal facility seeking a permit.'' This clearly refers to facilities that need permits because they are in the business of hazardous waste management. In the Agency's opinion, sites that only conduct hazardous waste management incidental to cleanup activities are not the types of facilities to which Congress intended to apply the § 3004 (u) and (v) facility-wide (and beyond the facility boundary) corrective action requirements.

In some cases, a media remediation site could be part of an operating (or closing) RCRA hazardous waste management facility that is already subject the § 3004 (u) and (v) corrective action requirements; in those cases, identifying an area of the facility as a media remediation site would not have any effect on the corrective action requirements for that site or the rest of the facility. The only advantage to designating part of a RCRA-regulated facility as a media remediation site would be that more streamlined permit procedures (for RMPs—see § 269.43) could be used for that part of the facility.

Under the proposed definition, a media remediation site would be limited to the area that is contaminated and subject to cleanup, and adjacent areas that are used for managing remediation wastes as part of cleanup activities. Areas that are remote from the contaminated site would not be eligible to be media remediation sites. For example, if remediation wastes were generated from a site and subsequently transported off-site for treatment or disposal, the treatment/disposal sites could not be considered media remediation sites. These off-site units would be subject to regulation as RCRA facilities for permitting and corrective action purposes.

Of course, units used to manage non-hazardous remediation wastes (including non-hazardous contaminated media—e.g., media determined not to contain hazardous waste), would not need to comply with Subtitle C regulations, nor would such units need RCRA permits. In other words, if the Director determined that media did not contain hazardous waste, units used for subsequent management of the media (on or off site) would not be subject to permitting or other Subtitle C requirements.

EPA considered the option of allowing certain off-site areas to be considered media remediation sites, such as sites dedicated to managing only remediation wastes, and sites where only remediation wastes from a specific cleanup site were managed. These options could provide significant advantages. For example, excavating wastes from a site located in a floodplain, and staging those wastes in a more secure location away from the floodplain, prior to ultimate disposal could be a reasonable remedy. As proposed, the off-site staging area could not be considered a media remediation site—it would have to be permitted as a traditional hazardous waste storage facility. The Agency recognizes that allowing the use of RMPs at off-site staging facilities might be more streamlined than requiring RCRA permits. However, an option that would allow off-site areas to be considered media remediation sites (or to be permitted under RMPs) could be more complicated to administer. The Agency does not want to restrict off-site management of remediation wastes, but simply to ensure that these off-site locations are adequately overseen. The Agency requests comments on allowing off-site areas to be regulated as media remediation sites under Part 269, and any specific requirements or limitations that should be imposed on off-site media remediation sites.

Today's proposal would allow the Director to include areas in close proximity to contaminated land that is being cleaned up as part of a designated media remediation site. This would allow the site managers a limited amount of room for conducting cleanup operations outside the area that is actually contaminated. For example, cleaning up a lagoon full of sludges might involve constructing and operating a treatment unit at the site; in many cases, it might be impractical or impossible to locate the treatment unit within the lagoon. This provision would require some judgment on the part of regulators responsible for defining the boundaries of a media remediation site. EPA solicits comments on this provision, and on the more general question of how expansive the definition should be, and what types of operations or areas should be included or excluded.

Non-hazardous contaminated media. Today's rule proposes the following definition of non-hazardous contaminated media:

Non-hazardous contaminated media means media that are managed as part of cleanup activities and that the Director has determined do not contain hazardous wastes (according to § 269.4), but absent such a determination would have been hazardous contaminated media.

This definition is intended to encompass any media that would have been subject to RCRA Subtitle C management requirements but the Director determined that they do not contain waste that presents a hazard (i.e., hazardous waste) based on controls in a RMP. (See discussion in section (V)(A)(4)(a) of this proposal). This definition is intended to differentiate non-hazardous contaminated media from media which would never have been subject to Subtitle C in the first instance (e.g., soil that was never contaminated with hazardous waste.)

Under today's proposal, management of non-hazardous contaminated media would nevertheless be subject to control and oversight from EPA or an authorized State. As discussed in section (V)(A)(4)(a), in order for hazardous contaminated media to be designated non-hazardous contaminated media, the Director would need to specify any appropriate management controls in an approved RMP. Since the intent of this rule is not to expand the reach of RCRA Subtitle C requirements, ''never contaminated soil'' would not be subject to the requirements set forth in this part for non-hazardous contaminated media.

Inherent in this definition is the idea that, even though these media would not be regulated as hazardous wastes, they might nevertheless be ''contaminated'' enough to be of some concern to the overseeing agency's site cleanup decisions. In fact, most of the media that are generated and managed as part of cleanups would likely be eligible to be considered non-hazardous, according to the results of the Regulatory Impact Analysis prepared for this proposed rule.

Remediation Management Plan (RMP). Today's rule proposes the following definition for Remediation Management Plan:

Remediation Management Plan means the plan which describes specifically how hazardous and non-hazardous contaminated media will be managed in accordance with this Part. Such a plan may also include, as allowed under Subpart D of this Part, requirements for other remediation wastes and any other (non-Part 269) requirements applicable to hazardous contaminated media.

The requirements of today's proposal depend on a responsible overseeing agency (EPA or an authorized State) to approve and monitor compliance with many site-specific decisions regarding the management of hazardous contaminated media. The RMP would provide the documentation of the plan and relevant information to demonstrate compliance with applicable requirements. A unique aspect of the RMP is that there could be several different kinds of RMPs. Since hazardous and non-hazardous contaminated media would be managed under any number of Federal and State programs, the Agency believes that it would be unnecessarily burdensome to require a fixed form of documentation, as long as the required information is adequately included or described in the documents already being used by the programs that implement the remedial activities. In other words, this rule would allow any enforceable document containing the information required to be included in a RMP if it also goes through at least the minimum public participation requirements in proposed § 269.43.

Sediment. Today's proposal specifies the following definition for sediments:

Sediment is the mixture of assorted material that settles to the bottom of a water body. It includes the shells and coverings of mollusks and other animals, transported soil particles from surface erosion, organic matter from dead and rotting vegetation and animals, sewage, industrial wastes, other organic and inorganic materials, and chemicals.

This definition is from EPA's Office of Water's document from June 1993, entitled ''Selecting Cleanup Techniques for Contaminated Sediments,'' EPA 823–B93–001, p. xiv, which is available in the docket to today's proposal. For further discussion of how the proposal would affect management of contaminated sediments, see sections (V)(A)(4)(c) and (V)(H) of this preamble.

Soil. Today's proposal specifies the following definition of soil, for the purpose of implementing Part 269 regulations:

Soil means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes, and is made up primarily of soil.

This definition was originally proposed in the September 14, 1993 Phase II LDR proposal (58 FR 48092, 48123). It would allow regulators to distinguish between soils, debris, and other remediation wastes by judging the results of simple, in-situ mechanical removal processes to separate the materials. These processes would include pumping, dredging, or excavation by backhoe, or other devices.

This approach would eliminate requirements for chemical analysis of soil, to differentiate between waste, soil and debris (e.g., considering such things as soil particle size, elemental composition of the soil, or other properties that might distinguish soil from other remediation wastes). The Agency is not proposing that owner/operators or the Director distinguish more precisely than specified in today's proposal between waste, soil, or debris—through a chemical analysis or other tests—since these approaches would be difficult to develop, support, and administer. Specifically, a basis for chemical analysis or other tests has not been developed, and implementation of this approach would most likely not be beneficial. Instead it would simply delay the progress of remedial actions. The Agency specifically solicits comments on this proposed definition for soil, and this type of approach for classifying mixtures of soil and other materials.

4. Identification of Media Not Subject to Regulation as Hazardous Waste—§ 269.4

Section 269.4 specifies that, as long as media do not contain Bright Line Constituents that are at or above Bright Line concentrations, the Director may determine if those media contain hazardous wastes. If not, the Director may determine that the media would not be subject to most RCRA hazardous waste management requirements.[7] This does not mean, however, that management of those media would be unrestricted. Instead, the rule would require EPA or the State to impose appropriate management requirements in an approved RMP, using authorities that do not depend on the presence of hazardous wastes (i.e., general cleanup authorities as provided in Federal or State cleanup statutes).

The Agency is imposing this condition on decisions that media no longer contain hazardous wastes, because the proposed rule, as discussed below, would allow those decisions to be made where media may be more highly contaminated than media the Agency has traditionally deemed to no longer contain hazardous waste. If, for some reason, a RMP were terminated prior to completion of a remedy, those

[7] The exception is, in some cases, the requirement to comply with the land disposal treatment standards. (See discussion in (V)(C).)

media would again become subject to Subtitle C regulation. Understanding the role of the Bright Line and the contained-in principle is essential to understanding how today's proposal would work. Both the contained-in principle and the Bright Line are explained below.

a. The contained-in principle in today's proposed rule background. The contained-in principle is the basis for EPA's longstanding policy regarding the application of RCRA Subtitle C requirements to mixtures of environmental media (e.g., soils, ground water, sediments) and hazardous wastes. This concept has been discussed previously in several Agency directives and in several RCRA rulemakings. (See, e.g., 58 FR 48092, 48127 (September 14, 1993)). In today's proposed rule the Agency is expanding this concept as the basis for allowing EPA or an authorized State to exempt certain contaminated media from the stringent, prevention-oriented RCRA regulations for hazardous waste management that previously would have applied.

The contained-in concept was originally developed to define the regulatory status of environmental media that are contaminated with hazardous wastes. The mixture rule at 40 CFR 261.3(a)(2)(iv) states that ''a mixture of solid waste and one or more [listed] hazardous wastes'' constitutes a listed waste itself (emphasis added). Similarly, the derived-from rule at 40 CFR 261.3(c)(2)(i) provides that ''a solid waste generated from the treatment, storage, or disposal of a hazardous waste'' is a hazardous waste (emphasis added).

Since media are not solid wastes, these rules do not apply to mixtures of media and hazardous wastes. However, two other regulations subject contaminated media to Subtitle C requirements. Under 40 CFR 261.3(c)(1) a ''hazardous waste will remain a hazardous waste'' unless and until certain specified events occur. Under 40 CFR 261.3(d)(2) a ''waste which contains'' a listed waste remains a hazardous waste until it is delisted. Together these regulations provide for continued regulation of hazardous wastes even after they are released to the environment and mingled with media.

The U.S. Court of Appeals for the District of Columbia Circuit upheld this interpretation of §§ 261.3(c)(1) and (d)(2) in *Chemical Waste Management Inc.* v. *EPA*, 869 F.2d 1526, 1538–40 (D.C. Cir. 1989), and EPA has explained the policy and its regulatory basis in numerous preambles and letters. (See 53 FR 31138, 31142, 31148 (Aug. 17, 1988); 57 FR 21450, 21453 (May 20, 1992) (inadvertently citing 40 CFR 261(c)(2) in lieu of § 261.3(d)(2)); memorandum from Marcia E. Williams, Director, EPA Office of Solid Waste, to Patrick Tobin, EPA Region IV (Nov. 15, 1986); letter from Jonathan Z. Cannon, EPA Acting Assistant Administrator, Office of Solid Waste and Emergency Response, to Thomas Jorling, Commissioner, New York Department of Environmental Conservation (June 19, 1989); and letter from Sylvia K. Lowrance, Director, EPA Office of Solid Waste, to John Ely, Enforcement Director, Virginia Department of Waste Management (Mar. 26, 1991). Under the contained-in policy, media contaminated with listed hazardous wastes are not wastes themselves, but they contain hazardous wastes and must therefore be managed as hazardous wastes until they no longer contain the waste. This concept is based on the idea that at some point (e.g., at some concentration of hazardous constituents) the media would no longer contain the hazardous waste, or be subject to RCRA Subtitle C regulations.

Because the regulations that serve as the basis for the contained-in policy are part of the ''base'' RCRA program that was in effect prior to 1984, the Agency has taken the position that EPA or the State agency authorized to administer the ''base'' RCRA regulations may determine whether media contain listed wastes. Decisions that media no longer contain listed hazardous wastes (or ''contained-in'' decisions) have typically been made on a case-by-case basis, according to the risks posed by the contaminated media. The Agency has not issued any definitive guidance or regulations for determining appropriate contained-in levels; however, EPA Regions and States have been advised that conservative, health-based levels derived from direct exposure pathways would clearly be acceptable as ''contained-in'' levels. (See memorandum from Sylvia K. Lowrance to Jeff Zelikson, Region IX, (January 24, 1989)). It has been the common practice of EPA and many States to specify conservative, risk-based levels calculated with standard conservative exposure assumptions (usually based on unrestricted access), or site-specific risk assessments.

With regard to mixtures of media and characteristic wastes, EPA has often stated that media are regulated under RCRA Subtitle C if they exhibit a hazardous waste characteristic. (See 57 FR 21450, 21453, (May 20, 1992)). But, since media generally are not wastes, they become regulated when they have been contaminated with solid or hazardous wastes and the resultant mixture exhibits a characteristic. EPA has also taken the position that contaminated media cease to be regulated as hazardous waste when sufficient quantities of hazardous constituents are removed so that the mixture ceases to exhibit a characteristic[8] (57 FR 21450, 21453, May 20, 1992).

The contained-in concept in today's proposed rule. One of the primary objectives of today's proposal is to remove lower risk contaminated media from Subtitle C jurisdiction so that more appropriate, site-specific management requirements can be specified by the overseeing Agency. For the purpose of this rulemaking EPA has chosen to use the contained-in concept as the basis for allowing these materials to be exempted from Subtitle C requirements. In formulating the proposal, the Agency considered alternative concepts that might be provided under the RCRA statute that would produce the same or similar exemption. Those concepts are discussed in section (VI)(A)(2) of this preamble.

Today's proposal would allow two separate regulatory regimes to be applied to the management of contaminated media under EPA or State-approved cleanups. For media determined to contain hazardous wastes, modified LDR treatment standards would apply, as would other applicable Subtitle C requirements. For media determined not to contain hazardous wastes, Subtitle C requirements would generally not apply, and the State or EPA would have considerable discretion in applying appropriate management standards.

The proposed rule would limit an overseeing agency's discretion to make site-specific decisions that media no longer contain wastes by specifying ''Bright Line'' concentration levels. Media that are contaminated below Bright Line concentrations would be eligible for contained-in decisions by the overseeing Agency. However, Bright Line concentrations would not constitute an automatic exemption from Subtitle C; rather, they would represent the concentration below which the State or EPA might determine that media do not contain hazardous waste.

As described below, EPA believes it would generally be acceptable to make a decision that media do not contain hazardous waste at the Bright Line concentrations specified in today's proposal. However, the proposed rule is

[8] Recent developments under the RCRA land disposal restrictions (LDRs) may suggest a qualification to this latter point. (See discussion of LDRs in section (V)(C) of today's preamble.)

designed to provide for site-specific discretion in making such decisions. Thus, it is possible that some States might choose to specify—on a site-specific basis, more broadly as a matter of policy, or in regulations—contained-in levels that are lower (i.e., more stringent) than the Bright Line concentrations specified in today's proposal. Moreover, States can be more stringent than the Federal program, and adopt lower Bright Line concentrations.

In applying the contained-in concept, today's proposed rule does not distinguish between media that are contaminated with listed hazardous wastes, and media that exhibit a hazardous waste characteristic. In both cases, it is the concentration levels of the individual hazardous constituents in the media that determine how the media will be regulated under Part 269. The origin of the constituents (i.e., listed wastes or characteristic hazardous wastes) is irrelevant in comparing measured levels in the media with Bright Line concentrations and/or contained-in concentrations.

EPA sees no reason to apply the Bright Line concept differently to media contaminated with listed hazardous wastes and media that exhibit a hazardous characteristic. In either case the media could presumably be contaminated with the same types of hazardous constituents, at similar concentrations, that would present similar potential risks if mismanaged. Thus, applying these rules differently, depending on how the media came to be regulated as hazardous, would be unnecessary and artificial, and would further complicate how these rules would be implemented in the field.

EPA recognizes that today's rule could have the effect of excluding from Subtitle C regulation some media that until now have been considered hazardous—i.e., media that exhibit a hazardous waste characteristic, with constituent concentrations below the Bright Line and EPA or the State makes a determination that the media no longer contain hazardous waste (often based on protective management controls). However, EPA believes that there is no compelling environmental rationale for not including such media in Part 269 regulation. The risk presented even by characteristic wastes is dependent on site-specific circumstances. Therefore, because today's proposal would require the Director to impose any management controls on contaminated media that are necessary to protect human health and the environment, whether the media is contaminated with listed or characteristic waste is unimportant.

Under today's proposed rule, contained-in decisions would be documented in the site's approved Remediation Management Plan (RMP). If an approved RMP expires or is terminated, the provisions of today's proposal would no longer apply. Therefore, all contaminated media that are addressed in the RMP (i.e., media that are contaminated both above and below contained-in concentrations) would again prospectively be subject to the ''base'' Subtitle C regulations. For example, if a cleanup of contaminated soil was half completed when a RMP was terminated or expired, the half that was completed in compliance with the RMP while it was in effect, would continue to be considered to be in compliance. For example, if contaminated soil was determined not to contain hazardous waste, and was disposed of in a Subtitle D landfill according to the requirements of the RMP, that Subtitle D landfill would not be considered retroactively to have accepted hazardous wastes. The half of the cleanup that was not completed when the RMP was terminated or expired, however, would have to be completed prospectively in compliance with the non-Part 269 Subtitle C regulations.

Effect of contained-in decisions under today's rule. Once the overseeing Agency has made a decision that media with constituents at certain concentrations no longer contain hazardous wastes (i.e., ''a contained-in decision''), the media would no longer be regulated as hazardous wastes under Federal RCRA regulations (§ 261.4(g) and § 269.4(a)).[9] The Agency requests comments, however, on whether the Agency should exempt the media instead, only if it were managed in compliance with the provisions of the RMP. The Agency did not propose this approach primarily because it could be unduly harsh, since any violation, no matter how minor, would result in a reversion to Subtitle C. However, this approach could be incorporated into RMPs on a case-by-case basis, where the Director could specify in the RMP the provision(s) who's violation would result in a reversion to Subtitle C regulation. (See discussion below).

A contained-in decision for wastes at a cleanup site would not, however, eliminate the Administrator's authority to require the owner/operator (or other responsible parties at sites not regulated by RCRA) to conduct remedial actions for media that do not contain hazardous wastes. Specifically, Federal cleanup authorities under RCRA section 3004(u) at TSDFs, section 7003, and CERCLA authorities, authorize the Agency to require cleanup of a broad spectrum of hazardous constituents and/or hazardous substances, however, the presence of hazardous waste(s) in media is not a requirement for exercising those authorities. Many State cleanup authorities have similar provisions.

Decision factors for contained-in decisions. Because the Agency does not want to constrain site-specific decision-making, today's proposed rule would not mandate specific factors for making contained-in decisions, but would allow the Director to base these decisions on appropriate site-specific factors. However, EPA requests comments on whether decision factors should be codified for making contained-in decisions. EPA believes that the Bright Line concentrations will generally be acceptable for contained-in decisions; however, decision factors could help authorities determine, on a site-specific basis, what types of management controls (see discussion below), if any, would make the Bright Line concentrations appropriate concentrations at which to make contained-in decisions. Decision factors could also aid in determining other appropriate levels at which to make contained-in decisions.

Given the multiplicity of different types of sites, EPA requests comments on what decision factors, if the Agency decided to include them in the final rule, would ensure consistent decision-making, and yet keep the process efficient and flexible. Although EPA does not believe it would be appropriate to do a risk assessment at every site, particularly if the cleanup is of a relatively simple nature, the Agency does believe that the following factors (adapted from the LDR proposal for hazardous soils) contain the types of information that may be appropriate (depending on the specific circumstances at a given site) to consider in making contained-in decisions:

—Media properties;
—Waste constituent properties (including solubility, mobility, toxicity, and interactive effects of constituents present that may affect these properties);
—Exposure potential (including potential for direct human contact, and potential for exposure of sensitive environmental receptors, and the

[9] The Agency notes, however, that by explicitly providing in § 261.4 that decisions under Part 269 that media no longer contain hazardous waste are not subject to most Subtitle C regulations, EPA would not intend to affect in any way the authority of EPA and authorized States to make contained-in decisions outside of the HWIR-media context.

effect of any management controls which could lessen this potential);
—Surface and subsurface properties (including depth to groundwater, and properties of subsurface formations);
—Climatic conditions;
—Whether the media pose an unacceptable risk to human health and the environment; and
—Other site or waste-specific properties or conditions that may affect whether residual constituent concentrations will pose a threat to human health and the environment.

Most of these factors were proposed in the LDR proposal for hazardous soil (58 FR 48092, September 14, 1993) as decision factors that might be considered by the Director in making contained-in decisions. If the proposal for hazardous soil had been finalized, it would have codified the contained-in principle for hazardous soil. Today's suggested factors differ from those in the hazardous soil proposal in one significant respect. The Agency has determined that it may be appropriate, when assessing ''exposure potential,'' to consider site-specific management controls imposed by the Director that limit potential exposures of human or environmental receptors to media. The Agency made this change because EPA believes that States overseeing cleanups might determine that media that would have traditionally been considered to contain hazardous waste (e.g., media that contained listed wastes and posed an unacceptable risk under traditional exposure scenarios) no longer presented a hazard (and thus did not contain ''hazardous'' waste), based on site-specific management controls imposed by the Director.

This position is based upon EPA's understanding that RCRA provides EPA and the States the discretion to determine that a waste need not be defined as ''hazardous'' where restrictions are placed on management such that no improper management could occur that might threaten human health or the environment. (See definition of hazardous waste at RCRA section 1004(5)(B)). The HWIR-waste proposal included a full discussion of the legal basis for this position. For the sake of clarity, it is repeated below (60 FR 66344–469, Dec. 21, 1995).

EPA's original approach to determining whether a waste should be listed as hazardous focused on the inherent chemical composition of the waste, and assumed that mismanagement would occur, causing people or organisms to come into contact with the waste's constituents. (See 45 FR 33084, 33113, (May 19, 1980)). Based on more than a decade of experience with waste management, EPA believes that it is inappropriate to assume that worst-case mismanagement will occur. Moreover, EPA does not believe that worst-case assumptions are compelled by statute.

In recent hazardous waste listing decisions, EPA identified some likely ''mismanagement'' scenarios that are reasonable for almost all wastewaters or non-wastewaters, and looked hard at available data to determine if any of these are unlikely for the specific wastes being considered, or if other scenarios are likely, given available information about current waste management practices. (See the Carbamates Listing Determination (60 FR 7824, February 9, 1995) and the Dyes and Pigments Proposed Listing Determination (59 FR 66072, December 22, 1994)). Further extending this logic, EPA believes that when a mismanagement scenario is not likely, or has been adequately addressed by other programs, the Agency need not consider the risk from that scenario in deciding whether to classify the waste as hazardous.

EPA believes that the definition of ''hazardous waste'' in RCRA section 1004(5) permits this approach to hazardous waste classification. Section 1004(5)(B) defines as ''hazardous'' any waste that may present a substantial present or potential hazard to human health or the environment ''when improperly * * * managed.'' 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 gives it flexibility in order to consider the need to regulate as hazardous those wastes that are not managed in an unsafe manner (section 3001 requires that EPA decide, in determining whether to list or otherwise identify a waste as hazardous waste, whether a waste ''should'' be subject to the requirements of Subtitle C). EPA's existing regulatory standards for listing hazardous wastes reflect that flexibility by allowing specific 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, based on that mismanagement scenario.

Two decisions by the U.S. Court of Appeals for the District of Columbia Circuit provide potential support for the 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.)

The Agency believes, therefore, that EPA and the States may consider site-specific management controls when making contained-in decisions pursuant to proposed Part 269. EPA believes that this approach is especially appropriate in the Part 269 context, because of the significant level of oversight generally given to cleanup actions. Management controls that are tailored to site-specific

circumstances and imposed in enforceable documents, and State or EPA oversight of cleanup activities, would ensure that the site-specific management controls that the Director relied upon in making each contained-in decision would continue to be implemented. In addition (although EPA is not proposing to require it as a federal matter), States may want to consider making such contained-in decisions conditional; i.e., media would only be considered nonhazardous so long as they were managed in the manner considered by the Director in making the contained-in decision. Deviations (any, or specific ones) would result in a reversion to Subtitle C regulation.

EPA specifically requests comments on the following: (1) Should the Agency specify a list of criteria to consider; (2) should the Agency prepare decision factors as guidance; (3) should the Agency promulgate decision factors as part of the final rule; (4) are the above decision factors appropriate for making these decisions; (5) if so, should the criteria listed above be more or less specific regarding the conditions that would allow or preclude contained-in decisions; (6) are there other factors the Director should consider when making contained-in decisions, in addition to those listed above; and (7) should there be fewer factors to consider?

b. Issues associated with hazardous debris. When EPA promulgated land disposal treatment standards for hazardous debris, it also codified the contained-in principle for debris contaminated with listed hazardous waste. (See 57 FR 37194, 37221, (August 18, 1992)). At the time EPA codified the contained-in principle for hazardous debris, it was the Agency's practice to make contained-in decisions at ''health-based,''[10] levels, thus a decision that debris no longer contain hazardous waste would clearly also constitute a ''minimize threat'' determination for purposes of RCRA section 3004(m). Therefore, contained-in decisions under 40 CFR 260.3(f)(3) also eliminate the duty to comply with the land disposal restriction requirements of 40 CFR Part 268. EPA requests comments on whether the contained-in principle codified for hazardous debris is adequate or whether the contained-in policy should be applied to debris in the same way today's proposed rule applies it to hazardous contaminated media. For example, should contained-in decisions for debris incorporate the Bright Line concept? If a Bright Line is established for debris, should it be the same as the Bright Line in today's proposed rule for hazardous contaminated media or would some other Bright Line values or methodology be more appropriate for debris? Are there issues associated with requiring that debris be tested to determine if it has constituent concentrations greater than Bright Line concentrations? Is testing routinely too complicated for debris matrices? Should contained-in decisions for debris be based on determinations made for media co-located with the debris (i.e., if debris were located in the same area as media that was determined not to contain hazardous wastes, should the debris be presumed not to contain hazardous wastes)? Similarly, if debris is located in the same area as media that have constituent concentrations less than Bright Line concentrations, should the debris be presumed to also be below the Bright Line?

Alternatively, should the Director be able to make contained-in decisions, as they are described in today's proposed rule, without application of the Bright Line to debris (as we are proposing for sediment? (See preamble (V)(A)(4)(c)). If allowed, should these contained-in decisions replace the existing contained-in decisions available for debris or should the existing contained-in decisions be maintained with non-Bright Line contained-in decisions (as discussed in today's proposed rules addressing sediments—see preamble (V)(A)(4)(c)) available for debris managed under a RMP? Are other combinations of the existing debris contained-in decision provisions and the contained-in decision provision for media in today's proposed rule appropriate?

While today's proposed rule does not include changes to the existing contained-in principle as applied to debris contaminated with listed hazardous waste, EPA could include revisions to the standard in response to public comment. Issues associated with hazardous debris and the possibility of including debris in the final Part 269 rules are also discussed in sections (V)(C)(10) and (V)(A)(2) of today's preamble.

c. The Bright Line. One of the key features of the ''Harmonized Approach'' developed through the FACA process was the concept of a ''Bright Line.'' The Bright Line would divide contaminated media into two different categories, which would be subject to two different regulatory regimes. Although straightforward in concept, the Agency has found it challenging to establish a set of numbers to serve this purpose.

As conceived by the FACA Committee, and presented in Appendix A to today's proposal, the Bright Line is a set of constituent-specific, risk-based concentration levels. In agreeing on a Bright Line approach, the FACA Committee anticipated that a substantial proportion of contaminated media would fall below the Bright Line, and thus be eligible, at the Director's discretion, for flexible, site-specific requirements (non-Subtitle C) set by the overseeing Agency. At the same time, the FACA Committee agreed that the Bright Line should ensure that very highly contaminated media (traditionally considered ''hot spots'') be subject to uniform national protective standards (e.g., treatment). EPA believes that the Bright Line values presented in today's proposal are a reasonable attempt to balance both of these important objectives.

As originally conceived, the Bright Line was intended to represent in some manner the relative risk posed by contaminated media. Simply put, media contaminated above Bright Line concentrations should pose higher risks than media below the Bright Line under a given exposure scenario. Since the Bright Line is only an indicator of relative risk, the levels should not be interpreted as representing what is protective or ''clean.'' The actual risk of any particular contaminated medium depends on the circumstances by which human or environmental receptors may be exposed to the medium. EPA wishes to emphasize that Bright Line concentrations are not cleanup levels. The Bright Line simply is a means of identifying which regulatory regime may be appropriate for the contaminated media at a cleanup site.

The Agency believes that the management of contaminated media would be conducted in a protective manner under either of the regulatory schemes that would be established by the rule. The underlying assumption is that managing contaminated media under the HWIR-media rule would eliminate significant exposures to humans or ecological receptors. This is because the overseeing agency's presence ensures that media will be managed in a way that directly addresses the risk posed by site-specific circumstances. Thus, protection of human health and the environment can be ensured by applying either the national standards for media that contain hazardous waste, or the site-specific standards specified by the overseeing agency for media, which the overseeing agency has determined do not contain hazardous waste, based on the proposed management standards

[10] See memoranda discussed in section (V)(A)(4)(a) of today's preamble.

identified in the RMP. Thus, in establishing Bright Line concentrations, EPA finds it reasonable to consider the potential effect of different sets of Bright Line concentrations in terms of the proportional volumes of media that would fall above and below the Bright Line. EPA believes that unless a substantial amount of contaminated media are eligible for site-specific decision-making, the disincentives for clean-up will not be eliminated (therefore resulting in greater overall risk to human health and the environment).

Thus, EPA's goal was to develop Bright Line concentrations that would remove a significant amount of contaminated media from Subtitle C jurisdiction, while ensuring that ''hot spots'' would remain subject to mandatory national standards. In deciding how to determine such levels, the Agency considered several approaches that included selecting concentrations based solely on volume. This approach, however, was rejected because there was no way to account for the relative degree of risk posed by different constituents. In other words, because some constituents are more hazardous than others at the same concentration, a Bright Line based purely on volume would not account for this difference.

EPA, therefore, wanted to set Bright Line concentrations for different constituents at different levels in order to account for this variance in relative risk. In order to do this, EPA needed to consider a potential exposure scenario that would account for the difference in relative risk of these different constituents. Because risk occurs only when there is a chance of exposure, at least one set of exposure assumptions would be necessary to establish the Bright Line.

Since one of the goals of the Bright Line was to identify the most highly contaminated media, the FACA Committee recommended using 10^{-3} as a benchmark for setting the Bright Line. Therefore, the Bright Line values in Appendix A were based on a 10^{-3} risk level for carcinogenic constituents (using the assumptions described above), and a health index of 10 for non-carcinogens, (that is, $10 \times$ the concentration at which adverse health effects occur) according to certain exposure assumptions. This approach is consistent with the Superfund Principle Threats concept which uses 10^{-3} as a factor to identify the principle threats at Superfund sites.

Describing the Bright Line theory was relatively easy compared with determining Bright Line concentrations for all media which would be subject to today's Part 269 proposal. Today's rule proposes to define soil, ground water, surface water, and sediments as media. However, the potential exposure assumptions that could be used to determine Bright Line concentrations vary for different types of media. Therefore, EPA established two sets of Bright Line values, one for soils, and one for ground water and surface water.

Today's proposed rule does not include Bright Line numbers for contaminated sediments. The amount of sediment that is classified as RCRA hazardous is very low. Thus, EPA proposes that site-specific contained-in decisions be made for hazardous contaminated sediments. The Agency requests comments on whether to develop a Bright Line specifically for contaminated sediments. The Agency also requests comments on whether it would be appropriate to use the Bright Line for soil for sediments.

Bright Line concentrations for soils. In setting the Bright Line for soils, EPA chose to use exposure scenarios and assumptions that were developed for the Superfund Soil Screening Levels (SSLs), because that effort used standard risk scenarios that have been widely used and accepted by the Agency (and by many States). The SSLs were developed for a purpose different from the Bright Line;[11] however, the exposure scenarios used in that effort are good indicators of relative risk for developing Bright Line values.

The SSLs are based on three human exposure scenarios; direct contact ingestion, inhalation, and drinking contaminated ground water. Each scenario is based on a specific set of assumptions for such things as body weight, frequency of exposure, daily intake rates, and other factors. The inhalation pathway also uses certain models to calculate wind dispersion and the uptake of airborne contaminants by human receptors.

Today's proposed Bright Line numbers for soils are based on only two of those human exposure scenarios—direct contact ingestion and inhalation. The Bright Line value for each constituent is based on whichever pathway yields the more conservative (i.e., lower) concentration. EPA recognizes that protection of ground water is one of RCRA's major goals and that many of the Subtitle C design and operating standards were developed to protect ground water resources. Therefore, EPA considered the possibility of using the ground water exposure pathway in setting Bright Line concentrations for soils. However, the migration of contaminants from soils to ground water is fundamentally site-specific, and influenced by a number of site-specific factors such as depth to ground water; soil porosity; carbon content and other soil characteristics; amount of rainfall; solubility of the contaminants; and numerous other site- and constituent-specific conditions. The Agency has found less variability in fate and transport potential for inhalation and ingestion exposures in residential settings.

EPA is reluctant to use a greatly simplified ground water model that would not take any site-specific or constituent-specific factors into account. In order to address concerns posed to ground water on a more appropriate site-specific basis, EPA prefers to allow for consideration of ground water risks in making site-specific decisions regarding either the contained-in decision and/or the site-specific management requirements. Given the overseeing Agency's discretion to determine these standards on a site-specific basis, and given that EPA believes that site-specific decisions are most appropriate for ground water risk decisions, the Agency has proposed that the ground water exposure pathway should not be considered in setting the national Bright Line values for soils. Finally, EPA proposes two considerations to overlay the soil Bright Line numbers. EPA proposes to cap the Bright Line values at 10,000 ppm, equivalent to 1% of the volume of the contaminated media. EPA believes that it is reasonable to classify media as highly contaminated if 1% of the volume of media is contaminated with a particular constituent. Therefore capping the Bright Line at 10,000 ppm is consistent with the intention that the Bright Line distinguish between highly contaminated and less contaminated media. The second cap on the soil Bright Line values is the saturation limit (Csat). EPA believes it is sound science to compare the concentrations developed through the inhalation and ingestion risk scenarios to the actual concentration that could physically saturate the soil. If the Csat was lower than the concentrations from the inhalation or ingestion scenarios, EPA set the Bright Line concentration at the Csat. For further details on specific assumptions and methodologies used to

[11] Superfund Soil Screening Levels (SSLs) were developed as a screening tool to determine when further investigation is necessary at Superfund sites. Because the SSLs are intended to be conservative, and trigger investigation whenever prudent, they are set at a 10^{-6} level for carcinogens. For more information on SSLs, call David Cooper (703) 603–8763.

determine the Bright Line values for soils, see Appendix A–1.

The Agency also considered several alternatives for establishing exposure assumptions for soil Bright Line numbers. These alternatives are discussed below. Estimates of the impacts of each alternative (in terms of volumes of media exempted) are all based on a 10^{-3} risk for carcinogens, and a health index of 10 for non-carcinogens (that is 10× the concentration at which adverse health effects occur).

Alternative #1—Bright Line for soils based on inhalation, ingestion, and migration to ground water. In addition to inhalation and ingestion pathways, this alternative would use a generic model to derive soil levels that, given certain fate and transport assumptions, would result in transfer of contaminants in the soils to ground water at or below drinking water standards (i.e., maximum concentration levels, or MCL's). EPA did not choose this alternative primarily because of the site-specific variability of calculating ground water exposure scenarios (as discussed above). In addition, this approach would result in Bright Line numbers that were considerably lower than those in the proposed option. The Agency estimated that under this alternative, approximately 50 percent of contaminated media would fall below the Bright Line, compared to 70 to 75 percent under the proposed option.

Alternative #2—Bright Line for soils based on inhalation and ingestion pathways, with concentrations calculated on a site-specific basis for the soil-to-ground water pathway. This option would yield Bright Line numbers that would approximate more closely ground water risks for each site. However, it would have the disadvantage of requiring considerable data gathering and analysis simply to calculate Bright Line concentrations, and these concentrations would obviously differ from site to site. This contradicts the idea of the Bright Line as ''bright''—i.e., an easily referenced set of numbers that can be applied in a standard fashion. However, since Bright Line numbers would vary widely across the range of cleanup sites, volume estimates for this alternative are not possible to calculate.

Alternative #3—Bright Line numbers for soils based on a multipathway analysis. Under this alternative, numerous exposure pathways would be considered for each constituent, and Bright Line concentrations would be set for the most conservative pathway (i.e., the pathway that resulted in the lowest concentration level). In some respects this approach would be consistent with the multipathway approach being used in the HWIR proposed rule for as-generated wastes (60 FR 66344–469, Dec. 21, 1995). However, the Bright Line is intended for a very different purpose than the ''exit levels'' being developed for that proposed rule. For instance, the exit levels in the HWIR-Waste rule (discussed in section (II)(B) of this preamble) generally assume that exited wastes will not be subject to any management requirements, whereas this proposal assumes that these wastes will be managed protectively under State/EPA oversight. In addition, the resulting Bright Line values would be much lower than those proposed today, thus much less media would be regulated ''below the line.''

Bright Line concentrations for ground water and surface water. Today's proposed rule also establishes Bright Line values specifically for contaminated ground water. (See Appendix A–2 and discussion below). As with contaminated soils, highly-concentrated, contaminated ground water would be subject to specific national management standards, while less-contaminated ground water could be managed according to site-specific requirements imposed by the State or EPA.

To set Bright Line concentrations for ground water and surface water (Appendix A–2), EPA used standard exposure assumptions for human ingestion of contaminated water. EPA believes that it is appropriate to use the same Bright Line values for surface water and ground water. And for the same reasons discussed above for soils, the Agency believes a multi-pathway approach, or ''actual risk'' approach is not necessary for setting Bright Line concentrations for ground water and surface water.

EPA has used the same philosophical approach for the ground water/surface water Bright Line as it has used for soils, by analyzing relative risk and relying on the oversight of authorized States or EPA to ensure that hazards are addressed on a site-specific basis. In addition, EPA used a 10,000 ppm cap for the ground water/surface water Bright Line, just as for the soil Bright Line. This is explained in the soil Bright Line section of the preamble. Finally, if the concentrations from the ingestion of contaminated water were below the detection limits for that constituent in water (the EQC), EPA set the Bright Line at the EQC. More details on the specific assumptions and methodologies used to determine these concentrations are included in Appendix A–2.

Issues common to both sets of Bright Line numbers. In developing today's proposed Bright Line concentrations, some stakeholders said that EPA would need to calculate a number of additional direct and indirect pathways to evaluate the relative risks of contaminated media completely. The stakeholders also said that the Agency would need to predict risks to ecological receptors (i.e., plants and animals) as well as human health risks. EPA, however, does not believe that evaluation of additional pathways is necessary. The pathways selected already provide a sufficient basis for distinguishing relatively lower-risk contaminated media from relatively higher-risk media. The evaluation of other pathways and receptors would be important and, in some cases, necessary if the Bright Line represented ''safe'' levels of contamination. As explained above, however, the Bright Line serves no such purpose. It merely identifies which of two regulatory schemes would apply to certain contaminated media. If site-specific factors demonstrate that a decision that media no longer contain hazardous wastes, would be inappropriate, then the overseeing agency has the discretion not to make such a determination.

Some stakeholders have voiced concerns about the land use assumptions that were used to set the Bright Line. The SSLs used residential land use assumptions; therefore, residential land use assumptions form the basis for the proposed Bright Line for soils. EPA recognizes that the residential land use assumptions that underlie the ingestion and inhalation exposure pathways used for today's Bright Line values for soil may be inappropriate for managing risks at many sites that would be subject to these HWIR-media regulations. However, since the purpose of using risk assessment to develop the Bright Line is to differentiate between the relative risks of constituents, and not to establish the risks posed at specific sites, either residential or industrial assumptions would have been equally appropriate. Since the Agency's residential risk assessment methodology is more developed than the industrial methodology, the Agency chose to use residential assumptions for developing the Bright Line. The Bright Line for ground water and surface water does not include assumptions about land use. (See discussion above).

Request for comment. EPA solicits comments on the approaches used to develop today's proposed Bright Lines. The Agency also requests comment on the alternatives described above, as well

as any other possible approaches to developing the Bright Line.

In addition, EPA requests comments on whether it is necessary to have a Bright Line at all. If there were no Bright Line, all media would be eligible for contained-in decisions by the overseeing agency on a site-specific basis. Alternatively, the ''unitary approach,'' discussed in section VI of this preamble, would eliminate the Bright Line, and instead would exempt all cleanup wastes managed under a RMP from Subtitle C requirements.

Technical methodology. As discussed above, the technical methodologies used in calculating Bright Line concentrations for soil ingestion and inhalation are those that were used to develop ''soil screening levels'' for contaminated sites (59 FR 67706, December 30, 1994). In the proposed soil screening level guidance, values for the soil-to-ground water pathway would generally be calculated with data derived from site-specific factors and conditions, although generic values for this pathway would be presented in situations where site-specific data were unavailable. These technical methods and formulae are available for review in the docket for this rulemaking, and in the docket for the soil screening level proposal since they support both rules.

EPA requests comments on the methods, formulae, and technical underpinnings used for this rulemaking. Comments could include information on particular constituents that could change proposed Bright Line concentrations, information that may be used to determine Bright Line numbers for constituents that currently do not have Bright Line numbers. Commenters should keep in mind that the Agency's objective is to provide regulatory relief by encouraging contaminated media with a lower degree of risk to exit from Subtitle C regulation—provided that adequate safeguards exist to protect human health and the environment.

EPA has often found it necessary to propose sets of risk-based numbers to address contaminated media, for example; Subpart S action levels, (55 FR 30798, July 27, 1990), Superfund Soil Screening Levels (see below), and today's proposed rule. Since the Agency's understanding of risk assessment and the science surrounding risk based numbers is constantly developing, EPA has realized that almost as soon as risk-based numbers are published, they can become outdated. As a very current example, today EPA is proposing Bright Line concentrations based, in part, on the Superfund Soil Screening Levels (EPA/9355.4–14FS, EPA/540/R–94/101 PB95–963529 (December 1994)). After today's proposed Bright Line concentrations were calculated, but before this proposal was published, some of the technical inputs used to calculate the Superfund Soil Screening levels were adjusted in response to public comments (e.g., volatilization factors, cancer slope factors, etc.). EPA did not have time to recalculate the Bright Line concentration before publishing them.

In response to this problem, EPA requests comment on alternatives to keep the Bright Line concentrations up-to-date with the most current Agency risk information and policies (e.g., adjustments to the Soil Screening levels,[12] changes in reference doses or cancer slope factors in the IRIS or HEAST databases). For purposes of comment on this proposal, EPA will update the Bright Line calculations and place them in the docket for this rule.

EPA believes it might be appropriate, instead of promulgating actual Bright Line concentrations in the final rule, to promulgate the methodology that could be used to develop constituent-specific concentrations, in Appendix A to this rule, and to provide guidance on appropriate sources for needed underlying risk-based information. EPA believes it might then be appropriate for States to update their lists of Bright Line concentrations on a regular basis, such as every six months, to remain current with developments in risk information. As an alternative, EPA believes it may be appropriate for States and/or EPA to calculate new Bright Line concentrations for each new RMP at the time it is proposed for public comment. In any case, the Bright Line concentrations being used under a RMP must be stated in the RMP, and available during public comment on the RMP. The Agency requests comment on these alternatives, and any other suggestions for keeping Bright Line concentrations up-to-date.

The Agency also recognizes the problems of trying to comply with a ''moving target.'' A cleanup could be completed or underway using a certain set of Bright Line concentrations that could then change. EPA believes it might be appropriate to protect those past and on-going cleanup operations from the requirement to change course mid-way, or to revisit completed remediation waste management under a RMP which used outdated Bright Line concentrations. In the Superfund program, requirements that are revised or newly promulgated after the ROD is signed must be attained only when EPA determines that these requirements are ARARs and that they must be met to ensure that the remedy is protective (40 CFR 300.430(f)(1)(ii)(*1*)). Another alternative could be a shield such as is provided for RCRA permits in 40 CFR 270.4, which could specify that compliance with a RMP would equal compliance with RCRA. EPA requests comments on this protection issue, and how best to achieve it.

Relationship of the HWIR-media Bright Line to the HWIR-waste exit levels. As described earlier in this preamble (in section (IV)(C)) the objectives for the HWIR-waste exit levels and the HWIR-media Bright Line are different. The HWIR-waste exit levels are intended to identify levels of hazardous constituents that would pose no significant threat to human health or the environment regardless of how the waste was managed after it exited Subtitle C jurisdiction. The HWIR-media Bright Line levels are simply intended to distinguish between (1) contaminated media that are eligible to exit Subtitle C because it is likely that they can be managed safely under cleanup authorities outside of Subtitle C, and (2) media that contain so much contamination that Subtitle C management is warranted. Because of these different objectives, EPA developed the two proposals using different methodologies. For the soil Bright Line, HWIR-media used a calculation based on ingestion and inhalation of soil at 10^{-3} cancer risk, and a hazard index of 10 for non-carcinogens. For the non-wastewater HWIR-waste exit level (which is most readily comparable to the soil Bright Line), EPA used an analysis that evaluates exposures from multiple pathways to identify those pathways that may result in a 10^{-6} cancer risk and hazard index of 1 for non-carcinogens. EPA then selected the most limiting pathway, (most conservative), as the exit criteria. EPA believed that the HWIR-waste levels would be more conservative than the HWIR-media concentrations. However, upon a recent comparison of the two sets of numbers, some HWIR-waste exit levels are at higher concentrations (less conservative) than the HWIR-media Bright Line concentrations. In the comparison of those concentrations, EPA determined that for about 27% of the HWIR-media Bright Line concentrations of chemical constituents for soil, the HWIR-waste exit levels for non-wastewater were higher.

A similar result was found when EPA compared the HWIR-media

[12] The Soil Screening Guidance has addressed this problem by publishing the *methodology* as the guidance itself, and only providing the actual concentrations as examples in the appendix to the guidance.

groundwater/surface water Bright Line concentrations to the HWIR-waste wastewater exit levels. In that case, EPA used direct ingestion of groundwater resulting in a cancer risk of 10^{-3} and hazard index of 10 for non-carcinogens to calculate the HWIR-media Bright Line. For the HWIR-waste wastewater exit level, EPA again analyzed multiple pathways to identify those that would result in a cancer risk of 10^{-6} and a hazard index of 1 for non-carcinogens and then selected the most limiting pathway as the exit criteria. For approximately 20% of the HWIR-media Bright Line concentrations for groundwater/surface water the HWIR-waste concentrations for wastewater were higher.

One of the practical concerns that arises from this difference in concentrations is this: if contaminated media is below the HWIR-waste exit levels, then that media is eligible for exit under that rulemaking just like any other hazardous waste. Therefore, if the HWIR-media rule specified that media at concentrations below the HWIR-waste exit levels were still ''above the Bright Line'' and not eligible for a contained-in determination, the two rules would be inconsistent. EPA recognizes that this inconsistency must be addressed before promulgation of these two final rules, and requests comments on how to resolve this issue. A preliminary description of the primary differences in the methodologies follows.

One of the most significant differences between the HWIR-waste and the HWIR-media methodologies is that the HWIR-waste methodology was designed to calculate an acceptable concentration at which as-generated waste and treatment residuals could exit the Subtitle C system. A part of that methodology assumed that exited wastes might be managed in such a way as to contaminate soils and groundwater, and calculated the potential risk to receptors from the contaminated soil or groundwater. Therefore, the HWIR-waste analysis models fate and transport between the original waste and the contaminated media, assuming some loss of concentration due to many factors, such as: partitioning of constituents to air, soil, and water; losses of contaminant mass through biodegradation; bioaccumulation through the food chain; and volatilization, hydrolysis, and dispersion of contaminants during transport. The HWIR-media methodology begins at the point where soils and groundwater are already contaminated. Therefore, the HWIR-media Bright Line did not incorporate fate and transport considerations to calculate the Bright Line concentrations, but assumed the receptor was in direct contact with the contaminated media.

Specific comparison of soil Bright Line to non-wastewater exit levels. If contaminated soil were managed under the HWIR-waste proposal, the soil would be subject to the exit criteria for non-wastewaters. That is why EPA compared the soil Bright Line to the non-wastewaters exit level. For this analysis, the HWIR-media Bright Line for soil based on ingestion or inhalation was compared with the exit criterion for non-wastewater identified as the most limiting pathway (e.g., soil ingestion, fish ingestion) in the HWIR-waste proposal. Thus, the analysis was not necessarily a comparison of exit criteria and Bright Lines for similar exposure pathways.

The analysis indicated that for 27 of the HWIR-media Bright Line constituent concentrations for soil, the proposed Bright Line concentration was lower than the exit criterion for HWIR-wastes for non-wastewater. Of these constituents, six of the lower proposed Bright Line concentrations are lower because the HWIR-media number was intentionally ''capped'' at 10,000 parts per million. EPA decided to propose a 10,000 ppm cap, equivalent to 1% of the volume of the contaminated media, (as discussed above) because EPA believes that it is reasonable to classify media as highly contaminated if 1% of the volume of media is contaminated with a particular constituent. Therefore capping the Bright Line at 10,000 ppm is consistent with the intention that the Bright Line distinguish between highly contaminated and less contaminated media. The HWIR-waste proposal did not propose to cap the exit levels because it was not intended to differentiate wastes based on higher vs. lower concentration, but instead to differentiate based on risk factors.

For 12 of the 27 constituents, HWIR-media Bright Lines are established at soil saturation limits (Csat) that are less than the corresponding HWIR-waste exit level. EPA believes it is sound science for a rule establishing soil concentrations to compare the concentrations developed through the inhalation and ingestion risk scenarios to the actual concentration that could physically saturate the soil. If the Csat was lower than the concentrations from the inhalation or ingestion scenarios, EPA set the Bright Line concentration at the Csat. The HWIR-waste proposal (since it is proposed for as generated wastes, not soils) did not propose to cap the exit levels at the soil saturation limit.

For the other nine of the 27 constituents, differences in the results can be attributed to several factors related to the underlying assumptions of the methodologies used to calculate the criteria.[13] These include the fate and transport differences discussed above, and:

—Receptors. Although many of the exposure assumptions (e.g., exposure duration, exposure frequency, ingestion rate) are common to the analyses, there are still significant differences in the location of the receptors that will affect the exit criteria. The HWIR-media Bright Lines are based on an exposure scenario in which a resident lives directly on the contaminated media and ingests contaminated soil or inhales particulate and volatile emissions. The HWIR-waste exit levels consider several exposure scenarios; however, none are directly comparable to the HWIR-media exposure scenario. These exposure scenarios include an off-site resident, an adult off-site resident, a child off-site resident, an adult and child on-site 10 years after site closure, and an on-site worker.

—Sources. The HWIR-media Bright Lines for soil ingestion and inhalation exposure pathways are based solely on contaminated soils and assume that the soil is an infinite source. The HWIR-waste non-groundwater non-wastewater exposure pathways consider three sources: land application units, waste piles, and ash monofills. Waste piles and ash monofills are assumed to be infinite sources; however, the land application units are assumed to be finite sources. This assumption may result in higher (less conservative) exit criteria under HWIR-waste.

A comparison of the toxicity benchmarks indicates that the HWIR-media Bright Lines and the HWIR-waste exit levels generally start with the same toxicity benchmark (all but three chemicals for oral ingestion and all but four chemicals for inhalation use the same toxicity benchmarks). Thus, the apparent discrepancies in the criteria can be attributed to the significant differences in the fate and transport modeling of the chemicals in the HWIR-process waste analysis, the receptors evaluated, and assumptions related to the sources (as described above).

[13] If the HWIR-media proposed Bright Line concentrations were updated to reflect the updated Soil Screening levels, as discussed above, two of these nine remaining constituents would have higher HWIR-media Bright Line concentrations than HWIR-waste exit levels.

Specific comparison of Groundwater/Surface Water Bright Line to wastewater exit levels. If contaminated groundwater were managed under the HWIR-waste proposal, the groundwater would be subject to the exit criteria for wastewaters. That is why EPA compared the groundwater/surface water Bright Line to the wastewaters exit level. For this analysis, the HWIR-media Bright Line for groundwater/surface water based on ingestion of groundwater was compared with two options for the exit criterion for wastewater for the HWIR-waste proposal, one based on toxicity benchmarks and one based on toxicity benchmarks and MCLs.

The analysis indicated that 38 constituents had higher proposed HWIR-waste exit criteria than proposed HWIR-media Bright Line concentrations.[14] For one of these 38 constituent, only the MCL option for the HWIR-waste exit level was higher. For four of the 38 constituents, only the toxicity benchmark only option for the HWIR-waste exit level was higher. None of these 38 constituents were affected by the HWIR-media 10,000 ppm cap, and there is not a saturation limit cap on the HWIR-media groundwater/surface water Bright Line.

Similar to the comparison of the HWIR-media soil Bright Line to the HWIR-waste non-wastewater exit levels, the HWIR-media groundwater/surface water Bright Line and the HWIR-waste wastewater exit levels use different methodologies, and therefore produce different results. Again, a key difference between the two sets of concentrations is the use of fate and transport modeling. The HWIR-waste proposal assumes some loss through fate and transport, whereas the HWIR-media methodology assumes direct ingestion of the contaminated groundwater (more details on the two methodologies can be found in the dockets for the two proposed rules).

Request for comments. Because of the above comparisons, EPA has determined that for some constituents, because the HWIR-media methodology was *more* conservative than the HWIR-waste methodology, that conservatism outweighed the fact that the HWIR-media risk target (10^{-3} for limited pathways) was *less* conservative than the HWIR-waste risk target (10^{-6} for multiple pathways). Therefore some of the HWIR-waste exit levels, which were intended to be more conservative overall than the HWIR-media Bright Line, are set at higher concentrations. As described above, EPA recognizes that these discrepancies must be resolved before promulgation of the two proposed rules. For further detail on the methodologies used to develop the HWIR-media Bright Line, Soil Screening Levels and the HWIR-waste exit levels, see the docket for the two proposed HWIR rules. EPA requests comments on how to resolve these issues.

B. Other Requirements Applicable to Management of Hazardous Contaminated Media

1. Applicability of Other Requirements—§ 269.10

The purpose of today's proposed rule would be to modify the identification, permitting, management, treatment, and disposal requirements for contaminated media. It is not intended to replace the entire scope of Subtitle C requirements as they relate to media. For that reason, many existing Subtitle C requirements would continue to apply to remedial actions conducted in accordance with this Part. Specifically, 40 CFR Parts 262–267 and 270 would continue to apply when complying with this Part, except as specifically replaced by the provisions of this Part. In addition, when treating media subject to LDRs according to the treatment standards in § 269.30, the following provisions of Part 268 would continue to apply' §§ 268.2–268.7 (definitions, dilution prohibition, surface impoundment treatment variance, case-by-case extensions, no migration petitions, and waste analysis and recordkeeping), § 268.44 (treatment variances), and § 268.50 (prohibition on storage). Again, the Agency does not intend to recreate all of the Subtitle C requirements, but in this case only replace certain requirements themselves as they relate to hazardous contaminated media.

2. Intentional Contamination of Media Prohibited—§ 269.11

EPA recognizes that promulgation of standards for hazardous contaminated media that are less onerous than the requirements for hazardous waste may create incentives for mixing waste with soil or other media to render the waste subject to these provisions. The Agency expressly proposes to prohibit this behavior (§ 269.11).

EPA recognizes, however, that sometimes it is necessary to have some mixing of contaminated media for technical purposes to facilitate cleanup. That mixing is not the prohibited mixing referred to here. This prohibition specifically includes the intent to avoid regulation. If the intent of the mixing is to better comply with the regulations that would apply to the wastes prior to mixing, then it would not be prohibited under this clause. The Agency requests comments on whether further safeguards, in addition to this proposed provision and the civil and criminal enforcement authorities of RCRA, are needed to ensure that no attempts are made to mix wastes with media to take advantage of the reduced requirements of the proposed HWIR-media rule.

3. Interstate Movement of Contaminated Media—§ 269.12

EPA recognizes that media that would be exempted under today's rule, but that previously would have been managed as hazardous wastes, would be transported to and through States that were not the overseeing agency for the remedial action that generated those media. Therefore, the Agency designed the interstate movement requirements of proposed § 269.12 to ensure that receiving (consignment) States—or States through which media would travel—could approve the designation that the media is not hazardous before they accepted the media for transport or disposal.

The default in these requirements is that the media must be managed as Subtitle C waste in the receiving or transporting State if the receiving or transporting State has not been notified of the designation as non-hazardous, or if the receiving or transporting State does not agree with the determination. Receiving and transporting States would also have to be authorized for this Part in order to approve these decisions in their States. If a receiving or transporting State agrees to the redesignation, then the media may be managed as non-hazardous.

EPA requests comments on these interstate movement requirements, specifically on any implementation concerns with this approach, and any suggestions to ease implementation. Several people have expressed concern about notifying the States through which the media would be transported, but not ultimately disposed. The Agency believes that it may be appropriate to limit notification requirements to the States ultimately receiving the media. EPA also feels that it would be necessary to limit the designation of media as non-hazardous only to States that are authorized for this Part. The Agency believes that this would be necessary because the authority to make these contained-in decisions is an integral element for authorization for this Part. EPA believes

[14] If the HWIR-media proposed Bright Line concentrations were updated to reflect current updated risk information, as discussed above, two of these 38 constituents would have higher HWIR-media Bright Line concentrations than HWIR-waste exit levels.

that it may be appropriate to allow States not authorized for this Part to simply approve another authorized States' decision that the media are not hazardous. The Agency requests comments on these issues.

C. Treatment Requirements

1. Overview of the Land Disposal Restrictions

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit land disposal of hazardous wastes.[15] Once a hazardous waste is prohibited from land disposal, the statute provides only two options: comply with a specified treatment standard prior to land disposal, or dispose of the waste in a unit that has been found to satisfy the statutory no migration test (referred to as a ''no migration'' unit) (RCRA section 3004(m)). Storage of waste prohibited from land disposal is also prohibited, unless the storage is solely for the purpose of accumulating the quantities of hazardous waste that are necessary to facilitate proper recovery, treatment, or disposal (RCRA section 3004(j)). For purposes of the land disposal restrictions, land disposal includes any placement of hazardous waste into a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave (hereafter referred to as ''placement'') (RCRA section 3004(k)).

Not all management of hazardous waste constitutes placement for purposes of the LDRs. EPA has interpreted ''placement'' to include putting hazardous waste into a land-based, moving hazardous waste from one land-based unit to another, and removing hazardous waste from the land, managing it in a separate unit, and re-placing it in the same (or a different) land-based. Placement does not occur when waste is consolidated within a land-based unit, when it is treated *in situ,* or when it is left in place (e.g., capped). (See 55 FR 8666, 8758–8760, (March 8, 1990) and ''Determining When Land Disposal Restrictions (LDRs) Are Applicable to CERCLA Response Actions,'' EPA, OSWER Directive 9347.3–O5FS, (July 1989)).

Congress directed EPA to establish treatment standards for all hazardous wastes restricted from land disposal at the same time as the land disposal prohibitions take effect. According to the statute, treatment standards established by EPA must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short- and long-term threats to human health and the environment are minimized (RCRA section 3004(m)(1)). In *Hazardous Waste Treatment Council* v. *EPA,* 886 F.2d 355 (D.C. Dir. 1989), Cert. Denied 111 S.Ct 139 (1990), the court held that section 3004(m) allows both technology- and risk-based treatment standards, provided that technology-based standards are not established ''beyond the point at which there is not a 'threat' to human health or the environment.'' *id.* at 362 (i.e., beyond the point at which threats to human health and the environment are minimized) (59 FR 47980, 47986, September 19, 1994). Hazardous wastes that have been treated to meet the applicable treatment standard may be land disposed in land disposal facilities that meet the requirements of RCRA Subtitle C (RCRA section 3004(m)(2)).

Congress established a schedule for promulgation of land disposal restrictions and treatment standards for all hazardous wastes listed and identified as of November 8, 1984 (the effective date of the HSWA amendments) so that treatment standards would be in effect, and land disposal of all hazardous waste that did not comply with the standards would be prohibited, by May 8, 1990 (RCRA section 3004(g)). For some classes of hazardous wastes, Congress established separate schedules: for certain hazardous wastes identified by the State of California (''California List''), Congress directed EPA to establish treatment standards and prohibit land disposal by July 8, 1987; for hazardous wastes containing solvents and dioxins, Congress directed the Agency to establish treatment standards and prohibit land disposal by November 8, 1986. (RCRA sections 3004(d) and (e)). For wastes listed or identified as hazardous after the HSWA amendments (referred to as ''newly identified wastes''), EPA must establish treatment standards and land disposal prohibitions within six months of the effective date of the listing or identification (RCRA section 3004(g)(4)). Under current regulations, environmental media containing hazardous waste are prohibited from land disposal unless they are treated to meet the treatment standards promulgated for the original hazardous waste in question (i.e., the same treatment standard the contaminating hazardous waste would have to meet if it were newly generated). (See 58 FR 48092, 48123, (September 14, 1993)).

The land disposal restrictions generally attach to hazardous wastes, or environmental media containing hazardous wastes, when they are first generated. Once these restrictions attach, the standards promulgated pursuant to section 3004(m) must be met before the wastes (or environmental media containing the wastes) can be placed into any land disposal unit other than a no migration unit. In cases involving characteristic wastes, the D.C. Circuit held that even elimination of the property that caused EPA to identify wastes as hazardous in the first instance (e.g., treating characteristic wastes so they no longer exhibit a hazardous characteristic) does not automatically eliminate the duty to achieve compliance with the land disposal treatment standards. (*Chemical Waste Management* v. *U.S. EPA,* 976 F.2d 2,22 (D.C. Dir. 1992), *cert. denied,* 113 S.Ct 1961 (1993).) The Agency has examined the logic of the *Chemical Waste* decision and concluded that the same logic could arguably be applied in the remediation context; i.e., a determination that environmental media once subject to LDR standards no longer contain hazardous wastes may not automatically eliminate LDR requirements. While the *Chemical Waste* court did not specifically address the remediation context, the Agency believes it may be prudent to follow the logic the court applied to characteristic wastes, and has developed today's proposal accordingly.

It is important to note that the land disposal restrictions apply only to hazardous (or, in some cases, formerly hazardous) wastes and only to placement of hazardous wastes after the effective date of the applicable land disposal prohibition—generally May 8, 1990 for wastes listed or identified at the time of the 1984 amendments, or six months after the effective date of the listing or identification for newly identified wastes.[16] In other words, the duty to comply with LDRs has already attached to hazardous wastes land disposed (''placed'') after the applicable effective dates, but not to hazardous wastes disposed prior to the applicable effective dates. Accordingly, hazardous

[15] The LDR requirements are not cleanup requirements; LDR treatment standards do not trigger removal, exhumation, or other management of contaminated environmental media; however, other applicable requirements, such as State or Federal cleanup requirements, could trigger such actions which, in turn, could trigger LDR requirements.

[16] A detailed listing of when the land disposal prohibitions took effect for individual hazardous wastes can be found in 40 CFR Part 268, Appendix VII.

wastes disposed prior to the effective date of the applicable prohibition only become subject to the LDRs if they are removed from the land and placed into a land disposal unit after the effective date of the applicable prohibition. (See 53 FR 31138, 31148, (August 17, 1988) and *Chemical Waste Management* v. *US EPA*, 86 9 F.2d 1526, 1536 (D.C. Cir. 1989)), ''treatment or disposal of [hazardous waste] will be subject to the [LDR] regulation only if that treatment or disposal occurs after the promulgation of applicable treatment standards.'') Similarly, environmental media contaminated by hazardous wastes placed before the effective dates of the applicable land disposal restrictions does not become subject to the LDRs unless they are removed from the land and placed into a land disposal unit after the effective dates of the applicable restrictions.

The land disposal restrictions do not attach to environmental media contaminated by hazardous wastes when the wastes were placed before the effective dates of the applicable land disposal prohibitions. If these media are determined not to contain hazardous wastes before they are removed from the land, then they can be managed as non-hazardous contaminated media and they're not subject to land disposal restrictions. For example, soil contaminated by acetone land disposed (''placed'') in 1986 (prior to the effective date of the land disposal prohibition for acetone) and, while still in the land, determined not to contain hazardous waste, is not subject to the land disposal restrictions.[17] This is consistent with the Agency's approach in the HWIR-waste rule, where it indicates that LDRs do not attach to wastes that are not hazardous at the time they are first generated (60 FR 66344, December 21, 1995).

Since application of the land disposal restrictions is limited, in order to determine if a given environmental medium must comply with LDRs one must know the origin of the material contaminating the medium (i.e., hazardous waste or not hazardous waste), the date(s) the material was placed (i.e., before or after the effective date of the applicable land disposal prohibition), and whether or not the medium still contains hazardous waste (i.e., contained-in decision or not).

Facility owner/operators should make a good faith effort to determine whether media were contaminated by hazardous wastes and ascertain the dates of placement. The Agency believes that by using available site- and waste-specific information such as manifests, vouchers, bills of lading, sales and inventory records, storage records, sampling and analysis reports, accident reports, site investigation reports, spill reports, inspection reports and logs, and enforcement orders and permits, facility owner/operators would typically be able to make these determinations. However, as discussed earlier in the preamble of today's proposal, if information is not available or inconclusive, facility owner/operators may generally assume that the material contaminating the media were not hazardous wastes. Similarly, if environmental media were determined to be contaminated by hazardous waste, but if information on the dates of placement is unavailable or inconclusive, facility owner/operators may, in most cases assume the wastes were placed before the effective date.

The Agency believes that, in general, it is reasonable to assume that environmental media do not contain hazardous wastes placed after the effective dates of the applicable land disposal prohibitions when information on the dates of placement is unavailable or inconclusive, in part, because current regulations, in effect since the early 1980's, require generators of hazardous waste to keep detailed records of the amounts of hazardous waste they generate. These records document whether the waste meets land disposal treatment standards and list the dates and locations of the waste's ultimate disposition. With these records, the Agency should be able to determine if environmental media were contaminated by hazardous wastes and if they would be subject to the land disposal restrictions.

In addition, EPA believes that the majority of environmental media contaminated by hazardous wastes were contaminated prior to the effective dates of the applicable land disposal restrictions. Generally, the contamination of environmental media by hazardous waste after the effective date of the applicable land disposal restriction would involve a violation of the LDRs, subject to substantial fines and penalties, including criminal sanctions. The common exception would be one-time spills of hazardous waste or hazardous materials. In these cases, the Agency believes that, typically, independent reporting and record keeping requirements (e.g., CERCLA sections 102 and 103 reporting requirements or state spill reporting requirements) coupled with ordinary ''good housekeeping'' procedures, result in records that will allow the Agency to determine the nature of the spilled material, and the date (or a close approximation of the date) of the spill. The Agency requests comments on this approach and on any other assumptions, records, or standards of evaluation that would ensure that facility owner/operators would identify any contaminated media subject to land disposal restrictions properly and completely.

Information on contained-in decisions should be immediately available since, generally, these determinations are made by a regulatory agency on a site-specific basis and careful records are kept.

2. Treatment Requirements—§ 269.30

a. Approach to treatment requirements and recommendations of the FACA Committee. RCRA section 3004(m) requires that treatment standards for wastes restricted from land disposal, ''* * * specify those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' A recurring debate through EPA's development of the land disposal restriction program has been whether treatment standards should be technology-based (i.e., based on performance of a treatment technology) or risk-based (i.e., based on assessment of risks to human health and the environment that are posed by the wastes). The Agency believes that both approaches are allowed. It has long been recognized that Congress did not directly address the questions of how to set treatment standards in the language of section 3004(m).[18] In addition, Congress did not specifically address whether the LDR treatment standards for newly generated wastes and remediation wastes must be identical; the structure of RCRA's LDR provisions suggests that Congress believed that remediation waste may merit special consideration. (See, RCRA sections 3004(d)(3) and 3004(e)(3), which

[17] Similarly, soil contaminated by acetone placed in a solid waste management unit in 1986, but leaked into the soil at some point after 1986, is not subject to the land disposal restrictions provided that, while the soil is still in the land, the Director determines it does not contain hazardous wastes. LDRs would not attach because, in this case, it is the initial placement of hazardous waste that determines whether there is a duty to comply with LDRs.

[18] See, e.g., 51 FR 40572, 40578 (November 7, 1986); *Hazardous Waste Treatment Council v. US EPA*, 886 F.2d 355, 361–3 D.C. Cir. 1989); 55 FR 6640, 6641 (February 26, 1990). The legislative history of section 3004(m) is likewise inconclusive. See discussion of the legislative history at 55 FR 6640, 6641–6642 (February 26, 1990)''[a]t a minimum, the [legislative history shows] that Congress did not provide clear guidance on the meaning of 'minimize threats'.''

provided a separate schedule for establishing LDR prohibitions and treatment standards for most remediation wastes).

EPA's preference would be to establish generic nationwide risk-based treatment standards that represent minimized threats to human health and the environment in the short- and long-term. However, the difficulties involved in establishing risk-based standards for contaminated media on a generic nationwide basis are formidable [19], due, in large part, to the wide variety of site-specific physical and chemical compositions encountered during cleanups in the field. In the absence of the information necessary to develop generic, risk-based standards for contaminated media, the Agency is proposing generic standards using a technology-based approach and, for lower-risk media subject to the LDRs, provisions for site-specific, risk-based minimize threat determinations. (See discussion of Media Treatment Variances, below).

Technology-based standards achieve the objective of minimizing threats by eliminating as much of the uncertainty associated with disposal of hazardous waste as possible. For this reason, technology-based standards were upheld as legally permissible so long as they are not established ''beyond the point at which there is not a ''threat'' to human health or the environment.'' (See, *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 355, 361–64 (D.C. Cir. 1989),*cert. denied* 111 S.Ct. 139 (1990), page 362; see also (55 FR 6640, 6642, February 26, 1990)).

Today's proposed regulations would modify the land disposal restriction treatment standards for contaminated media so that they reflect appropriate treatment technologies and strategies for environmental media, and the site-specific nature of cleanup activities more accurately. When non-hazardous contaminated media is still subject to LDRs (e.g., because hazardous wastes contaminating the media were land disposed (''placed'') after the effective date of the applicable LDR prohibition, or because the media were determined to still contain hazardous wastes when removed from the land), today's proposal would establish, as a policy matter, a presumption for site-specific LDR treatment variances. This approach is consistent with the recommendations of the FACA Committee, which agreed that the land disposal treatment standards for ''as-generated'' wastes are not generally appropriate for contaminated environmental media, and that higher-risk media should be subject to generic national standards while requirements for lower-risk media should be determined on a site-specific basis in the context of agency-overseen cleanups.

b. Proposed treatment standards for contaminated media (1) Applicability. Hazardous contaminated media are environmental media that contain hazardous waste or that exhibit a hazardous characteristic and have not been determined, pursuant to § 269.4, to no longer contain hazardous wastes. Non-hazardous contaminated media are environmental media that have been determined, pursuant to § 269.4, not to contain hazardous wastes. Media contaminated by hazardous wastes placed after the effective date of the applicable land disposal prohibition must be treated to meet LDR treatment standards before it is placed into a land disposal unit. In this case, the land disposal restrictions attach because hazardous waste was originally land disposed—placed—after the effective date of the applicable land disposal prohibition and the standards of section 3004(m) were never met. Likewise, hazardous contaminated media removed from the land after the effective date of the applicable land disposal restriction and placed into a land disposal unit, must be treated to meet LDR treatment standards. The land disposal restrictions attach in this case because, although the hazardous waste was not restricted from land disposal when first disposed, it has subsequently been prohibited from land disposal and, therefore, if removed from the land after the effective date of the applicable prohibition, cannot be placed into a land disposal unit until it meets the standards of RCRA section 3004(m). As discussed earlier in today's preamble, once the land disposal restrictions attach, the standards of section 3004(m) must be met before the wastes (or environmental media) may be placed into any land disposal unit other than a no migration unit, elimination of the property that cause the waste to be hazardous (e.g., deciding, pursuant to § 269.4, that a given environmental medium no longer contains hazardous waste) does not automatically mean the wastes have complied with RCRA section 3004(m). [20]

(2) Today's proposal. In today's proposed rule, EPA would, (1) establish generic, technology-based treatment standards for higher-risk contaminated media subject to the LDRs (i.e., hazardous contaminated media) and, (2) for lower-risk contaminated media subject to the LDRs (i.e., non-hazardous contaminated media), establish, as a policy matter, a presumption for site-specific LDR treatment variances. The treatment standards proposed today would only apply when media subject to the LDRs are managed under a RMP. For hazardous contaminated media other than soils (e.g., groundwater and sediments), the proposed rule would require treatment to meet the LDR treatment standards applicable to the hazardous wastes contained in the media. (See § 269.30(f)). For example, ground water contaminated with a commercial chemical product such as acetone (hazardous waste number U002) would have to be treated to the standards specified in Part 268 for acetone.

For hazardous contaminated soils, the proposed rule would establish alternative soil-specific LDR standards. Proposed § 269.30(e) would require that, generally, soils be treated so that the concentrations of constituents subject to treatment are reduced by 90 percent with treatment capped at 10 times the Universal Treatment Standard. If treatment of a given constituent to meet the 90 percent reduction standard would result in reducing constituent concentrations to less than 10 times the UTS, treatment beyond 10 times the UTS would not be required. For non-metal contaminants, total concentrations of constituents subject to treatment would have to be reduced by at least 90 percent from their initial concentrations (or 10 times the Universal Treatment Standard, whichever is higher). For metal contaminants, the 90 percent standard would apply either to the total concentrations of metals (for treatment technologies that remove metal contaminants), or to the concentrations of the metals in leachate as measured using the TCLP (for solidification-type treatment technologies). In addition to

[19] The Agency has proposed a rule that would define hazardous constituent concentrations below which certain wastes will no longer be listed or identified as ''hazardous'' under RCRA Subtitle C. (60 FR 66344–469 (December 21, 1995)). In some instances, these concentrations may also serve as risk-based LDR treatment standards. The Agency can set risk-based LDR treatment standards for certain as-generated hazardous wastes (and not for hazardous contaminated environmental media) because the Agency has significantly more information on as-generated wastes streams and as-generated waste streams are typically more homogeneous that contaminated environmental media waste streams.

[20] Of course, if the environmental media is determined not to contain hazardous wastes before it is removed from the land, the land disposal restrictions and duty to comply with RCRA section 3004(m) do no attach, because no placement of hazardous waste will occur after the effective date of the applicable land disposal prohibition. In addition, if contaminated environmental media are determined not to contain solid or hazardous waste (i.e., it's just media) it would not be subject to any RCRA Subtitle C standard, including LDRs.

treating for constituents subject to treatment, for soil that is hazardous because it exhibits the characteristics of ignitability, corrosivity, or reactivity, the Agency proposes to require treatment until the soil no longer exhibits the characteristic.

(3) Justification for soil-specific LDRs. EPA believes that it is appropriate to set soil-specific LDR standards because the soil matrix often poses distinct treatment issues. Specifically, the Part 268 Universal Treatment Standards that would otherwise apply to soil subject to the LDRs are based, in large part, on incineration for organics and high temperature metal recovery (HTMR) for metals. Although incineration and HTMR are highly effective technologies, their selection was based on treatment of concentrated, as-generated hazardous wastes, and they are not generally appropriate for the large volumes of low and moderately contaminated soil typically encountered during site remediation. Thus, the Agency believes that technology-based standards for contaminated soil should not rely exclusively on incineration or HTMR and that, in many cases, innovative (i.e., non-combustion) technologies will be more appropriate (See 55 FR 8666, 8760–8761, (March 8, 1990) and 58 FR 48092, 48125, (September 14, 1993)). While the Agency believes that soil is, in most cases, most appropriately treated using non-combustion technologies, data gathered for the Phase II Soil proposal do not demonstrate conclusively that the Universal Treatment Standards can be met using technologies other than combustion; therefore, EPA is proposing the alternative soil treatment standards discussed today at levels somewhat above UTS levels.

(4) Application of soil-specific LDRs to other media. EPA considered applying the alternative 90% or 10 times the UTS treatment standard to hazardous contaminated media other than soils, but decided not to because there is little information available to the Agency to indicate that the LDR treatment standards that currently apply to these other media are inappropriate, or otherwise pose the same type of technical challenges as they do for soils. In individual cases where the existing UTS standards is inappropriate, the Director would be able to use the proposed Media Treatment Variance procedures outlined below to set alternative LDR treatment standards for these other media.

(5) Request for comments. EPA requests comments and data on the LDR treatment standards that would be established by today's proposed regulations. The Agency is especially interested in comments which document that the current LDR treatment standards are appropriate or inappropriate for hazardous contaminated media other than soils (e.g., groundwater, sediments), or are otherwise compatible or incompatible with the remediation context. The Agency is also interested in comments which document whether the proposed LDR treatment standards for contaminated soils are achievable using technologies appropriate at remediation sites.

c. Detailed analysis of proposed treatment standards for hazardous contaminated soils. EPA first proposed LDR treatment standards specific to hazardous contaminated soil in the LDR Phase II Rule (58 FR 48092, September 14, 1993). In the Phase II Rule, EPA requested comment on three options for soil treatment standards: Option 1 was 90% treatment provided treatment achieved concentrations at least equal to or less than one order of magnitude above the Universal Treatment Standard (90% and 10 times UTS); Option 2 was treatment to one order of magnitude above the Universal Treatment Standard (10 times UTS); and Option 3 was 90% treatment with no ceiling value (90%). Commenters on the Phase II proposal strongly supported the 10 times UTS treatment standard,[21] indicating that they thought it would be easy to implement, provide for appropriate levels of protection, and be achievable using a range of treatment technologies. Available data supports the achievability of the 10 times UTS standard, 91% of the data pairs in EPA's Soil Treatability Database were treated to 10 times UTS using non-combustion technologies such as biological treatment, thermal desorption, and dechlorination. Commenters also supported various combinations of the 90% reduction and 10 times UTS standards, including the 90% or 10 times UTS approach proposed today.

Ultimately, EPA has chosen to propose the approach it believes will provide the most flexibility to overseeing agencies and facility owner/operators. Providing for flexibility in the management requirements for contaminated media is one of EPA's goals for the HWIR-media rulemaking. While EPA agrees with some of the comments on the Phase II proposal and believes that many facility owner/operators will be able to achieve the 10 times UTS treatment standard using non-combustion soil treatment technologies, the Agency does not have information to show that 10 times UTS will be necessary to fulfill the requirements of RCRA section 3004(m) at all sites. In addition, the data pairs in EPA's Soil Treatment Database are primarily from bench and pilot schedule studies and may not reflect the ''potentially problematic soil matrices and varying contaminant levels'' likely to be encountered in the field (58 FR 48092, 48124, September 14, 1993). Finally, the FACA committee agreed on a 90% treatment standard for contaminated media with constituent concentrations above Bright Line concentrations. Therefore, the Agency believes it is appropriate to also allow for 90% reduction. As discussed below, the Agency believes compliance with either standard fulfills the requirements of RCRA section 3004(m). EPA intends to use the treatability data it receives pursuant to the requirements in proposed § 269.41(c)(9) and § 269.42(b) to fill in gaps in the data on which the proposed standards are based, and intends to amend the standards if appropriate.

EPA acknowledges that because the 90% reduction standard does not guarantee any particular final constituent concentrations, it may increase the chance, in individual cases, that soil treatment standards will not be appropriate to the site or might not meet the statutory standard. To address this concern, the Agency has built a ''safety net'' into the proposed soil treatment standards in today's regulations, by allowing the Director to specify more stringent soil treatment standards that are based on site-specific factors when he/she finds that the 90% or 10 times the UTS treatment standard does not ''minimize threats'' (e.g., where initial concentrations of hazardous constituents in the media are abnormally high). (See § 269.32.)

In developing the LDR treatment standards proposed today for hazardous contaminated soils and the standards discussed in the Phase II proposal, the Agency did not use its normal approach to setting technology-based LDR standards. In setting LDR treatment standards, the Agency generally examines available treatment data and sets a standard based on the ''best'' of the demonstrated available technologies (''BDAT''). The Agency typically finds a technology to be ''demonstrated'' when the data show that it can operate at the required levels, and ''available'' when, among other things, it is commercially available and provides ''substantial''

[21] Of the 34 comments received, 14 supported 10 times the UTS; 6 supported 90% and 10 times the UTS; 4 supported 90%; 6 supported other combinations of 90% and 10 times the UTS, including the combination proposed today; and 4 supported other options.

treatment. The Agency's selection of the ''best'' of these technologies is generally based on a statistical evaluation of the treatability data. (See 51 FR 40572, 40588–40593 (Nov. 7, 1986).) Instead of this standard approach, the Agency selected options that could be achieved by available technologies and that would result in the ''substantia[l]'' reductions mandated by RCRA section 3004(m) to develop the standards proposed today.

The Agency believes that RCRA allows this alternative approach to implementing section 3004(m). Specifically, RCRA § 3004(m) does not require the use of ''BDAT'' to implement a technology-based approach. In fact, as the D.C. Circuit has specifically recognized, section 3004(m) need not be read ''as mandating the use of the best demonstrated available technologies (BDAT) in all situations.'' *Chemical Waste Management, Inc.* v. *US EPA,* 976 F.2d 2, 15 (D.C. Cir. 1992). Instead, any substantial treatment method that ''minimizes'' threats according to the statutory objectives is permissible. Id.[22] In other instances the Agency chose a BDAT approach because it believed that applying BDAT standards best served the Congressional objectives when the LDR requirements for as-generated wastes were enacted (55 FR 6640–6643, February 26, 1990).

The policy considerations that argue for BDAT as the basis for technology-based standards for as-generated wastes do not, however, support a BDAT approach in the remediation context. EPA has long maintained that setting BDAT standards for newly generated wastes best fulfilled the Congressional goal of reducing the amount of wastes ultimately disposed on the land (55 FR 6640, 6642, February 26, 1990); RCRA section 1003(6). While this may be true for newly generated waste not yet disposed, such standards do not further this goal in the remediation context. As discussed in section (II)(A) of this preamble, current standards can create disincentives to excavation, and more protective management of wastes already disposed of on the land, because excavation of contaminated media for the purposes of treatment may trigger LDRs. Site decision makers are often faced with the choice of either capping or treating the wastes in place (to avoid LDRs), or excavating and triggering the costly BDAT treatment standards. This situation creates an incentive to leave wastes in place, a result obviously not contemplated by Congress in enacting LDRs. For a fuller discussion of this issue, see 54 FR 41566–41569, (Oct. 10, 1989). EPA has justified BDAT standards based in part on the fact that imposing them would create an incentive to generate less of the affected waste in the first instance. (See *Steel Manufacturers Association* v. *EPA,* 27 F.3d 642, 649 (D.C. Cir. 1994) (upholding the LDR standard, in part, because it minimized the amount of waste that would be generated)). In the remediation context the waste is already in existence, therefore, such ''waste minimization'' is not an issue. Typically, the threats to human health and the environment that the land disposal restrictions were intended to address are better controlled through excavation and management of remedial wastes and such action should therefore be encouraged, not discouraged.

Accordingly, EPA believes that it is appropriate to set LDR standards for soil subject to the LDRs based on something less than the ''best'' demonstrated available technologies, so long as those standards encourage the development of more permanent remedies and result in the ''substantia[l]'' reductions contemplated by section 3004(m). The Agency believes that the 90% or 10 times the UTS standard proposed today will, by providing flexibility to cleanup decision makers, encourage the development of more permanent remedies. The Agency also believes that the 90% or 10 times the UTS standard represents a level of treatment that will, in general, ''substantially'' diminish the toxicity of the wastes or substantially reduce the likelihood of migration of hazardous constituents from the wastes so that short- and long-term threats to human health and the environment are minimized. Among other things, the Agency looks to the percentage of constituents removed, destroyed, or immobilized when deciding whether treatment is ''substantial'' (51 FR 40572, 40589, November 7, 1986). On this basis, the Agency believes that the 90% component is clearly substantial. Since EPA has previously determined that the UTS standards result in ''substantial'' treatment, the Agency believes that a standard one order of magnitude higher should be considered substantial when addressing matrices that can be significantly more difficult to treat.

d. Application of proposed treatment standards to media which no longer contain hazardous waste. In some cases, contaminated media with constituent concentrations below the Bright Line will be determined to no longer contain hazardous waste, but may remain subject to the land disposal treatment requirements. As discussed earlier in today's preamble, EPA's analysis in this proposal is based on the logic that once the land disposal restrictions attach to hazardous wastes (or environmental media that contain hazardous wastes) the standards of section 3004(m) must be met before the wastes can be land disposed in any unit other than a no migration unit. Once attached, the obligation to meet land disposal restriction treatment standards continues even if a waste is no longer considered hazardous under RCRA Subtitle C (e.g., by eliminating a hazardous characteristic, or, in the case of an environmental medium, by making a contained-in decision[23]).

In these cases, EPA believes that it will generally be appropriate to use the additional opportunities for Media Treatment Variances proposed in § 269.31 to establish site-specific LDR treatment requirements based on risk. While the Agency is proposing generic technology-based treatment standards for higher-risk environmental media (i.e., hazardous contaminated media); EPA continues to believe that LDR treatment standards for lower-risk contaminated media (i.e., media determined not to contain hazardous wastes) are best addressed on a site-specific basis. This belief was supported by the FACA Committee, which said that lower-risk media should be exempt from the land disposal restrictions, and addressed on a site-specific basis in the context of agency-overseen cleanups.

Media Treatment Variances are discussed in more detail in section (V)(C)(7) of today's preamble. Most of these variances are also available for higher-risk media, the difference is a

[22] The legislative history of section 3004(m) supports the reading that the legislative preference expressed for ''BDAT'' could be achieved using something less than only the ''best'' technologies:

The requisite levels of [sic] methods of treatment established by the Agency should be the best that has [sic] been demonstrated to be achievable. This does not require a BAT-type process as under the Clean Air or Clean Water Acts which contemplates technology-forcing standards. *The intent here is to require utilization of available technology in lieu of continued land disposal without prior treatment. It is not intended that every waste receive repetitive or ultimate levels of [sic] methods of treatment* * * *

130 Cong. Rec. S. 9178 (daily ed. July 25, 1984) (statement of Sen. Chaffee) [emphasis added].

[23] Of course, as discussed earlier in today's preamble, if soils were contaminated by hazardous waste prior to the effective date of the applicable land disposal prohibition and a contained-in decision was made prior to removal of the contaminated material from the land, the land disposal restrictions and the duty to treat to LDR treatment standards would not attach in the first instance. Since the Agency believes most environmental media contaminated by hazardous waste were contaminated prior to the effective date of the applicable land disposal restrictions, the Agency believes instances where contaminated environmental media is determined to no longer contain hazardous waste but remains subject to the LDR requirements will be few.

matter of assumptions. The Agency believes that lower-risk media that remain subject to the LDRs (i.e., media determined to no longer contain hazardous waste) should be addressed on a site-specific basis in the context of an Agency overseen cleanup and, because they present less risk, should, as a policy matter, be afforded additional flexibility. Therefore, treatment variances are presumed to be appropriate and are encouraged for these media. It is presumed that hazardous contaminated media will be treated to meet generic, nationwide treatment standards, although a variance may be appropriate in individual circumstances based on site-specific conditions.

e. More stringent treatment standards—Proposed § 269.32. As discussed above, because of the great diversity among cleanup sites—in terms of the contaminated media's properties; the exposure potential; size; topography; climate, and many other factors—EPA believes that it is appropriate to provide for situations where meeting the proposed treatment standards for hazardous contaminated media may be insufficient to meet RCRA section 3004(m)'s requirements that ''* * * threats to human health and the environment are minimized.'' For example, a site might be located in a particularly sensitive environmental setting (e.g., over a shallow aquifer used for drinking water), where large volumes of contaminated soil containing high concentrations of highly-mobile, toxic constituents will be excavated, treated, and disposed on-site. In order to minimize the potential for releases from the on-site landfill over the long-term, it could be appropriate to require some type of treatment that is more stringent than the standards proposed in § 269.30. While EPA believes these situations would be rare, it is sensible to explicitly give overseeing Agencies the authority to impose more stringent LDR treatment requirements when they believe them necessary in order to meet the intent of RCRA section 3004(m). Because these decisions would be made on the record during the RMP approval process, they would be subject to notice and comment. Any final Agency decision to impose more stringent standards would be subject to challenge during the RMP review and approval process.

f. Cross-media transfer. Paragraph (h) of proposed § 269.30 specifies that the technologies employed in meeting any treatment standard for contaminated media must be designed and operated in a manner that would control the transfer of contaminants to other media. This general standard is intended to eliminate from consideration any technology, such as uncontrolled air stripping, that would remove contamination from one medium by simply contaminating another. For a discussion of the Agency's tentative position concerning at what point cross-media transfers of constituents from land-based units could result in an invalidation of that unit as a treatment unit, see 60 FR 43654, 43656, (August 22, 1995). In addition, in conjunction with this rulemaking effort, EPA is developing guidance on controlling cross-media transfer of contaminants for a wide range of soil treatment technologies. The Agency plans to issue this guidance prior to or in conjunction with the final HWIR-media rulemaking. Further information on this guidance may be obtained from Subijoy Dutta in the Office of Solid Waste at (703) 308–8608.

3. Constituents Subject to Treatment

EPA is proposing that hazardous contaminated media be treated for each UTS constituent that originated from the contaminating hazardous waste, and that is subject to the treatment standard for such hazardous waste as it was generated (hereafter ''constituents subject to treatment'') (§ 269.30(g)). For contaminated media other than soil (e.g., groundwater, sediments), treatment would be required for each constituent subject to treatment with concentrations above the UTS. For contaminated soil, treatment would be required for each constituent subject to treatment with concentrations greater than 10 times the UTS.

EPA believes it is appropriate to link LDR treatment requirements to the contaminating hazardous waste because, under the contained-in principle, environmental media only become subject to hazardous waste management requirements because they contain hazardous waste. The duty to treat, therefore, should only attach to those constituents for which treatment would have been required if the wastes were not contained in environmental media.

EPA is proposing to apply the definition of constituents subject to treatment to environmental media contaminated by both listed and characteristic wastes. Under the proposed rule, if environmental media were contaminated only by listed hazardous wastes (or mixtures of listed hazardous wastes and solid wastes) treatment would be required solely for Part 268 ''regulated hazardous constituents'' in these wastes (identified in the table entitled ''Treatment Standards for Hazardous Wastes'' at 40 CFR 268.40). If environmental media exhibit a characteristic, treatment would be required for the characteristic constituent (in the case of TC wastes) or the characteristic property (in the case of ignitable, reactive, or corrosive wastes), and for all constituents listed in § 268.48 ''Table UTS—Universal Treatment Standards'' present in the media. As stated above, this approach, in essence, incorporates the rule for characteristic wastes that requires treatment of all ''underlying hazardous constituents''; underlying hazardous constituents are those constituents for which the Agency has promulgated Universal Treatment Standards (except for zinc and vanadium) that can reasonably be expected to be present in the wastes, and that are present in concentrations exceeding the UTS levels (or, for contaminated soil, ten times the UTS level). (See 40 CFR 268.2(i); 40 CFR 268.40(e); 60 FR 11702, (March 2, 1995); and discussion of underlying hazardous constituents at (59 FR 47980, 48004, (September 19, 1994)).

The Agency requests comments on the scope of the constituents that would be subject to treatment under today's proposed approach. For example, should background concentrations of naturally occurring hazardous constituents be explicitly evaluated when identifying constituents that are subject to treatment? Would it be more appropriate, as was suggested in the Phase II proposal (58 FR 48092, 48124, September 14, 1993), for the Agency to make all constituents present (even in media containing listed wastes) above UTS levels (or for contaminated soil, 10 times UTS levels) subject to treatment? Are there other ways to address the scope of constituents subject to treatment?

The Agency notes that ''Bright Line constituents'' and ''constituents subject to treatment'' are two different sets of constituents. Under today's proposal, the Bright Line does not define the applicability of LDR treatment requirements or the constituents subject to treatment in media subject to the LDRs. Contaminated environmental media that contains one or more hazardous constituents at concentrations greater than Bright Line concentrations would be ineligible for a contained-in decision and would become subject to the requirements for hazardous contaminated media, including LDR treatment requirements. Once subject to LDR treatment requirements, contaminated media would have to be treated to the generic, technology-based treatment standards for all constituents subject to treatment, including those below the Bright Line.

EPA requests comments on this approach. For example, should EPA allow site-specific minimized threat Media Treatment Variances (discussed below) for constituents subject to treatment that have initial concentrations below Bright Line concentrations and require compliance with the generic treatment standards only for constituents subject to treatment that have initial concentrations above Bright Line concentrations? How would this affect overseeing agencies that choose to set contained-in levels at concentrations more stringent than the Bright Line?

4. Nonanalyzable Constituents

Some contaminated environmental media may contain constituents that do not have analytical methods. For media containing multiple organic constituents, some of which are analyzable and some of which are nonanalyzable, the Agency believes that treating the analyzable constituents to meet treatment standards should provide adequate treatment of any nonanalyzable constituents. As a general principle, the destruction of an analyzable organic surrogate constituent is an effective indicator for destruction of nonanalyzable organic constituents. The Agency is therefore not proposing treatment standards for nonanalyzable organic constituents found in hazardous contaminated media. The Agency requests comment on this approach as well as data on the degree to which non-analyzable organic constituents are treated when environmental media are treated for other organic contaminants. If, based on public comments, EPA should choose to regulate these constituents, the Agency could require treatment by specific technologies known to achieve adequate treatment of the constituent.

In cases where contaminated environmental media are contaminated solely with nonanalyzable constituents, (i.e, media contaminated only by nonanalyzable U or P wastes), EPA proposes requiring treatment by the methods specified in § 268.42 for those U or P wastes. For a list of U and P wastes, see 40 CFR 261.33. The Agency solicits comments on whether other technologies should be allowed for treatment of such media.

5. Review of Treatment Results—§ 269.33

Once treatment under an approved RMP has been completed, the proposal would require the overseeing agency to review the treatment results and determine whether the treatment standard was achieved. If the treatment standard were not achieved, EPA proposes that the facility owner/operator would be required to: submit a new RMP that includes plans and procedures designed to re-treat the material, or submit an application for a Media Treatment Variance (if a variance is appropriate). The Director, at his/her discretion, could require that the owner/operator continue to treat the materials until the treatment standard is met, or grant a Media Treatment Variance.

6. Management of Treatment Residuals—§ 269.34

Depending upon the type of treatment system used, residuals from the treatment of media under Part 269 could either be media (hazardous contaminated or otherwise) or wastes (hazardous or otherwise) that have been separated from the media being treated. Under the proposed rule, waste residuals would be managed according to applicable RCRA Subtitle C or Subtitle D requirements. Media residuals would remain subject to Part 269. This is consistent with the Agency's approach to residuals from treating hazardous debris. (See 57 FR 37194, 37240, (August 18, 1992)). If media residuals from treatment of contaminated media meet the treatment standards, they can be disposed of in a Subtitle C land disposal facility. If those media have met their treatment standards and also no longer contain hazardous wastes, they are no longer subject to Subtitle C requirements and can be used, re-used, or returned to the land absent additional Subtitle C control. Under proposed § 269.33, media residuals that do not meet the treatment standards would be re-treated or, if appropriate, granted a Media Treatment Variance.

The Agency requests comments on this approach and on whether regulatory standards for management of non-media treatment residuals are necessary under this Part. For example, should residuals from treating media using stabilization technologies (i.e., stabilized media) be considered waste residuals and subject to the applicable subtitle C or D standard? Should the Agency address, through regulations or guidance, the methods used to determine whether treatment residuals are media or non-media? For example, should the Agency use the approach it promulgated for treatment residuals from treatment of hazardous debris and require that media and non-media treatment residuals be separated using simple physical or mechanical means?

Some treatment methods may distinctly separate hazardous wastes from contaminated media (e.g., carbon adsorption for groundwater). In these cases, each residual can be measured to certify compliance with the applicable land disposal restriction treatment standards. For other treatment technologies that may not as distinctly separate media from non-media residuals, it may be more difficult to determine which LDR treatment standards should be applied. For example, some treatment methods (e.g., combustion technologies) may result in destruction of the media treated, leaving only non-media residuals. In these cases, should the residuals be subject to the treatment standards for contaminating hazardous wastes (e.g., the Universal Treatment Standard) or the treatment standards for media (e.g., the 90% or 10 times the UTS alternative soil treatment standard proposed today).

7. Media Treatment Variances—§ 269.31

This section provides a mechanism which the Director can use to establish alternative treatment standards for contaminated media subject to the land disposal restrictions. The Agency is proposing to allow variances from generic treatment standards in three situations: when the generic standard is technically impracticable, when the generic standard is inappropriate, or when the Director can demonstrate, based on site-specific circumstances, that lower levels of treatment ''minimize threats'' in accordance with the standard of RCRA section 3004(m). Each situation is discussed in more detail below.

EPA encourages use of these procedures to establish site-specific LDR treatment standards for media that have been determined to no longer contain hazardous wastes but remain subject to LDRs. In addition, although EPA believes the generic, nationwide technology-based treatment standards for hazardous contaminated media should be appropriate and achievable for the majority of media managed at cleanup sites, the Agency acknowledges that because of the wide range of soils and contaminants that may be encountered in the field, there may be situations where such standards would be inappropriate.

Paragraphs (a) and (b) of § 269.31 would list the situations under which the Agency believes a Media Treatment Variance would be appropriate. Paragraph (c) of § 269.31 would provide the overseeing agency with the authority to request any information from the owner/operator that may be necessary to determine whether a treatment variance should be approved, and paragraph (d) provides that an alternative treatment standard approved according to this

section may be expressed numerically, or as a specified technology.

In order to ensure that the Media Treatment Variance provisions are not used simply to seek approval of an inferior technology or a poorly operated treatment system, § 269.31(e) would specify that any technology used to meet an alternative standard would have to be operated in a manner that optimizes efficiency, and result in substantial reductions in the toxicity or mobility of the media's contaminants. For the reasons discussed above, any such technology would be required to control the cross-media transfer of constituents.

The Media Treatment Variances in today's proposed rule are analogous to the existing site-specific treatment variances in Part 268. (See § 268.44(h)). EPA considered using § 268.44(h) for contaminated media, but decided to propose media-specific variance provisions for three reasons. First, for clarity, EPA has made a conscious effort to develop the HWIR-media rules to operate as a complete system and minimize cross-references to other portions of the regulations. Second, EPA believes that including Media Treatment Variances will make it easier and less disruptive for states to adopt and implement the final HWIR-media rules. Third, EPA believes that it is valuable to propose regulations clarifying the circumstances under which media treatment variances are appropriate, especially in the case of the variance for a site-specific minimize threat determination. The Agency requests comments on the need for the specific Media Treatment Variances proposed today and the relationship of the proposed Media Treatment Variances to the existing site-specific variance procedures in § 268.44(h).

a. The generic technology-based treatment standard is technically impractical (§ 269.31(a)(1)). In some cases, an owner/operator may be able to demonstrate to the overseeing agency that achieving the generic LDR standard is technically impracticable. While EPA believes it will typically be possible to achieve the general standards using common remedial technologies (e.g., biological treatment, soil washing, chemical oxidation/precipitation, activated carbon, air stripping), the Agency recognizes that, in some cases, these technologies may not be able to meet the 90% or 10 times the UTS standard. For example, comparison of leachate concentrations from some metal-bearing wastes before and after stabilization or solidification may not indicate a 90% reduction (and may not be at concentrations below 10 times the UTS).

b. The generic technology-based treatment standard is inappropriate (§ 269.31(a)(2)). Many site-specific circumstances could cause the generic treatment standard to be inappropriate. In some cases, the media to be treated may differ significantly from the material upon which the generic treatment standard was based. For example, the Universal Treatment Standards for water were based on treatment of industrial wastewater. In some situations facility owner/operators could be treating groundwater that poses unique treatability issues, and may merit an alternative treatment standard (e.g., groundwater that is highly saline or has high concentrations of other naturally occurring contaminants such as iron). In another example, treatment of soils contaminated by heavy chain polynuclear aromatics (PNAs) with non-combustion strategies may not be sufficient to meet the 10 times the UTS standard.

In other cases, the generic treatment standard will be inappropriate because use of an alternative treatment standard would result in a net environmental benefit. For example, use of innovative treatment technology might result in substantial reductions in constituent concentrations in the near-term, while use of a more traditional treatment technology might eventually achieve the generic treatment standard but take twice as much time. For a discussion of EPA's position that a treatment standard may be deemed inappropriate when imposing it ''could result in a net environmental detriment.'' (See 59 FR 44684, 44687, (August 30, 1994)).

c. Threats can be minimized with less treatment than the generic technology-based standard would require (§ 269.31(b)). As discussed earlier, EPA prefers to base land disposal restriction treatment requirements on risk. While information is not available to establish generic risk-based treatment standards for contaminated environmental media, EPA believes that adequate information may be available to establish site-specific, risk-based treatment standards. Using this variance, the Director would be able to make a site-specific, risk-based determination of § 3004(m) treatment requirements. In other words, the regulations would allow the Director to determine on a site-specific basis, ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized'' (RCRA section 3004(m)).

EPA is proposing this site-specific approach to ensure appropriate levels of treatment, and to provide some relief from the generic LDR treatment standards where an examination of actual site circumstances demonstrates that the requirements of section 3004(m) may be met with lesser treatment than that required by the generic, technology-based standards proposed today. The Agency has long recognized that section 3004(m) could be implemented on a risk basis, and that the risk approach often would require less treatment than the BDAT approach (51 FR 1602, 1611, (January 14, 1986); 55 FR 6640, 6642, (February 26, 1990); and *Hazardous Waste Treatment Council* v. *US EPA*, 886 F.2d 355, 361 (D.C. Cir. 1989) (upholding the Agency's view that although permissible, risk-based treatment standards are not compelled by section 3004(m)).

The Agency believes that a great number and variety of site-specific factors would influence minimize threat determinations; therefore, it is not proposing generic decision criteria. In general, however, EPA believes that the decision factors for contained-in decisions discussed earlier would be appropriate. This is similar to the approach in the LDR Phase II proposal, in which the Agency expressed the view that when a regulatory authority determined that media no longer contain hazardous waste, the regulatory authority could also make a site-specific determination that threats had been ''minimized'' (58 FR 48092, 48128, September 14, 1993).

The Agency further believes the site-specific minimize threat variance would be particularly appropriate in situations when the Director would be able to determine that constituent concentrations greater than the proposed soil treatment standards minimize threats at a site because not providing such relief would result in a less protective remedy. Often, when excavation of environmental media would trigger the duty to comply with LDRs, the LDR treatment standards serve as a disincentive to excavation and treatment in the remediation context. In proposing the NCP, EPA discussed the effect that LDRs can have on CERCLA decision making:

> For wastes potentially subject to the LDRs, essentially only two options will generally be available—treatment to BDAT standards, or containment (including containment of wastes treated *in situ*). The range of treatment technologies between these two extremes that may be practical and cost-effective, and yield

highly protective environmental results, would not be available to decision makers. In some cases, given only these two remedial choices, decision makers may be pressured to select containment remedies that offer less permanence than treatment options that might otherwise be selected if the LDRs were not applicable (54 FR 41566, 41568, (October 10, 1989)).

EPA has experienced the same effect in the RCRA closure program. (See 54 FR 41566, 41568, (October 10, 1989)). ''EPA's experience with the RCRA closure program has shown that owner/operators, faced with the choice of using BDAT treatment, or no treatment or *in situ* treatment, have a strong incentive to choose the less costly option * * *, which may actually result in less effective long-term performance for many closed units'').

While Congress did not address how to determine when threats are minimized in the remediation context, it obviously did not intend LDRs to act as a barrier to aggressive cleanup when enacting RCRA section 3004(m). Therefore, the Agency believes that in cases presenting the dilemma outlined above, and where imposing a lesser standard would encourage more protective management of the media, it would be reasonable for the Director to decide that, because overall risks at the site would be significantly reduced, imposition of lesser LDR treatment requirements would minimize threats at that site; therefore, as a general rule, cleanup to health-based standards through implementation of an approved remedy in the context of an agency-overseen cleanup can be presumed to minimize threats even when the remedy involves placement (or re-placement) of contaminated media which does not meet the generic, technology-based LDR treatment standards. The Agency notes that most Federal and State remedy selection criteria and cleanup procedures include independent requirements or preferences for treatment to ensure that remedies are protective over the long-term, although such would not necessarily be to the generic, technology-based LDR treatment standards.

Consistent with the recommendations of the FACA Committee, which agreed that higher-risk contaminated media should be subject to generic, nationwide standards, while lower-risk contaminated media should be addressed on a site-specific basis in the context of agency overseen cleanups, the Agency is proposing to limit the availability of the site-specific minimized threats variance to hazardous (or formerly hazardous) contaminated environmental media with all constituent concentrations below the Bright Line. For media that does not have a Bright Line (i.e., sediments) program implementors should consider the Bright Line risk levels and principles when determining if a site-specific minimize threat variance is appropriate. Despite this limitation, the Agency believes that the site-specific, minimize threat determination will provide significant and appropriate relief since Agency experience has shown that the dilemma of choosing between capping and/or treating media in place or excavating and triggering inflexible LDR treatment standards is much more likely to present itself with less contaminated media (such as media in which all constituents are below the Bright Line) (54 FR 41566, 41567, October 10, 1989). This is because an *in situ* option is much more likely to be acceptable under a remedial authority where wastes are not highly concentrated.

EPA recognizes that there may be concerns regarding the ability of the overseeing agency to grant a treatment variance based on a site-specific determination that threats are minimized. However, it should be noted that these decisions would go through the same notice and comment procedures as other substantive standards included in RMPs. Any concerns with risk-based treatment standards identified in a particular RMP could be raised during the comment period, and the overseeing agency would be required to address them when finalizing the RMP.

EPA seeks comments on its approach to site-specific, minimize threat variances. For example, should EPA propose more specific standards for making minimize threat determinations? Should the Agency allow site-specific minimize threat variances for any constituent subject to treatment that has initial concentrations that are less than Bright Line concentrations even though other constituents in the same medium might have concentrations that are greater than Bright Line concentrations? Should EPA allow site-specific, minimize threat variances when constituent concentrations drop below Bright Line concentrations even if the generic, technology-based LDR treatment standards (i.e., 90% or 10 times the UTS) have not yet been achieved? Should EPA allow site-specific, minimize threat variances for constituents with initial concentrations that are greater than the Bright Line?

EPA requests that commenters who support specific standards for minimize threat determinations suggest standards for EPA consideration, and address the application of these standards in the remediation context. Commenters who support minimize threat determinations for contaminated media with constituent concentrations above the Bright Line should address the relationship of these determinations to contained-in decisions (which, under today's proposed rule are not allowed for contaminated media with constituent concentrations above the Bright Line).

The Agency also requests comments on whether it should attempt to provide explicit opportunities for site-specific minimize threat determinations outside of the HWIR-media context (e.g., add appropriate provisions for non-HWIR-media contaminated media to the current treatment variance rules at § 268.44(h))? If so, should these determinations be limited to media with constituent concentrations below the Bright Line?

8. Request for Comment on Other Options

Two of the Agency's stated policy objectives for the HWIR-media rule are to develop requirements that are appropriate for contaminated media and to remove administrative obstacles to expeditious cleanups where possible. EPA has struggled with these objectives in the context of LDR requirements. The applicability of land disposal treatment requirements depends, in part, on whether contaminated environmental media are determined to contain hazardous waste. Under today's proposed rule, contaminated environmental media that contain hazardous waste, are placed after the effective date of the applicable land disposal prohibition, and have concentrations of hazardous constituents above the Bright Line will always be subject to the LDRs because contained-in decisions are not allowed for contaminated environmental media with constituent concentrations above the Bright Line. For such contaminated environmental media with constituent concentrations below the Bright Line, overseeing agencies would have the discretion to make contained-in decisions, as discussed in section (V)(A)(4)(a), above. Accordingly, in some cases, the LDRs might apply to contaminated environmental media with all constituent concentrations below the Bright Line (e.g., where the duty to comply with LDRs attached to the contaminating waste prior to the initial act of disposal), while in other cases they might not.

While the Agency believes that today's proposed LDR requirements are consistent with the goals and objectives

of the HWIR-media rulemaking and would provide significant and appropriate relief from the LDR treatment requirements for as-generated wastes, it requests comments and suggestions that identify other options for developing appropriate land disposal restriction standards for contaminated media.

The Agency is especially interested in comments that address environmental media with all constituent concentrations below the Bright Line. For example, the HWIR FACA Committee expressed the view that it would be appropriate, as a policy matter, to exempt contaminated media with constituent concentrations below the Bright Line from LDR treatment requirements when these media were subject to agency-overseen cleanups. Comments are therefore invited on how the Agency could attain this result consistent with the requirements of section 3004(m). For example, would it be appropriate for EPA to define contaminated soil and/or other contaminated environmental media (e.g., groundwater, sediments) as a separate LDR ''treatability group?'' Changes in treatability groups generally result when the properties of a waste that affect treatment performance have changed enough that the waste is no longer considered similar to those in its initial group. Each change in a waste's treatability group constitutes a new point of generation; if the waste is no longer considered ''hazardous'' at the time of the change (e.g., through a contained-in decision), LDRs would not attach even though the initial waste might have been subject to LDRs prior to the change in treatability group (55 FR 22520, 22660–22662, June 1, 1990). The Agency notes that the treatability group approach could be Bright Line dependent (i.e., available only for contaminated media with all constituent concentrations below the Bright Line) or Bright Line independent (i.e., available for all contaminated media regardless of constituent concentrations).

9. LDR Treatment Requirements for Non-HWIR-media Soils

In some cases, hazardous contaminated soils would not be subject to the alternative LDR treatment requirements in today's proposal. This will be the case in states that choose not to adopt the HWIR-media rules and may also occur at sites where cleanup occurs without direct agency approval (e.g., voluntary cleanup sites). The Phase II proposal would have modified the LDR treatment standards for all hazardous soils regardless of the presence of agency-oversight; however, under today's proposal, the alternative LDR soil treatment standards would only be available when applied by an overseeing agency through issuance of a RMP.

Today's proposal would limit application of the alternative soil treatment standards proposed today because they were developed, in part, using the assumption that they would only be applied with agency-oversight and, therefore, could be easily adjusted, either upward or down, to account for site-specific conditions. Nonetheless, the Agency requests comment on whether it would be appropriate to extend the 90%/10×UTS treatment standard proposed today to all hazardous contaminated soils, instead of limiting them to soils managed under an approved RMP. This would allow their use in States that do not seek authorization for this rule, or by facility owner/operators who wish to proceed with remedies ahead of formal agency approval of a RMP.

Alternatively, should the Agency adopt soil treatment standards that are adjusted to account for the lack of State or Agency oversight over how they are administered? For example, should the Agency promulgate a 10 times the UTS only standard for non-HWIR-media hazardous soils? This would account for the fact that the ''safety-net'' provided by proposed § 269.32, which would allow the Director to impose more stringent treatment standards Director on a case-by-case basis, would not be applicable in the non-HWIR-media situation. Would some other combination of a greater percent reduction and lesser UTS multiplier be more appropriate?

10. Issues Associated With Hazardous Debris

Earlier in the preamble for today's proposal, EPA requested comment on whether the substantive requirements of today's proposed rules should be applied to hazardous debris as defined in 40 CFR 268.2(h). Hazardous debris are currently subject to a specific set of LDR treatment standards, promulgated in the LDR Debris rule (57 FR 37194, 37221, August 18, 1992).[24] In individual cases where the generic, national LDR treatment standards are not appropriate or un-achievable for certain hazardous debris, EPA and authorized states may grant site-specific treatment variances using the procedures in 40 CFR 268.44(h).

The LDR treatment standards for hazardous debris promulgated in the LDR Debris Rule are generally expressed as generic, specified technologies, rather than constituent concentrations. While EPA believes that the technologies specified for debris treatment are generally compatible with most types of remedial activities, the Agency recognizes that applying different regulatory schemes at the same site (one for media and one for debris) may unnecessarily complicate cleanups and raise cleanup costs without a discernable environmental benefit.[25] In addition, the debris treatment technologies can be problematic in some instances, especially when the standard of 0.6 cm surface removal is applied to brick, cloth, concrete, paper, pavement, rock or wood debris treated with high pressure steam or water sprays.

EPA requests comments on whether the current LDR treatment standards for hazardous debris remain appropriate or whether hazardous debris should, instead, be subject to treatment standards similar to the standards in today's proposed rule for contaminated media, or whether some combination of the standards would be most appropriate. For example, EPA could allow the Director to impose either the generic debris treatment technologies codified in the Hazardous Debris Rule or, if appropriate, specify site-specific LDR treatment standards (either as constituent concentrations or specified technologies) using the proposed site-specific, minimize threat Media Treatment Variance. Since under today's proposal, site-specific minimize threat Media Treatment Variances are only available for contaminated media with constituent concentrations less than Bright Line concentrations, EPA requests that commenters who support site-specific, minimize threat variances for debris address application of the Bright Line to debris. More generally, EPA requests comments on whether the variances provided for in 40 CFR 268.44(h) are sufficient to provide for appropriate management of hazardous debris or whether the Media Treatment Variances proposed today would be more appropriate.

While today's proposed rule does not include changes to the existing LDR treatment standards and requirements for hazardous debris, EPA could include new LDR treatment standards or requirements in response to public comment. Issues associated with hazardous debris and the possibility of

[24] EPA is not now reopening the comment period on the LDR Debris Rule.

[25] BP Exploration Alaska Inc estimated that managing hazardous debris in compliance with the existing 40 CFR 268.45 regulations, rather than including hazardous debris in on-going cleanups on similarly contaminated media, would cost $3,200–$6,000 a ton since Debris Rule treatment technologies are rarely used in remote Alaska areas.

including debris in the final Part 269 regulations are also discussed in sections (V)(A)(2) and (V)(A)(4)(b) of today's preamble.

D. Remediation Management Plans (RMPs)

1. General Requirements—§ 269.40

Today's proposed rule provides for considerable site-specific decision making as to how contaminated media should be managed as part of remedial actions. This is particularly so in the case of media that are determined not to contain hazardous waste (on the condition that there is compliance with a RMP that would address any hazards), and thus would not be subject to any of the national, generic Subtitle C management standards. Today's proposal would provide a new administrative mechanism—RMPs—as the means for documenting, providing for public review and comment, and enforcing these site-specific requirements.

Under the proposal, a RMP would be required (1) whenever hazardous contaminated media are managed according to Part 269, and (2) whenever a contained-in determination is made for non-hazardous contaminated media (i.e., contaminated media are determined by the Director to not contain hazardous wastes), and (3) whenever non-hazardous contaminated media are managed in accordance with site-specific management requirements prescribed by the overseeing Agency. Thus, any management of contaminated media that would need a permit according to § 270.1—if Part 269 did not apply—would require a RMP.

It should be understood that RMPs could also be used (if deemed appropriate by the Director) as the procedural/administrative vehicle for imposing management requirements, in addition to those required under Part 269, for any hazardous cleanup wastes under Part 264, and as requirements for management of non-hazardous cleanup wastes. The following are examples of the types of management requirements that could be imposed under a RMP, and the circumstances under which those requirements could apply. When applicable, a RMP must include requirements for management of:

1. Hazardous contaminated media at the media cleanup site, imposed pursuant to Part 269;

2. Hazardous contaminated media at the media cleanup site, imposed pursuant to applicable unit-specific provisions of Part 264 (e.g., standards for tanks, landfills, etc.);

3. Hazardous contaminated media at a permitted, off-site hazardous waste management facility, imposed pursuant to the Part 269 LDR treatment standards;

4. Other types of hazardous cleanup wastes (e.g., debris, sludges) that are managed in compliance with applicable provisions of this chapter;

5. Non-hazardous contaminated media (i.e., media that have been determined by the Director to not contain hazardous wastes, in accordance with § 269.4), that are managed either at a media cleanup site or elsewhere, in accordance with site-specific or other management requirements imposed pursuant to any applicable State or Federal management requirements, which do not require the presence of hazardous waste; and/or

6. Other types of non-hazardous cleanup wastes that are generated from a media cleanup site and managed either at the site or elsewhere, in accordance with management requirements imposed pursuant to applicable State or Federal regulations.

As explained above, RMPs would always be required whenever Part 269 requirements are implemented, except when the cleanup is conducted under circumstances where a permit is not required, such as in CERCLA responses. In the case of CERCLA on-site removal or remedial actions, RMPs would not be required. Generally, however, a Record of Decision (ROD), or other CERCLA decision document, would specify the requirements for compliance with Part 269, if the remedy involved management of contaminated media.

As mentioned already, the provisions of this rule would not waive or replace otherwise applicable provisions of Subtitle C. For example, if the cleanup will be taking place at an operating RCRA Treatment Storage or Disposal Facility (TSDF),[26] that TSDF would still need a traditional RCRA permit for its ongoing operations. If that facility wanted to conduct cleanup according to Part 269, the RCRA permit for the site could serve as the RMP, or the facility could have both a RMP and a RCRA permit. In addition, if hazardous waste management units are to be employed during the remedial activities, such units would have to be operated in compliance with the appropriate standards of 40 CFR Part 264 (except Subparts B and C, for general facility standards and preparedness and prevention) for design; operation; closure and post-closure; handling procedures; transportation, and inspection of units or equipment.

The Agency is proposing this approach because the requirements of Subparts A and D–DD are appropriate to ensure safe, protective operation of such units for hazardous contaminated media, just as they are appropriate for new wastes. EPA is proposing not to require compliance with parts B and C because those sections were designed for long-term operating hazardous waste facilities, and not one-time cleanup actions. However, EPA recognizes that other 40 CFR Part 264 standards may not be appropriate under certain site-specific circumstances. EPA solicits comments on what other, if any, provisions of 40 CFR Part 264 should not be applicable to management of hazardous contaminated media at media cleanup sites.

The proposed requirements concerning RMPs (Subpart D) are the only provisions of Part 269 that could be applied to management of all types of hazardous cleanup wastes. EPA considered restricting RMPs to address only management of media. Under such an option, however, other types of cleanup wastes, such as debris and sludges, would require a permit—a second authorizing document under the RCRA permit requirements of Part 270. The Agency does not propose to limit RMPs in this way, because RMPs are intended to expedite permitting and accelerate cleanups for a wide variety of sites, and because they can adequately address public participation concerns. As explained in section II of this proposed rule, the requirement to obtain RCRA permits for cleanups has often frustrated desirable cleanup activities. Thus, limiting RMPs to management of contaminated media would severely limit the relief that this rule is intended to provide.

In addition, RMPs would be required only if cleanup wastes are managed in such a way that requires a RCRA permit, or to document contained-in decisions (that media do not contain hazardous waste), and the management requirements for the non-hazardous contaminated media. In many cases, hazardous cleanup wastes could be managed in such a way that does not trigger the requirement for a RCRA permit. An example would be a site where contaminated media are simply excavated and transported off-site to a permitted facility for treatment or

[26] i.e., hazardous waste management activities apart from the cleanup activities would require a RCRA permit. Although the part of the site where the remediation was taking place could be considered a ''media remediation site,'' the entire facility could not be considered a ''clean up only'' site, and therefore would be subject to applicable RCRA requirements, including permitting, and RCRA §§ 3004(u) and (v) facility, and beyond the facility boundary, corrective action. (See definition of media remediation site in 40 CFR 269.3, and preamble section (V)(A)(3)).

disposal. Another example would be treatment or storage in units that are exempt from permitting requirements, such as wastewater treatment units, or less than 90-day treatment or storage in tanks or containers. In summary, if absent proposed Part 269, a cleanup action did not require a RCRA permit under § 270.1, and a RMP is not needed to document a contained-in decision, it would not need a RMP.

Under proposed § 269.40(e), a RMP could be a ''stand alone'' document, or as might often be the case, a part of a more comprehensive document prepared by the overseeing agency. An example of a comprehensive document would be an enforcement order that explains the overall remedy for a contaminated site. The order would specify the requirements for management of hazardous cleanup wastes, and other remedial requirements such as cleanup standards and source control requirements. The order's media management requirements would not necessarily have to be presented as a separate plan, so long as those requirements were clearly specified to enable public review and comment. On the other hand, an overseeing agency might prefer to issue a RMP for a cleanup site, and use the RMP as the vehicle for specifying other remedial requirements, in addition to those for waste management.

Proposed § 269.40(c) provides that RMPs may constitute RCRA permits for the purpose of satisfying permitting requirements under RCRA section 3005(c). RMPs are designed to streamline the implementation of remedial actions that need RCRA permits by requiring less extensive review and comment procedures than are required for RCRA permits. In addition, facility-wide corrective action requirements would not generally apply to RMPs. (See preamble discussion of media cleanup sites elsewhere in this proposed rule).

Proposed § 269.40 (f) and (g) specify that approval of a RMP would not convey any property rights, or any exclusive privilege of any sort, and that approval of a RMP does not authorize any injury to persons or property, or any invasion of other private rights, or any infringement of State or local laws or regulations. These statements were taken from RCRA permitting requirements. (See § 270.4 (b) and (c)). EPA believes that these statements should apply in the same manner to RMPs as they do to RCRA permits.

EPA believes it may also be appropriate to specify that compliance with a RMP during its term would constitute compliance, for purposes of enforcement, with Subtitle C of RCRA. This would be consistent with 40 CFR 270.4(a) for RCRA permits. The Agency requests comments on this issue.

2. Content of RMPs—§ 269.41

The purpose of a RMP is to document the requirements for the contaminated media that are being managed at the media cleanup site, and to justify these requirements. This documentation is necessary because it (1) defines the enforceable provisions that apply to contaminated media management activities; (2) provides information to the Director that is sufficient to determine that these actions will be conducted according to applicable provisions; and (3) provides sufficient information and opportunity for public comment through the public participation procedures in § 269.43(e).

Although RMPs may be required for the management of media that result from investigations and treatability studies, the Agency believes that the process and content requirements for such RMPs should be as streamlined as possible. In those cases, under the proposed rule it would only be necessary to include relevant information to determine that media management activities would be in compliance with the requirements of this Part, and other applicable requirements. This would ease the administrative burden on investigations and treatability studies, and therefore facilitate getting these activities underway at cleanup sites. EPA requests comments on whether this streamlining is appropriate, and whether more should be done to reduce the administrative burdens associated with investigations and treatability studies in regard to today's proposal.

Since several different types of cleanup wastes may be managed under approved RMPs, the RMP must define what types of materials are being managed according to their requirements. For media that will be managed by the requirements of this Part, the proposed rule provides that information must demonstrate that the materials are indeed media, as defined in proposed § 269.3. For hazardous contaminated media and other hazardous cleanup wastes that must be managed according to the substantive requirements under Subtitle C, information would be required to demonstrate what type of cleanup wastes would be managed in order to identify the applicable, substantive Subtitle C regulations. This information would be necessary to indicate that the planned remedial activities involving those materials would be in compliance with those substantive requirements. For non-hazardous contaminated media which would be managed according to applicable State/Federal requirements, the RMP would have to include enough information to allow the Director to determine that the media did not contain hazardous waste. Also, the RMP would have to show that the media would be managed in compliance with any applicable State/Federal requirements.

It is important to demonstrate that the contaminated media being managed would meet the definition in the proposed § 269.3, and that planned treatment of those media would meet the treatment requirements of this Part, if applicable. The RMP would have to provide any information on the media (or waste) characteristics, and the constituent concentrations that would affect how the materials should be treated and/or managed. Particularly, the RMP would have to provide information on initial concentrations of contaminants in the media so that the overseeing agency could determine when any applicable required treatment reductions are met. Also, some contaminants are treated more or less successfully with different types of technologies. Accordingly, this information could affect how those contaminants should be treated.

Different management requirements could be more appropriate for different sites, depending on the volumes of hazardous contaminated media to be managed at the site. Therefore, EPA proposes that RMPs would be required to include information on the volumes of wastes and media to be managed.

The RMP should also specify the types of treatment and management that will be used to treat the contaminated media under the RMP. With this information the Director could determine if other Subtitle C requirements would be applicable to that treatment, such as the 40 CFR Part 264 standards. The Director also could determine if the treatment would be conducted in a way that would be protective of human health and the environment.

As discussed in the section ''Treatment Requirements for Hazardous Contaminated Media'' of today's proposed rule, EPA is concerned about the potential for remedial technologies to cause cross-media transfer of contaminants. For example, contaminants could be volatilized for removal from the soil, but releasing them to the air could then contaminate the air. Obviously, this would not accomplish the Agency's goal of actual cleanup of contaminants. Instead the

Agency proposes to control the potential of cross-media transfer by requiring that the RMP would include information on how the treatment system would be designed and operated so that the transfer of pollutants to other environmental media would be minimized.

As discussed earlier, EPA is currently developing a set of guidance documents called Best Management Practices for Soils Treatment Technologies. These documents will provide guidance for controlling cross-media contamination from different categories of remedial technologies. This guidance will be made available for comment before it is finalized.

In EPA's experience, accurate waste analysis is critical in selecting effective remedial waste management requirements. Thus, the proposed rule states that RMPs would include information on planned or completed sampling, and analysis procedures necessary to many aspects of the remedial actions, including: characterization, ensuring effective treatment, and demonstrating compliance with the treatment standard. In addition, the RMP would include quality assurance, and quality control procedures to validate the results of the sampling and analysis.

The Agency is currently developing guidance on how to sample, test, and analyze contaminated media. This guidance would be used to characterize the contaminated media being managed in a way that EPA would generally consider adequate for compliance with this Part. This draft guidance is available for comment in the docket for today's proposal.

EPA has found it necessary to collect treatability data for contaminated media so that it can set treatment standards with reasonable faith that those standards can be met with available technologies, and provide information on which technologies have accomplished what results on what kinds of contaminated media to potential users. Today's proposed rule would provide tremendous flexibility in LDR treatment standards because, among other things, of a lack of data regarding what treatment levels can actually be met in practice. One of the rule's goals is to provide data to ensure appropriate, future treatment requirements. In order to collect this much-needed data, the proposed rule would require that upon conclusion of implementation of remedial technologies (both full-scale as well as treatability studies), conducted under approved RMPs, data be submitted to EPA in the manner specified in Appendix B to this Part. (See §§ 269.41(c)(9) and 269.42(b)). The Agency will make these data available to the public once they have been compiled into EPA's NRMRL treatability database. EPA proposes that data from treatability studies be submitted as soon as the treatability study (or studies) has been completed. Full-scale operating data would be submitted every three years, or after the cleanup has been completed, whichever is first.

Treatability data. The National Risk Management Research Laboratory treatability database is available through the Alternative Treatment Technology Information Center (ATTIC) system or on disk at no charge from EPA. The ATTIC system provides access to several independent databases as well as a mechanism for retrieving full-text documents of key literature. The ATTIC system can be accessed with a personal computer and modem 24 hours a day, and no user fees are charged.

To access the ATTIC system, set your PC communications software as follows:

Name: ATTIC
Number: (703) 908–2138
Baud Supported: Up to 14,400
Parity: N
Data Bits: 8
Stop Bits: 1
Terminal Emulations: ANSI, VT100
Duplex: Full

For further information on the ATTIC system, please call the ATTIC Hotline at: (703) 908–2137, or contact the ATTIC Program Manager: Daniel Sullivan, U.S. EPA (MS 106), 2890 Woodbridge Avenue, Edison, NJ 08837–3679, phone: (908) 321–6677, fax: (908) 906–6990.

The Agency requests comments on whether this procedure and format will meet the goals of providing access to the public and regulated community about achievable treatment at cleanup sites, and whether it will provide adequate information to the Agency for the development of future rulemakings.

For many reasons, the Director could decide that further information in the RMP is needed to determine compliance with this Part. If the Director does request further information (according to § 269.41(c)(10)), the owner/operator shall revise the proposed RMP to include that information.

Fostering innovative technologies. The Agency believes that environmental regulations and policies should promote, rather than inhibit, the innovation and adaptation of new technologies. By adopting such a strategy, environmental policy can promote both the economy and the environment by creating new industries, jobs, and a new capability to make environmental progress. We therefore are seeking comments on how this regulation can further innovative technology as well.

In order to clarify what the Agency means by innovative technology in this case, the following is a definition from the White House ''Bridge to a Sustainable Future'' document from April 1995. ''[A] technology that reduces human and ecological risks, enhances cost effectiveness, improves efficiency, and creates products and processes that are environmentally beneficial or benign. The word ''technology'' is intended to include hardware, software, systems, and services. Categories of environmental technologies include those that avoid environmental harm, control existing problems, remedied or restore past damage, and monitor the state of the environment.''

One example of how this proposed rule attempts to foster innovative technologies is by creating a new media treatment variance. In cases where innovative technologies will be protective of human health and the environment, given site-specific conditions, a media treatment variance could set an alternative treatment standard using an innovative technology.

The Agency requests comments on what specific regulatory or policy changes should be added to the rule to: (1) Increase incentives for innovative technologies; and (2) identify and reduce any existing barriers to innovative technologies. Specifically, the Agency requests comments on how RCRA requirements can be changed, in a manner acceptable to all concerned parties, to allow for rapid technology development.

EPA solicits comments on the desirability of, and possible approaches for, tailoring regulatory requirements for technologies when the risk of a major system failure is impossible, remote, or without significant risk from unit operations commonly called ''soft landing technologies.'' For such technologies, particularly those that are in-situ, a high level of regulatory control does not appear necessary. Certain ex-situ technologies such as soil washing also seem to present a minimal risk. EPA requests comments and suggestions specifically on how regulatory requirements could be tailored to ''soft landing'' technologies. For example, should RMPs for soft landing technologies have a more streamlined approval process than other RMPs; or should they be exempt from permitting requirements entirely; or should their requirements be tailored differently?

3. Treatability Studies—§ 269.42

EPA recognizes that treatability studies are likely to be an important component of evaluation, selection, and application of LDR treatment technologies, especially for innovative technologies. Thus, it may be highly desirable or even necessary to generate site-specific, pilot-scale treatability information to support preparation of Remediation Management Plans (RMPs).

In § 269.42 of today's proposed rule, EPA proposes that treatability studies would be conducted subject to the discretion of the Director, and in accordance with appropriate provisions of 40 CFR 269.41 and 269.43. (See discussion above). If a treatability study were going to be conducted under a RMP, the RMP would include information describing how the study would be conducted, including relevant design and operating parameters, information on waste characteristics, and sampling and analytical procedures.

If applicable, the currently available Treatability Sample Exclusion Rule could be used for treatability studies; however, the rule might not cover all situations where relief for treatability studies is needed. EPA solicits comments on whether it would be preferable to revise the Treatability Sample Exclusion Rule (40 CFR 261.4(e)–(f)) to allow site-specific decisions regarding quantities and time frames for treatability studies that have been conducted in support of activities covered by HWIR-media, or other cleanup projects.

The Agency recently revised the Treatability Sample Exclusion Rule to allow up to 10,000 kg of contaminated media to be used in treatability studies without permits or manifests. In promulgating the revision, EPA was aware, based on comments received on the proposal, that the quantity limits were not always sufficient to allow treatability studies of appropriate scale, particularly for in-situ treatments. Because treatability studies in support of HWIR-media activities have the objective of improved remedial decision-making and cleanups, and would take place under regulatory oversight, EPA sees merit in facilitating appropriate scale studies, and requests comments on whether to allow the Director to determine, on a site-specific basis, to exempt waste under treatability studies when necessary in order to obtain effective treatability study results. The Director would be required to ensure, as always, that exempting the wastes would not pose a threat to human health and the environment. The Agency requests comments on any other approaches to effective treatability studies, and other issues related to this area.

4. Approval of RMPs—§ 269.43

This section of the proposed rule sets out procedures for review and approval of RMPs. If, however, the overseeing Agency were using an alternative document as discussed above, and if the Agency had review and approval requirements for the document (that provide equivalent or greater opportunities for public review and comment), then those alternative procedures could be used. Examples of these procedures would be the RCRA permit, or the permit modification procedures in Part 270. If necessary, the Director could also require further review and comment procedures.

The proposed rule would require both the owner and operator to sign the draft RMP before submitting it to the Director for review and approval. The owner and the operator's signatures would certify their agreement to implement the provisions of the RMP if the RMP is approved as submitted. In the context of cleanups, EPA has found that, on occasion, either the owner or operator is unwilling to sign a permit application. For example, a property owner may be unwilling to sign, because of fear of liability, where a lessee is conducting a cleanup. EPA solicits comments on whether signatures of both the owner and operator are needed in every case.

The Director could require modification or additional information that might be necessary for demonstrating compliance with the requirements of this Part. For example, to allow EPA and the States flexibility in using existing enforceable documents and procedures to comply with the requirements for RMPs, the Agency is not proposing national requirements in areas such as record keeping and reporting. EPA believes that the Director should specify any additional requirements that he/she determines necessary, (but that do not have national requirements specified in Part 269) in the RMP. The Agency requests comments on whether EPA should specify national requirements for record keeping and reporting, or any other requirements for RMPs.

Once the Director determines that the draft RMP adequately demonstrates compliance with the requirements of this Part, he/she could add provisions to the proposed RMP that specify conditions under which the media must be managed, in accordance with this Part and other applicable provisions of Subtitle C. The Director could also add contained-in concentrations for media that would be managed under the RMP. If media that originally contain hazardous wastes were to be treated to a point at or below which they no longer would contain the wastes, then these levels would be necessary to define when the media no longer contain hazardous wastes.

If the Director had established applicable State-wide contained-in concentration levels, or if all media at the site were to be managed as hazardous contaminated media, then such contained-in levels could simply be referenced in the RMP.

The Director must also document site-specific minimize threat determinations or other treatment variances in the RMP if such a determination were made for the site in question. This would provide the public the opportunity to review and comment on both contained-in and minimize threat decisions.

EPA considers public review and comment procedures to be an extremely important part of the review and approval process for remedial activities. The Agency intends for the procedures provided in this proposed rule to balance the need for public involvement with the need for fast and efficient approval of remedial activities.

In essence, EPA is proposing to require the use of the minimum public participation requirements set out in RCRA section 7004(b). Thus, the first step in the proposed public review and comment procedures is for the Director to publish in a major local newspaper of general circulation, and broadcast over a local radio station his/her intention to approve the RMP. This notice would provide the public with the opportunity to submit written or oral comments, and would be required to specify the length of time that the public has to comment. The proposed rule specifies that the comment period shall be no shorter than 45 days. At this time, the Director would also be required to transmit a written notice of his/her intent to approve the RMP to each unit of local government having jurisdiction over the area in which the site was located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

The next step is an informal hearing. The Director could determine on his/her own initiative that a hearing is appropriate, or receive a request for a hearing. In either case the Director would be required to schedule a hearing to discuss issues relating to approval of the RMP. The hearing would provide the interested public an opportunity to present written or oral statements. The Director would be required, whenever

possible, to schedule the hearing at a location that is convenient to the site's nearest population center. The Director would be required to give notice again in the newspaper and on the radio of the hearing's date, time, and subject matter.

After the comment period, and after the hearing (if one is held) the Director would be required to consider and respond to all significant written and oral comments (received by the deadline) on the proposed RMP. If the Director determines that it is appropriate, he/she may modify the RMP to accommodate the comments received.

At that point, the Director would be required to determine if the RMP were adequate, and if it met the requirements of this Part. If so, he/she would be required to notify the owner/operator and all other commenters in writing that the RMP had been approved. Once the RMP had been approved, it would be an enforceable document, and a final Agency action (not subject to administrative appeals in § 124.19 of this part).

EPA requests comments on whether these public participation requirements are appropriate for RMPs. The Agency also requests comments on public participation requirements in the State Authorization section of this proposal. The Agency is proposing this approach to public participation for RMPs because RMPs can serve as RCRA permits if necessary; hence, the Agency is proposing to follow the statutory requirements for public participation for RCRA permits. The Agency also requests comments on whether there should be different levels of public participation if the media contain hazardous wastes, or if the Director determines that the media do not contain hazardous wastes. The Agency requests comments on whether there should be some flexibility in the public participation requirements based on the different types of activities that could be performed according to RMPs. See further discussion of this issue below in the State Authorization section (V)(E)(6)(b) of the preamble regarding essential elements for an HWIR-media program.

Proposed § 269.43(f) specifies that RMPs that require combustion of cleanup wastes at a media cleanup site would have to be approved according to the more rigorous procedures that are required for RCRA permits under Part 270. Technologies involving higher levels of energy input generally achieve higher levels of contaminant removal/destruction, and may do so with greater consistency over a range of conditions. Nevertheless, higher energy systems potentially may have undesirable side-effects. As in the case of combustion, regulatory attention, including preliminary demonstrations of performance through trial burns, etc., has been found necessary to address these concerns.

5. Modification of RMPs—§ 269.44

Plans for remedial actions sometimes need to be modified. Often, modifications are necessary as new information becomes available, or when unforeseen circumstances arise. In order to retain the most flexibility for overseeing Agencies that have their own requirements for modification of remedial plans, this rule proposes that the RMP specify procedures for any necessary modifications. The Agency believes that if the modifications include a major change in the management of hazardous contaminated media at the site, the modification procedures should provide opportunities for public review and comment.

6. Expiration, Termination, and Revocation of RMPs—§ 269.45

In a similar manner as modifications to RMPs, EPA intends for the Director to specify in the RMP the procedures under which the RMP will expire, terminate, or be revoked. RMPs which constitute permits for land disposal facilities must be reviewed every five years to comply with the statutory requirements under RCRA section 3005(c)(3), and all RMPs which constitute RCRA permits must be renewed at least every 10 years, if they will remain in effect longer than that, in order to comply with the statutory requirements under RCRA section 3005(c)(3).

E. Streamlined Authorization Procedures for Program Revisions (Part 271)

1. Statutory and Regulatory Authorities

Section 3006(b) of RCRA, 42 U.S.C. 6929(b), instructs EPA, after notice and opportunity to comment, to authorize State programs, unless the Agency finds that the State program is not equivalent to the Federal program, nor consistent with the Federal program, nor adequate in providing for enforcement. General standards and requirements for State authorization are set forth in 40 CFR Part 271. Following authorization, EPA retains the enforcement authorities of RCRA sections 3008, 7003 and 3013, although the authorized State has primary enforcement responsibility. Pursuant to RCRA section 3009, 42 U.S.C. 6929, States may choose to implement hazardous waste management requirements that are either more stringent or broader in scope than the Federal requirements. State requirements that are more stringent may be included in a State's authorized program; requirements that are broader in scope are not part of the authorized State program.[27] (See 40 CFR 271.1(i)).

2. Background and Approach to Streamlined Authorization

EPA has been reviewing State authorization applications and authorizing State hazardous waste programs since the early 1980's. Currently 49 States and territories have received final authorization as defined in 40 CFR 270.2 for the base RCRA program.[28] To varying degrees these same States and territories are also authorized to implement provisions promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA). Many States have more than a decade of experience promulgating rules for and implementing authorized hazardous waste programs.

Once authorized, States are required to adopt and become authorized for new and revised Federal requirements that are more stringent than the authorized State program. (See 40 CFR 271.21). Since EPA regularly revises the RCRA regulations in response to statutory provisions, court ordered deadlines, evolving science, and changing Agency priorities, States continually submit program revisions to EPA for review and approval.

Under the current authorization structure, all revisions to authorized State hazardous waste programs, including minor changes, are potentially subject to the same standards of application and receive the same level of EPA scrutiny. Preparation, review, and processing of these program revisions represent a significant resource commitment on the part of EPA and the States. Occasionally, States and EPA Regions can experience delays in authorization of State program revisions during which EPA and a State are jointly implementing many portions of the RCRA program. For example, in many States EPA is still implementing

[27] More stringent State requirements are typically those which impose additional requirements on wastes or facilities that are already addressed by the Federal program. Broader in scope requirements are typically those that would address wastes or facilities not covered by the Federal program. The authorization status of a State's requirements does not in any way affect the ability of a State to enforce such requirements as a matter of State law.

[28] In this context, the ''base'' RCRA program refers to authorization for all or part of the regulations promulgated by EPA prior to January 26, 1983.

regulations promulgated pursuant to the 1984 HSWA amendments. Any delay in authorization of State program revisions concerns EPA and State regulators, and can confuse the public and the regulated community who often must interact with both agencies for even routine inquiries (e.g., the status of a pending permit application or the compliance of a given hazardous waste management facility).

EPA is continuously improving the administrative processes associated with authorization of State program revisions. Over the past years, improvements have been made through joint training of State and Federal authorization staff, increased emphasis on early EPA involvement in initial preparation of authorization applications, and delegation of the authority to grant authorization for program revisions to EPA Regional offices. EPA believes that the quality of State program revision applications has improved and therefore, EPA review and approval of these submittals has accelerated.

Over the past two years, many EPA rulemaking workgroups (including the HWIR FACA Committee) began to discuss and/or develop streamlined authorization procedures specific to their rulemakings. Based on these discussions, EPA became concerned that some of the recently gained efficiencies in authorization processes could be lost if every new Federal rule contained its own specialized authorization procedures. EPA believes that promulgating specific authorization procedures for each new rule could force State and Regional authorization personnel to continually revise their application formats and review procedures. EPA is especially concerned since many States do not apply for authorization of new Federal regulations one rule at a time, but ''cluster'' their authorization applications. Establishing slightly different authorization procedures for each new Federal rule might preclude clustering of program revisions, and actually slow authorization by forcing States and EPA Regions to prepare and process separate program revision applications for each new rule.

To address this situation, and to further improve the authorization process, EPA developed two generic sets of streamlined procedures for the authorization of program revisions. The first set of streamlined procedures was proposed in the Phase IV proposal (60 FR 43654, August 22, 1995);[29] the second set is being proposed today. EPA believes that these procedures would formalize some efficiencies in the authorization of State program revisions piloted by some States and EPA Regions.

In addition, EPA believes that, by using these new generic procedures, States and EPA Regions would continue to be able to cluster their authorization applications, and conduct successful reviews, by including all Category 1 rules in one authorization package, and all Category 2 rules in another authorization package. (See preamble (V)(E)(3) for discussion of Categories 1 and 2). States and EPA Regions could even choose to coordinate the submittal dates for these authorization packages. For example, the Category 2 application could be submitted prior to the Category 1 application. This would allow the EPA Region to include an authorization decision for both applications in one Federal Register notice.

Through use of two sets of authorization procedures, EPA hopes to tailor the level of effort for preparation, review, and approval of revision applications to the significance of the program revision. Both new sets of procedures would significantly streamline authorization of program revisions. However, both would also provide for EPA review of State program revisions and maintain opportunities for public review and comment on EPA's proposed authorization decisions.

In developing streamlined authorization procedures, EPA used three guiding principles. First, States are EPA's partners in environmental protection. Although EPA must maintain minimum national standards for hazardous waste management, the Agency recognizes that many States have sophisticated, and highly-developed programs for hazardous waste management and cleanup designed to meet their individual circumstances and priorities. Second, State programs do not have to be exactly the same as the Federal program to be equivalent. EPA review of State programs must focus on whether State programs would achieve the same results. (See S. Rept. 98–248 p. 62). Third, EPA should continue to promote the most efficient use of State and Federal authorization resources and take advantage of opportunities to streamline and otherwise encourage State authorization.

3. Streamlined Procedures—§ 271.21

a. Phase IV proposal—Category 1. In the recent Phase IV Land Disposal Restrictions (LDR) proposal (60 FR 43654, August 22, 1995), EPA proposed a streamlined set of authorization procedures that would apply to certain routine changes to the LDR program, such as the application of treatment standards to newly identified wastes. The streamlined authorization procedures proposed with Phase IV have come to be known as Category 1 procedures for authorization of program revisions, or simply ''Category 1.''

In the Phase IV proposal, EPA explained that the proposed streamlined authorization procedures would also be used for certain other revisions to the LDR program and could be considered for future, non-LDR, rules. EPA proposed the generic streamlined authorization procedures for Category 1 in the Phase IV proposal because many of the changes to the LDR program proposed in the Phase IV proposal exemplify the types of program revisions EPA believes should be addressed by Category 1. In general, EPA believes Category 1 authorization procedures would be appropriate for rules or parts of rules that do not change the basic structure of the authorized State program, or expand the State program into significant new areas or jurisdictions. For example, the application of LDR treatment standards to newly identified wastes and revisions to existing LDR treatment standards discussed in the Phase IV proposal would be additions of new wastes to an existing program, changes to numeric criteria, or improvements in existing procedures. These would have minimal effect on the basic scope or implementation of authorized State LDR programs.

Since Category 1 authorization procedures are designed for rules or parts of rules that do not significantly change the way a State might implement its authorized program, EPA believes it is essential that the State first be authorized for the appropriate prerequisite program component. For example, the Phase IV proposal would allow use of Category 1 authorization procedures only in States already authorized for the LDR Third Third regulations (55 FR 22520, June 1, 1990) since the LDR Third Third rule essentially completed the framework of the LDR program. Interested individuals are encouraged to refer to the LDR Phase IV proposal at (60 FR 43654, August 22, 1995), for more information on Category 1 authorization requirements and procedures. Note that in today's proposed rule, EPA would reserve 40 CFR 271.21(h) for finalization of the generic Category 1 streamlined authorization procedures proposed in 40 CFR 271.28 of the LDR Phase IV proposal.

[29] EPA is not now reopening the comment period on the Phase IV proposal.

b. Today's proposal—Category 2. In this proposed rule, EPA addresses authorization of program revisions that have significant impacts on State hazardous waste programs. EPA is proposing generic Category 2 authorization procedures today because we believe the HWIR-media rule exemplifies the type of program revisions which could be addressed using the Category 2 procedures. In general, EPA believes that Category 2 authorization procedures would be appropriate for rules or portions of rules that address areas not previously covered by the authorized State program, or that substantially change the nature of the program.

For example, implementation of the HWIR-media regulations proposed today would involve policy decisions for management of hazardous contaminated media. These policy decisions would likely affect the way States implement hazardous waste requirements at cleanup sites, and State HWIR-media programs would probably be significantly different from the States' previously authorized programs. As with the Category 1 procedures discussed above, EPA believes it could be appropriate to require States to be authorized for certain rules prior to receiving authorization for certain Category 2 rules. For instance, a prerequisite for authorization of today's HWIR-media regulations would be final authorization as defined by 40 CFR 270.2 for the ''base'' RCRA program (the base RCRA program is defined in footnote #28 in (V)(E)(2) of today's proposed rule).

The Category 2 authorization procedures proposed today consist of the following components: (i) Requirements for Category 2 revision applications; (ii) criteria to be used by EPA to determine if Category 2 revision applications are complete; and (iii) procedures for EPA review and approval of Category 2 revision application. Each of these components is discussed in detail below.

When developing the authorization procedures discussed today, EPA sought to balance its desire to recognize successful State performance and experience with the need to ensure adequate implementation of minimum Federal requirements. EPA requests comments on (1) whether the authorization procedures proposed today sufficiently recognize the sophistication of State programs, while maintaining an appropriate level of EPA review; (2) whether these provisions are appropriate for authorization of the HWIR-media regulations (alternative approaches to HWIR-media authorization and HWIR-media eligibility are discussed in section (V)(E)(6)(a) of today's proposed rule); (3) other types of regulations that these procedures could address; and (4) whether the development of generic sets of authorization procedures will preclude or inhibit clustering of program revision applications, thereby potentially slowing their authorization. EPA also requests comments from State, tribal, and territorial governments on the degree to which the authorization approach proposed today will streamline and create efficiencies in the preparation, review, and approval of revision applications.

i. Requirements for Category 2 revision applications (§ 271.21(i)(1)). EPA is proposing that Category 2 revision applications include: (1) a certification by the State attorney general (or the attorney for State agencies that have independent legal counsel) that the laws and regulations of the State provide authority to implement a program equivalent to the Federal program; (2) a certification by the State program director that the State has the capability to implement an equivalent program and commits to implementing an equivalent program; (3) an update to the State/EPA Memorandum of Agreement (MOA) and/or State Program Description (PD) if necessary; and (4) copies of all applicable State laws and regulations showing that such laws and regulations are fully effective. EPA also proposes to allow States, at their discretion, to submit any additional information that they believe will support their revision application.

State certifications (§ 271.21(i)(1)(i)). The State certifications should specifically address the Category 2 rule for which a State is seeking authorization, and include reference to State authorities and requirements that provide for a State program equivalent to the Federal program.

The State attorney general's certification should include specific citations to the State laws and regulations that the State would rely on to implement an equivalent program. If appropriate, the attorney general's certification should include citations to judicial decisions that demonstrate that the State's laws and regulations provide for an equivalent program. All State laws and regulations cited in the State attorney general's certification must be fully effective at the time the certification is signed. Copies of all cited laws, regulations, and judicial decisions must be attached to the State's certification.

In cases where authorization of a Category 2 rule is contingent on the State already being authorized for certain rules, EPA is proposing that the State attorney general's certification include certification that the State is authorized for the prerequisite requirements. Although information on a State's authorization status is, of course, available to EPA, the Agency believes that requiring that the State AG certification address prerequisite requirements would ensure that the State adequately considers these requirements when preparing the authorization application. In addition, States should note that existing regulations at 40 CFR 271.21(a) and (c) require an authorized State to keep EPA fully informed of any proposed changes to its basic statutory or regulatory authorities, its forms, procedures, or priorities, and to notify EPA whenever they propose to transfer all or part of the authorized program from the approved State agency to another State agency. Failure by an authorized State to keep EPA fully informed of changes to State statutes and regulations may affect authorization of that State's program revision applications.

The State program director's certification should specifically address the State's intent and capability to implement an equivalent program. The State program director is the ''director'' as defined at 40 CFR 270.2. If EPA has established essential elements for the rule in question, the State program director's certification must address each essential element individually. Essential elements are discussed in detail below. It may be helpful for the State to reference State policies, procedures, or other documents that support the State program director's certification. When referenced, these documents should be fully effective at the time of the certification, and copies must be attached.

Essential elements (§ 271.21(i)(1)(ii). EPA could choose to promulgate essential program elements for any Category 2 rule. Essential elements summarize critical program components and/or implementation requirements. They would be intended to focus State and EPA resources on a review of critical program components to determine whether the State program will achieve the same results as the Federal program, rather than on line-by-line comparisons of State and Federal regulations. Essential elements could include regulatory provisions, and enforcement or capability considerations. EPA emphasizes that the purpose of essential elements is not to promote detailed or exhaustive re-

evaluations of authorized State programs. Instead, essential elements should be used by State and EPA Regions to ensure that all impacts of certain Category 2 program revisions have been identified and adequately considered. As discussed in section (V)(E)(3)(b)(iii) of the preamble below, EPA would give great deference to States in their certifications of programmatic intent and capability.

EPA would establish essential elements as specifically as possible; however, because of the varying degrees to which States are authorized for the RCRA program and HSWA amendments, some essential elements could overlap with authorized requirements in some States. For example, one of the essential elements proposed today for the HWIR-media rule is ''authority to address all media that contain hazardous wastes listed in Part 261 Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in Part 261, Subpart C of this chapter.'' Some States that have already been authorized for various portions of the RCRA program, including the corrective action program, and the land disposal restrictions for hazardous debris. These States have already promulgated—and are using—appropriate rules for addressing media.

If EPA promulgates essential elements for a particular rule, EPA proposes that the Director's certification would address each essential element individually. When State program components corresponding to an essential element have already been reviewed by EPA when authorizing a previous program revision, the Agency would not re-evaluate the State program component. In these cases, EPA would evaluate the essential element portion of the Director's certification only to verify that the State did, in fact, consider the essential element when deciding how it would implement the program revision at issue.

EPA is not proposing that essential elements replace the authorization checklists currently used by States and EPA to document authorized State authorities. However, to ensure that work is not duplicated, future authorization checklists would incorporate any promulgated essential elements. EPA is proposing essential elements for the HWIR-media rule; these elements are discussed in section (V)(E)(6)(b) of the preamble to today's proposed rule.

Update to the State/EPA Memorandum of Agreement and/or State Program Description (§ 271.21(i)(1)(iii)). EPA is proposing that the Category 2 revision application would include either updates to the State/EPA Memorandum of Agreement and Program Description or certification by the Director that such updates are not necessary. EPA believes that these updates or certifications must be required because Category 2 rules could affect the way a State implements its authorized program.

Consequently, implementation of the proposed program revision could raise issues not addressed by the existing MOA or PD. For example, a State hazardous waste agency may choose to rely on another State agency (e.g., a State water control board) to implement some Category 2 rules. In these cases the State/EPA MOA and Program Description should be updated to reflect the various roles and responsibilities of the two State agencies, and to designate a lead agency for communications with EPA. (See 40 CFR 271.6). If an update to the State/EPA MOA is needed, it should be finalized and signed by the State and EPA before final authorization of the program revision.

EPA does not believe authorization of Category 2 program revisions would routinely necessitate updates to State/EPA Memorandums of Agreement or Program Descriptions. In cases where the MOA already addresses issues such as routine State program monitoring, sharing of information, and procedures for State enforcement, Category 2 revisions could simply add additional requirements to those already implemented by the State agency, and updates would not typically be necessary. Similarly, when the State Program Description already addresses the setting of State priorities, organizational structures, and implementation strategies, and a Category 2 program revision only adds to RCRA requirements already implemented by the State agency, updates would not typically be necessary. In other cases, Category 2 program revisions—even those that would simply add to the RCRA requirements already implemented by a State—could have significant resource implications that should be addressed in an update to the State Program Description.

ii. Completeness check (§§ 271.21(i)(2) and 271.21(k)). When EPA receives a Category 2 revision application, the Agency would conduct a completeness check to determine if the application contains all of the required components. To be considered complete, Category 2 revision applications must include the State attorney general and Director certifications, any necessary updates to the State/EPA MOA and PD, and copies of all cited laws and regulations, as discussed above.

The criteria for completeness checks of Category 2 revision applications would be essentially the same as those proposed in the Phase IV proposal for completeness checks of Category 1 revision applications. Like Category 1 revision applications, Category 2 revision applications would be considered incomplete if: (1) Copies of the laws and regulations cited by the State in their certifications were not included; (2) the statutes and regulations cited by the State were not in effect; (3) the State was not yet authorized for any prerequisite regulations; or (4) the State certifications contain significant errors or omissions.

EPA proposes to allow 30 days for the completeness check. When the Agency determines that a Category 2 revision application is incomplete, it will notify the State in writing. This written notification will specifically identify the application's deficiencies, and provide the State an opportunity to revise and re-submit its application. In cases where a State application was deemed incomplete because of minor errors or omissions, and the State and EPA are in agreement on correction of such errors, the Agency could choose to proceed with the review and approval process discussed below, emphasizing that final authorization of the State program would be contingent on agreed upon corrections to errors in the State application.

iii. Review and approval (§ 271.21(i)(3)). Following determination that a Category 2 program revision application is complete, EPA would review the application as necessary to confirm that the State revisions are equivalent to applicable Federal rules. During this review, EPA could, for example, examine an update to the State/EPA Memorandum of Agreement, if one were submitted, to see if it addressed implementation roles. Similarly, EPA could review the State Director's certification of essential elements to learn more about how the State intended to implement the program revision.

EPA proposes to allow a maximum period of 60 days, beginning when the Agency determines that a program revision application is complete, to consider the application, and to prepare a Federal Register notice requesting public comment on EPA's tentative authorization decision. Although EPA and the State may agree to a shorter or longer review period, EPA believes that it would be possible to confirm the revision's equivalence and prepare the

necessary Federal Register notice within 60 days.

Through the initial authorization of the State program, EPA would have become familiar with the program, and with the laws and regulations of the State. In addition, through the existing procedures for EPA monitoring and oversight of authorized State programs, EPA would be familiar with a State's program priorities, implementation strategies, policies, and procedures. Therefore, authorization of program revisions should be a straightforward process, where EPA's role would be to confirm that the State has adequately considered implementation of the program revision at issue, and has appropriately certified that the State laws and regulations provide for a program equivalent to the Federal program. EPA emphasizes that the review of program revision applications that are provided for in proposed 40 CFR 271.21(i)(3) should be used only to address the particular program revision at issue. Concerns EPA might have with parts of the State program that are already authorized should be addressed during EPA's monitoring and oversight of the State program.

EPA believes that the exact level of review necessary to confirm that a State's revisions provide for a program equivalent to the Federal program would vary from State to State, and from rule to rule. For example, in cases where EPA is very familiar with the State program (e.g., in the case of HWIR-media, in a State authorized for corrective action), the review necessary for EPA to confirm equivalence would not be extensive. In other cases, a State may be proposing to implement a program revision using a non-hazardous waste authority, or a combination of authorities, and the level of review necessary for EPA to confirm equivalency could be more intensive. EPA has developed the Category 2 authorization procedures to allow States and EPA Regions the flexibility to establish the level of review necessary for a determination of equivalence, rather than presupposing that any given level of review would be appropriate in all States for all Category 2 program revisions.

EPA proposes to use the procedures for an immediate final rule (see 40 CFR 271.21(b)(3)) to request comments on its tentative decision to approve or disapprove a Category 2 program revision. Immediate final rules, which are published in the Federal Register, provide a 30-day public comment period, and go into effect 60 days after publication unless significant adverse comment is received. An example of significant adverse comment would be comments demonstrating that the cited State authorities do not provide for an equivalent program. EPA believes that immediate final rules would typically be the most efficient way to publish and seek comments on its proposed program revision authorization decisions; however, the Agency and a State could agree to use a proposed/final Federal Register notice (as provided for under 40 CFR 271.21(b)(4)), if they believed such notice would be more appropriate to their circumstances.

EPA's goal is to authorize State program revisions in a timely way. EPA is committed to working with State agencies to address any deficiencies or areas of confusion in State applications, and to support States as they develop their programs. EPA emphasizes that, when processing program revision applications, it would give great deference to the State in: (1) interpretation of State laws and regulations and the judgement that such laws and regulations provide for an equivalent State program; and (2) certifications of State intent and capability. As always, EPA encourages States to work closely with the Agency when developing revision applications. The Agency has found that this ''up front'' investment is often the most effective way to streamline authorization.

c. Clarification of the meaning of the term ''Equivalent'' (§ 271.21(j)). EPA is taking this opportunity to clarify that the term ''equivalent'' means that the proposed State program is no less stringent than the Federal program. EPA hopes that this clarification allows States and Regions to efficiently focus authorization applications and review on the ability of the proposed State programs to meet the minimum national standards, rather than on line-by-line comparisons of State and Federal regulations. One of EPA's guiding principles in developing streamlined authorization procedures for program revisions was that State programs do not have to be exactly the same as the Federal program to be equivalent, and that EPA should focus its authorization review on environmental results.

EPA is considering applying the definition of ''equivalent'' discussed above to all authorization decisions, including authorization of Category 1 program revisions, authorization of program revisions using the existing regulations, and final authorization as defined in 40 CFR 271.3. If EPA decided to apply the definition of equivalent to all authorization decisions, the definition would be finalized in 40 CFR 270.2. EPA requests comments on whether or not the definition of ''equivalent'' discussed above should be applied to all authorization decisions and, if commenters believe that the clarification should be applied to all authorization decisions, whether or not the definition should be finalized in 40 CFR 271.21(j) or 40 CFR 270.2.

d. Table of Authorization Categories (§ 271.21 Table 1). EPA is proposing to record rules or parts of rules eligible for Category 2 authorization procedures and any prerequisite requirements in Table 1 of 40 CFR 271.21. EPA believes that tabulating the different Category 2 rules and their prerequisite requirements is the most effective and efficient way to present and maintain this information. If the procedures for Category 1 proposed in the LDR Phase IV proposal are finalized, the information proposed in § 271.28(a) of that proposed rule, and any future Category 1 rules and prerequisite requirements, would be also presented in table form.

e. Relationship of Category 1 and 2 procedures to existing authorization procedures for program revision, and request for comments on the need for a third Category. EPA believes that all revisions to authorized State hazardous waste programs required in the future could be appropriately addressed using either the Category 1 authorization procedures proposed in the LDR Phase IV proposal, or the Category 2 authorization procedures proposed today. EPA believes that the Category 1 and Category 2 procedures would be appropriate for all program revisions since each retains a level of EPA review appropriate to the program revision at issue, and incorporates an opportunity for the public to comment on EPA's proposed authorization decisions. Under this scenario, the existing program revision procedures in 40 CFR 271.21(b)(1) would apply only to authorization of rules or parts of rules promulgated prior to finalization of the Category 1 and 2 authorization procedures discussed today.

Alternatively, EPA could retain the existing program revision procedures as Category 3, and use them to authorize major revisions to State hazardous waste programs (e.g., States authorized for the first time for land disposal restrictions). EPA requests comments on the need for a third authorization category and the types of revisions that might require that level of review. In addition, EPA is considering not changing the current program revision rules, and instead applying the streamlined authorization procedures discussed today and in the Phase IV proposal as guidance to authorization of existing rules. EPA requests comment on the degree to

which Category 1 and 2 authorization procedures should be used as guidance when implementing the current procedures for authorization of program revisions.

4. Authorization for Revised Technical Standards for Hazardous Waste Combustion Facilities

Recently, EPA proposed Revised Technical Standards for Hazardous Waste Combustion Facilities published in the Federal Register on April 19, 1996 at (61 FR 17358). In this document, EPA requested comment on whether the streamlined authorization procedures that were proposed on August 22, 1995, (see 60 FR 43654, 43686) should apply to States seeking authorization for this rule. Note that in today's proposed rule, those procedures are classified as Category 1.

In requesting comment on the use of Category 1 procedures in the April 19, 1996 combustion standards proposal, EPA made a distinction among those States that would be approved to implement the final rule pursuant to 40 CFR Part 63, Subpart E (in the Clean Air Act (CAA) regulations), those States simply incorporating this rule into their RCRA regulations, and those States that would be seeking to implement the rule for the first time under RCRA authority. EPA continues to believe that the Category 1 procedures would be appropriate for those States that would be incorporating the combustion standards rule from an already approved State air program into the State RCRA program. However, EPA stated in the combustion proposal its belief that for all other States, the slightly more extensive authorization procedures developed as part of today's HWIR-media proposal would be most appropriate. This preference is based on the complexity and significance of the combustion standards rule, which substantially revises the performance standards for hazardous waste combustion facilities. EPA believes that the Category 2 procedures provide the benefits of streamlined authorization, while allowing a slightly longer period for EPA review.

Because the Category 2 authorization procedure had not been proposed before the combustion standards rule was developed, EPA was unable to request comments on whether the proposed Category 2 procedures should apply to the authorization of those States that did not incorporate by reference an approved State CAA program for the combustion standards rule. Thus, EPA is now taking the opportunity in today's notice to request this comment. EPA will consider comments made regarding today's notice when developing the final combustion standards rule.

5. Request for Comment on Application of Category 1 Procedures to Portions of HWIR-waste Proposal

In the recent proposal to establish self-implementing exit levels for listed hazardous wastes, waste mixtures, and derived-from wastes (the HWIR-waste rule), EPA announced that it was considering the possibility of using streamlined authorization procedures for some portions of the exit rule. (See 60 FR 66344, 66411–12, (December 21, 1995)). EPA has completed its initial evaluation of this issue, and is proposing today to apply the Category 1 procedures set forth in the LDR Phase IV rulemaking to major portions of the exit proposal.

Specifically, EPA is proposing to allow States to use Category 1 procedures for all portions of proposed 40 CFR 261.36 (the exit levels, requirements for qualifying for an exemption based on these levels, and the conditions for maintaining an exemption). However, EPA is proposing to restrict this option to States that have already obtained authorization for the pre-1984 base program, including the 1980 Extraction Procedure Toxicity Characteristic. (Authorization for the 1990 Toxicity Characteristic that replaced the EP rule would also be acceptable). The two toxicity characteristic rules closely resemble the exit proposal. All three rules require waste handlers to determine whether their wastes contain specified hazardous constituents in concentrations exceeding specified threshold levels. All three schemes also are self-implementing, requiring the waste handler to keep records but requiring no prior approval by Federal or State authorities. Thus, States that have been authorized for the base program have experience in drafting rules similar to the proposed exit rule. They also have significant experience in enforcing a self-implementing waste determination scheme that covers both organic and metallic waste constituents. Although the proposed exit scheme for listed waste involves many more constituents than either the EP or TC rule, EPA does not believe that increasing the number of constituents that waste handlers must evaluate would warrant, by itself, a detailed review of the State program.

Neither the base program nor the 1990 Toxicity Characteristic include any conditions for maintaining an exit. The conditions proposed in § 261.36, however, would be requirements for retesting, notification, and record keeping similar to requirements in the base program and the TC. Moreover, they would be easy to understand, and relatively easy to detect, if violated. Accordingly, EPA believes that the Category 1 procedures would be appropriate for these conditions. EPA requests comments on its proposal to allow use of Category 1 procedures for all portions of § 261.36. The proposed Category 1 procedures are described in detail in the preamble to LDR Phase IV proposal at (60 FR 43654, 43687–88, August 22, 1995). Proposed regulatory text is set out at (60 FR 43654, 43698–99, August 22, 1995).

EPA is also proposing to allow States that have obtained authorization for the Third Third LDR rule to use Category 1 procedures for the alternative ''minimize threat'' treatment standards in proposed revisions to § 261.40 and proposed new § 268.49. States that are already authorized for the basic framework 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 minimize threat levels would merely be different numerical alternatives to some of the existing BDAT standards. No change to any other portion of the LDR program would be required.

The December 1995 HWIR-waste proposal also contains an option for alternative, less restrictive exit levels based on constraining the type of management that the wastes will receive. Under this option, wastes with higher constituent concentrations would be exempted from Subtitle C control if they were not placed in land treatment units. EPA believes that this option may present significant new issues not previously addressed in the base program or any subsequent program revision. Consequently, EPA is not proposing to apply Category 1 procedures to this portion of the waste exit proposal. Rather, EPA is proposing to allow States that wish to adopt this option to use the Category 2 procedures proposed in today's proposed rule. EPA requests comments on this proposal, and the alternative of allowing States to use Category 1 procedures for this ''management condition'' option.

6. HWIR-media Specific Authorization Considerations—§ 271.28

During the development of today's proposed rule, EPA considered a number of authorization alternatives before deciding to propose the Category 2 authorization procedures discussed above. One approach would have based eligibility for final HWIR-media authorization on whether a State was

authorized to implement the corrective action regulations under RCRA section 3004(u). Under this approach, all HWIR-media authorization applications would have been prepared, reviewed, and approved using streamlined procedures,[30] but States that were not authorized for corrective action would have been granted HWIR-media authorization for a two-year provisional period. During this period, States would have been required to demonstrate their ability to implement an equivalent program.

After careful consideration, EPA tentatively determined that lack of corrective action authorization should not prejudice a State's ability to receive prompt authorization for the HWIR-media program. Many States that are not authorized for corrective action nonetheless have highly-developed, sophisticated cleanup programs that they are using to address RCRA facilities, sometimes through work-sharing agreements with EPA Regions. EPA believes that it would be inefficient to require States to undergo a two-year provisional demonstration period, if EPA is already familiar with the State's program, and confident in the State's ability to make appropriate cleanup decisions. In addition, EPA was concerned that a provisional period approach would be cumbersome and confusing, because it would rely on two different procedures, and because it involved, for States authorized under this approach, a significant resource commitment. Instead, EPA decided to propose a single authorization approach using the streamlined Category 2 process discussed above—not only for States authorized for corrective action, but for all States that have received final authorization for the ''base'' RCRA program. (See footnote #28, (V)(E)(2) of this preamble for a definition of the base RCRA program). This would allow almost all States to be eligible to use the streamlined Category 2 authorization procedures to their applications for HWIR-media authorization. An alternative approach to HWIR-media eligibility, where States proposing to use authorized hazardous waste authorities to implement an HWIR-media program would be authorized using the Category 1 authorization procedures, and all other States would be authorized using the Category 2 authorization procedures, is discussed in section (V)(E)(6)(a) of this preamble for today's proposed rule.

Although EPA did not decide to propose that State authorization for HWIR-media be based, in part, on a State's corrective action authorization status, the Category 2 procedures proposed today would incorporate many of the streamlined procedures contemplated by the HWIR FACA Committee. EPA solicits comments on whether the alternative discussed above (predicating authorization for HWIR-media on corrective action authorization, and requiring non-corrective action authorized States to undergo a two-year provisional period) would be more appropriate to HWIR-authorization and therefore should be finalized in lieu of the approach proposed today. The Agency also requests comment on other alternatives that would differentiate between States which are authorized for RCRA corrective action, and those which are not.

a. Eligibility for HWIR-media authorization. EPA proposes that authorization to administer an approved HWIR-media program would be made available only to those States that have received final authorization as defined in 40 CFR 270.2 to implement the base RCRA program (the base RCRA program is defined in footnote #28 in section (V)(E)(2) of today's preamble). Before granting a State final authorization, EPA would determine that the State in question had legal and administrative structures in place to implement an equivalent program, that the State program was consistent with the Federal program and other authorized State programs, and that the State had adequate enforcement authorities.

EPA believes that final authorization would be an essential prerequisite to HWIR-media authorization because States that have received final authorization are allowed to decide that solid wastes met the definition of hazardous wastes. This authority includes the authority to make contained-in decisions that are a central element of the HWIR-media program. EPA believes that experience making hazardous waste decisions would be essential to a State's ability to make contained-in decisions for media with concentrations of hazardous constituents that are below the Bright Line. In addition, States that have received final authorization would have demonstrated capability in permitting, ground water protection, oversight, and enforcement of hazardous waste management requirements.

States seeking authorization to implement the new HWIR-media LDR treatment standards and treatment variances must first have received final or interim authorization for the LDR program through the Third Third LDR rule (55 FR 22520, June 1, 1990). As discussed in the Phase IV proposal, EPA believes that the LDR Third Third rule established the general framework and infrastructure of the LDR program. Since the new LDR treatment standards and treatment variances rely on the existing infrastructure of the LDR program, EPA believes that it would be necessary for States to be authorized for the LDR Third Third rule before they could be authorized to implement those portions of the HWIR-media program. EPA requests comments on whether the Third Third LDR rule would be the appropriate prerequisite requirement for authorization of the changes to the LDR program proposed today. If commenters believe that the Third Third LDR rule is not appropriate, EPA requests suggestions for an alternative prerequisite (e.g., the LDR Solvents and Dioxins Rule, (51 FR 40572, November 7, 1986)).

States that have not received final authorization or LDR authorization could seek HWIR-media authorization concurrently with, or subsequent to, those authorizations. Unauthorized States could work with EPA under cooperative agreements to implement the HWIR-media program, if interested.

Alternative proposal for HWIR-media eligibility. Alternatively, EPA could allow States that are planning to use authorized hazardous waste authorities to implement the HWIR-media program to use the generic procedures for Category 1 for HWIR-media authorization, and reserve the generic Category 2 procedures for States proposing to implement the HWIR-media with non-authorized authorities (e.g., State Superfund-like authorities). This approach would allow streamlined authorization procedures to apply to almost all States by retaining the prerequisite of final RCRA base program authorization (rather than corrective action authorization), and would provide States proposing to use authorities familiar to EPA with the most streamlined procedures available.

EPA requests comments on this alternative to HWIR-media authorization eligibility, and whether or not this approach should be finalized in lieu of the eligibility approach discussed above. EPA also requests general comments on the feasibility of determining authorization categories based on the type of authority a State proposes to use, rather than on the impact or significance of the program revision at issue.

[30] Although considered prior to development of the streamlined Category 1 and 2 authorization procedures discussed today, the streamlined procedures considered for HWIR-media authorization most closely resembled those proposed as Category 1 in the LDR Phase IV proposal.

Authorization of tribes. EPA is currently developing a proposal to clarify the eligibility of tribes to receive authorization to administer their own hazardous waste programs. The proposal would discuss in detail existing RCRA authorities that EPA believes allow tribes to seek full or partial hazardous waste program authorization. If this proposal is finalized, any tribe that wishes to obtain final base RCRA program authorization would likewise be eligible for HWIR-media authorization. Tribes that choose to receive only partial authorization would not be eligible to obtain HWIR-media authorization, since the scope of such a partial program would be limited. EPA believes that in order to adequately implement the HWIR-media program, a tribe (like a State) should receive final authorization to implement the base RCRA program.

b. HWIR-media essential elements (§ 271.28(a)). EPA may choose to establish essential elements for any Category 2 rule. As discussed above (see preamble section (V)(E)(3)(b)(i)), the purpose of essential elements is to focus State and EPA resources on critical program components.

EPA believes that essential elements would be especially important when authorizing States to implement the HWIR-media program because it anticipates that many States would seek authorization for HWIR-media using existing, non-RCRA, State authorities. For example, some States could choose to rely on State Superfund-like authorities that could address a broader universe of sites and/or wastes than the RCRA corrective action or HWIR-media programs, and provide considerable flexibility and discretion to State agencies in specification of cleanup requirements. Alternatively, some States could choose to rely, in part, on a program that is less comprehensive than the Federal HWIR-media program. For example, a State could choose to rely on its pesticide management authorities to implement the HWIR-media program for media that were contaminated with pesticides. EPA believes that the HWIR-media essential elements would help State and Federal staff efficiently determine if these non-RCRA State authorities provide for equivalent State programs. EPA believes that the States' reliance on broad or flexible authority should not make approval of HWIR-media revision applications more difficult, as long as the State clearly provided for implementation of the HWIR-media program essential elements.

EPA has identified the following essential elements for the HWIR-media program:

(i) Authority to address all media that contain hazardous wastes listed in Part 261, Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in Part 261, Subpart C of this chapter.

(ii) Authority to address the hazards associated with media that are managed as part of remedial activities and that the Director has determined do not contain hazardous wastes (according to Part 269), but would otherwise be subject to Subtitle C regulation. States that choose to make contained-in decisions only when concentrations of hazardous constituents in any given media are protective of human health and the environment, absent any additional management standards (i.e., eatable, drinkable concentrations), may receive HWIR-media authorization without certifying their ability to impose management standards on media that no longer contain hazardous waste.

(iii) Authority to include, in the definition of media, materials found in the natural environment such as soil, ground water, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids that are inseparable by simple mechanical removal processes and made up primarily of media.

(iv) Authority to exclude debris (as defined in § 268.2) and non-media remediation wastes from the requirements of Part 269 (except those for Remediation Management Plans).

(v) Authority to use the contained-in principle (or equivalent principles) to remove contaminated media from the definition of hazardous wastes only if they contain hazardous constituents at concentrations at or below those specified in Appendix A.

(vi) Authority to require compliance with LDR requirements listed in § 269.30 through § 269.34.

(vii) Authority to issue, modify and terminate (as appropriate) permits, orders, or other enforceable documents to impose management standards for media as described in essential elements 1–6 and 8 and 9.

(viii) Requirements for public involvement in management decisions for hazardous and non-hazardous media as described in § 269.43(e).

(ix) Authority to require that data from treatability studies and full scale treatment of media that contain hazardous waste be submitted to EPA for inclusion in the NRMRL treatability database.

The essential elements of HWIR-media programs are proposed in 40 CFR 271.28(a).

The preceding essential elements were developed for the proposed options included in today's proposed rule. If EPA chooses to finalize the alternatives discussed in this proposal, rather than the proposed options, then the essential elements will be revised to represent the final version of today's rule more accurately.

The Agency requests comments on the essential elements proposed for HWIR-media authorization. The Agency also requests comments on whether essential elements in general should be promulgated as rules, or suggested as guidance only.

Specifically, the Agency requests comment on the essential element (viii) for public participation. Many cleanups, particularly if they were short term, or involved wastes that would not remain on site, could warrant less public participation. For example, if a State agency were cleaning up spilled petroleum in soil, which exhibited the hazardous TC characteristic for benzene, and the remedy called for digging it up immediately for off-site treatment or disposal, should the Agency wait to clean up the site until it was in compliance with the public participation requirements described above? Should the final rule allow for different degrees of public participation depending on the nature of the activities being performed? Should EPA allow decisions to be made on a site-specific or case-specific basis about the level of public participation necessary?

c. *Monitoring of State HWIR-media programs and program withdrawal (§ 271.28(b)).* The Agency is not proposing requirements for monitoring of State HWIR-media programs; however, a discussion of how EPA expects this monitoring should take place is included below. The procedures for partial program withdrawal discussed below were developed by the HWIR-media workgroup to complement the streamlined authorization procedures anticipated for HWIR-media.

A number of changes have occurred since these procedures were developed. First, EPA has chosen to propose generic, streamlined authorization procedures rather than establish authorization procedures specific to the HWIR-media rule. (See the above discussion of Category 1 and 2 program revision authorization procedures in section (V)(E)(3)). Second, the authorization procedures for the HWIR-media rule, while significantly streamlined from the existing procedures for authorization of program

revisions, include a level of EPA review not anticipated by the workgroup when monitoring and partial program withdrawal procedures were developed.

EPA has also addressed the oversight and monitoring of authorized State programs more generally through a number of Agency workgroups and initiatives. EPA requests comments on the degree to which the monitoring procedures discussed below should be considered for application beyond the HWIR-media rule. In addition, EPA requests comments on whether partial program withdrawal would be feasible, and whether such a provision would be necessary.

i. Monitoring of State HWIR-media programs. EPA believes that some monitoring of State programs is necessary to ensure that the considerable flexibility provided by today's proposed rule would be implemented in a way that is protective of human health and the environment. This was a particular concern to stakeholders during the development of today's proposed rule because it allows a more streamlined authorization for program revisions. For this reason, stakeholders were concerned that State programs might not receive sufficient up-front review prior to authorization to ensure that the program would be conducted protectively.

EPA currently conducts routine monitoring of State programs in order to identify conflicting EPA and State priorities, or areas where the State program seems to be significantly at variance with Federal rules or guidance. The purpose of routine monitoring is not to direct the priorities or site-specific implementation decisions of any given State program, but to identify problematic trends in the program. Typically, the procedures for routine State program monitoring are specified in the State/EPA Memorandum of Agreement, the annual or biannual State/EPA Grant Workplan, or other written State/EPA agreements. Often, routine State program monitoring will include mid- and end-of-year State/EPA meetings, periodic oversight inspections, and review of State files or enforcement cases.

EPA believes that most concerns regarding a State's implementation of its authorized HWIR-media program could be resolved through routine State program monitoring activities. If concerns regarding a State's HWIR-media program implementation cannot be resolved during routine monitoring, EPA would identify those concerns and propose options for resolution. Depending on the degree of EPA's concerns, the Agency would increase its monitoring of the State program accordingly. When serious concerns are identified, and when a State's failure to address these concerns adequately would cause significant risk to human health or the environment, EPA would warn the State, in writing, that the State's HWIR-media authorization could be withdrawn.

Decisions to increase the monitoring of State programs could be made by EPA based on the Agency's own information, or based on information submitted by independent third parties who allege poor or inadequate performance by the State HWIR-media program. (See proposed 40 CFR 271.28(d)). EPA would consider such allegations when making decisions about the level of program monitoring necessary in an HWIR-media authorized State. Third party allegations are also discussed in the section of this preamble that addresses withdrawal of authorized State HWIR-media programs.

ii. Program withdrawal (§ 271.28(b)). In the event that EPA and the State could not resolve their differences during program monitoring, EPA could choose to withdraw the State's HWIR-media program authorization. Program withdrawal would be for the HWIR-media portion of the State's authorization program only.

EPA would not withdraw HWIR-media authorization without first providing the State an opportunity to address EPA's concerns using the monitoring discussed above. In addition, EPA would not withdraw HWIR-media authorization without first giving the State clear, written warning that program withdrawal was imminent.

EPA proposes that, in addition to program withdrawal initiated for cause by EPA, any person could petition EPA at any time to withdraw a State's HWIR-media program authorization based on allegations that the program fails to meet the minimum national standards for an HWIR-media program as set forth in 40 CFR 271.28(a), and discussed in today's proposal. Whenever such petitions are received, EPA would provide copies of the petition and all supporting documentation to the State and allow the State at least 30 days to respond. Following the State's response and any independent EPA investigation, EPA would respond to all third-party allegations in writing.

When EPA determines that a State's HWIR-media program authorization should be withdrawn, EPA will publish its tentative decision to withdraw the State's HWIR-media program in the Federal Register, and provide the public, including the State, at least 60 days to review and comment on the tentative program withdrawal determination. If requested, EPA would also hold an informal public hearing. At the close of the review and comment period, EPA would publish its final decision regarding withdrawal of the State's HWIR-media program in the Federal Register. EPA's notice of final decisions would include responses to any significant comments received during the public review and comment period.

Following withdrawal of a State's HWIR-media program, EPA would administer the HWIR-media program in that State using the Federal standards for HWIR-media, and Federal enforcement authorities. (See § 271.28(c)). EPA believes it is important for HWIR-media program implementation to continue even in States that lose their HWIR-media program authorization because reverting to existing RCRA Subtitle C hazardous waste management requirements would disrupt and delay the cleanup process. In addition, since States that receive HWIR-media authorization would expect that management standards for contaminated media would be tailored to specific cleanup sites through the HWIR-media process, EPA believes that it would be appropriate to continue implementation of the program for new cleanups even if a State's HWIR-media program authorization is withdrawn. Otherwise, management standards could revert to the existing RCRA standards for hazardous waste once a State's authorization for HWIR-media was withdrawn; then, the State would no longer be able to approve Remediation Management Plans (RMPs) or make contained-in decisions for contaminated media. Remediation Management Plans that were approved by the State prior to the withdrawal of its HWIR-media program would remain in effect. However, EPA could use Federal enforcement authorities to impose additional management requirements in these RMPs as necessary to ensure protection of human health and the environment.

d. HWIR-media authorization in States that can be no more stringent Than the Federal Program. Some States' statutes prohibit the promulgation of any rules that are more stringent than Federal RCRA regulations. EPA does not believe that such statutes would prohibit States from adopting and implementing any portion of Part 269, including decisions to continue regulation of media with constituent concentrations below Bright Line concentrations as hazardous. As proposed, this media management decision would be completely discretionary with the overseeing

agency. Consequently, it would be impossible to argue that a State that chooses to continue regulation of contaminated media under Subtitle C would be ''more stringent'' than the Federal RCRA program. As proposed, the Bright Line would not automatically reclassify media, even under the Federal RCRA program. Rather, it would act as a ''ceiling'' below which an agency overseeing cleanup of a site would have the authority and discretion to determine whether the media should continue to be managed as hazardous waste.

States that could be no more stringent than the Federal program might, however, be required to adopt regulations equivalent to the new regulations for LDR treatment standards and media treatment variances and remediation piles. Since these new requirements would be less stringent than the existing requirements, a State that is prohibited from having more stringent regulations might be required to provide equivalent flexibility.

7. Effect in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered the State hazardous waste program, in lieu of EPA administering the Federal program in that State. When new, more stringent, Federal requirements were promulgated or enacted, authorized States were required to update their hazardous waste programs within specified time frames to remain equivalent to the Federal program, as revised. States were not required to update their hazardous waste programs to conform to new Federal requirements that were less stringent than the authorized State program. New Federal requirements did not take effect in authorized States until the State adopted the requirements as State law and received authorization to implement the new requirements (in lieu of the Federal program).

In the HSWA amendments of 1984, Congress specified that the new requirements enacted in the amendments and all implementing regulations promulgated by EPA would take effect immediately in authorized and non-authorized States. (See RCRA section 3006(g); 42 U.S.C. 6926(g)). While States are still required to update their authorized hazardous waste programs to remain equivalent to the Federal program, EPA is directed to carry out HSWA requirements in authorized States until the State modifies its program, and receives final or interim authorization.

Since EPA modifies portions of the Federal hazardous waste program enacted prior to the HSWA amendments and portions of the Federal program enacted by the HSWA amendments, there are different time frames by which revisions to the Federal RCRA program become effective in authorized States. New, more stringent, Federal regulations that are promulgated pursuant to the pre-HSWA program do not take effect in authorized States until the State modifies and updates its hazardous waste program. New, more stringent, Federal regulations promulgated pursuant to the HSWA amendments take effect immediately in authorized and non-authorized States, and are implemented by EPA until the State adopts the new requirements and revises its authorized program. New Federal regulations (HSWA and pre-HSWA program) that are considered less stringent than the existing Federal or authorized State programs are optional for States to adopt and do not go into effect unless and until States adopt them, and are authorized to implement the provisions in lieu of EPA (except for less stringent HSWA requirements that are in effect and implemented by EPA in unauthorized States, such as Alaska). To ensure that authorized State programs accurately reflect the Federal program, States are required to update their authorized hazardous waste programs to incorporate all more stringent Federal regulations within the time frames specified in 40 CFR 271.21(e).

Today's proposal is promulgated in part pursuant to pre-HSWA authority, and in part pursuant to HSWA. The following sections of this proposed rule are proposed pursuant to pre-HSWA authority: (1) Codification of the contained-in policy for constituents lacking Bright Line concentrations; (2) Bright Line concentrations and decisions that media no longer contain hazardous waste; and (3) RMP issuance for management of remediation wastes that contain hazardous wastes. The following elements of today's proposal are proposed pursuant to HSWA and would be modifications to the existing HSWA program that would cause the Federal program to become less stringent: (1) LDR treatment requirements for hazardous contaminated soil addressed under new Part 269; (2) new regulations for remediation piles; (3) media treatment variances; and (4) interpretations that RCRA section 3004 (u) and (v) do not apply to cleanup-only facilities. In today's proposal, revocation of the CAMU regulations would be more stringent than existing HSWA regulations.

In general, today's proposal is less stringent than the existing Federal hazardous waste program and, therefore, optional for States to adopt. The sole exception is the proposed revocation of the CAMU regulations, which would be considered more stringent, and would thus require adoption by States within the time frames set forth in 40 CFR 271.21(e). These time frames would provide that State modifications be made within one year of the date of the Federal program change, or within two years if State statutory amendments are necessary.

Since the bulk of the HWIR-media program proposed today is less stringent than the existing Federal RCRA program, it would not be effective in authorized States unless and until the State chose to adopt it and become authorized. EPA believes that the relief provided by the HWIR-media program would significantly increase the speed and efficiency of cleanups. Therefore, States seeking authorization for a HWIR-media program would be encouraged to use their existing State enforcement authorities to provide for HWIR-media style relief while their authorization applications were being reviewed.

a. Pre-HSWA requirements. The pre-HSWA requirements proposed today would be less stringent than the existing RCRA requirements. Because they would be less stringent, they would be optional for States to adopt, and would not take effect in authorized States unless and until the State adopted and became authorized for them. States with final authorization (or States seeking final authorization concurrently with this rule), that choose to obtain authorization for today's HWIR-media rule, would have to adopt requirements that were no less stringent than the requirements specified in Part 269. States that seek final program authorization after finalization of HWIR-media regulations could choose to apply for final program authorization without the HWIR-media program.

b. HSWA Requirements. The HSWA requirements proposed today (with the exception of CAMU revocation) would relate to the Land Disposal Restriction (LDR) program, and would be less stringent than existing LDR requirements. They would be, therefore, optional in HSWA authorized States

and would not go into effect unless and until a State adopted and became authorized for them. Normally, less stringent HSWA requirements automatically take effect in non-HSWA authorized States. However, the Part 269 LDR treatment requirements would not take effect because they apply only to cleanup wastes addressed under a Part 269 program. Thus, they would become effective in non-HSWA authorized States only when such States obtain authorization to run a Part 269 program. States authorized for the LDR program that choose to obtain HWIR-media authorization, would have to adopt requirements that would be at least as stringent as the LDR requirements specified in Part 269. States that seek LDR authorization after promulgation of final HWIR-media regulations would have to adopt requirements no less stringent than the existing (non-Part 269) Federal LDR program, if they chose not to seek authorization for today's HWIR-media requirements.

Media treatment variances. Under current regulations at 40 CFR 268.44, EPA may grant waste- or site-specific variances from treatment standards in cases where it can be demonstrated that the treatment standard is inappropriate for the waste, or that the waste cannot be treated to specified levels, or treated by specified methods. Today's proposed rule would retain the availability of treatment variances in the implementation of the HWIR-media program, and establish HWIR-media specific treatment variance procedures for media managed under Part 269. The Agency is clarifying today that States could seek authorization for both the site-specific treatment variance procedures in 40 CFR 268.44, and the HWIR-media specific treatment variance procedures proposed in Part 269. EPA is aware that some States, especially States that chose to adopt the Federal LDR program by reference, could have already received authorization to issue site-specific LDR treatment variances under 40 CFR 268.44. Because there has been some confusion about this issue, and because EPA's current proposal would encourage States to become authorized for treatment variances, EPA requests the States to note in their HWIR-media program revision application, or other authorization application, or in official correspondence, whether or not they believe that they have been authorized for site-specific LDR treatment variances under 40 CFR 268.44. EPA would then evaluate that aspect of a State submittal to confirm the State's authorization for treatment variances. EPA requests comments on this proposal, especially from States that believe they are already authorized to approve LDR treatment variances.

CAMU revocation. EPA is proposing today to revoke the CAMU regulations at 40 CFR 264.552 and to ''grandfather'' CAMUs approved prior to the publication date of the final HWIR-media rule. Since revocation of the CAMU regulations would remove that option at the Federal level, even States that have adopted CAMU regulations as a matter of State law and/or become authorized for CAMUs would be blocked from approving new CAMUs by this date, when these more stringent Federal rules would go into effect. Of course, States could still use their CAMU regulations for non-hazardous wastes at their discretion, or for media that do not contain hazardous wastes (and that are not subject to LDRs).

In order to ensure that requirements for ''grandfathered'' CAMUs remain enforceable, States that have already been authorized for the CAMU regulations, and that choose to grandfather CAMUs, should retain their CAMU regulations (for those grandfathered CAMUs) until those CAMUs have expired or are terminated. States would be required, however, to make clear that existing State CAMU regulations would not be used to grant any new CAMUs for management of Federally hazardous waste after the date of publication of the final HWIR-media rule.

c. Examples. The following examples illustrate the effect of today's proposed rule in authorized States.

Example One: The State has received final base program authorization but has not yet been authorized for the land disposal restriction program.

Because the State has received final base program authorization, and the pre-HSWA HWIR-media regulations proposed today are less stringent than the existing program, the pre-HSWA HWIR-media regulations would not be effective in the State unless and until the State adopted and became authorized for them.

Since EPA would still be implementing the LDR program in the State, the Part 269 LDR treatment requirements for hazardous contaminated media and treatment variances for contaminated media would be effective immediately upon approval of the State's HWIR-media program, and would be implemented by EPA until the State received the necessary LDR program authorization. On the other hand, the new remediation pile provisions would become effective immediately in non-HSWA authorized States, because they are HSWA requirements that are not specific to the Part 269 program.

Example Two: The State has received final base program authorization, and is also authorized for the land disposal restriction program through the Third Third LDR rule.

Since the State has received final authorization and the pre-HSWA HWIR-media regulations proposed today are less stringent than the existing program, the pre-HSWA HWIR-media regulations would not be effective unless and until the State adopted and became authorized for them, as discussed in example one. Similarly, since the State would be authorized for the land disposal restriction program, and the remediation pile provisions (which are considered HSWA provisions because they affect LDRs) proposed today are considered less stringent than the existing LDR program, the remediation pile provisions proposed today would not be effective in the State unless and until the State adopted and became authorized for them.

For the less stringent Part 269 treatment standards, as explained in example one, these would not become effective in the State until the State chose to adopt a Part 269 program. Because the State would already be authorized for a sufficient LDR program, the State could also be authorized to run the LDR program of the HWIR-media program.

Example Three: The State is authorized for the corrective action management unit rule.

The CAMU revocation provision proposed today is the only provision that is more stringent than the existing Federal RCRA program and, therefore, mandatory for States to adopt. In addition, because revocation of the CAMU regulations would remove that option at the Federal level, even States that have adopted CAMU regulations as a matter of State law would be blocked from implementing those regulations when more stringent Federal rules take effect (date of publication of final HWIR-media rule).

8. Request for Comment on EPA's Approach to Authorization

EPA requests general comments on the approach to authorization outlined in today's proposal. In addition, as discussed above, EPA specifically requests comments that address the following issues and areas:

a. The use of differential authorization procedures for State program revisions, and whether the Category 2 authorization procedures discussed today would sufficiently recognize the sophistication of State programs while maintaining an appropriate level of EPA review. EPA is specifically interested in the ability of these procedures to adequately address evaluation of a State's capability to implement any given program revision;

b. The effect of differential authorization procedures, if any, on State's and EPA's ability to cluster authorization applications (i.e., the ability to prepare and review program revision applications that address more than one rule at the same time);

c. Whether the Category 2 procedures discussed today would be appropriate for authorization of the HWIR-media regulations, and other types of

regulations which these procedures should address;

d. The degree to which the authorization approach proposed today would, in practice, streamline and make preparation, review, and approval of State program revision applications more efficient;

e. The use of essential elements to target authorization applications and review and whether essential elements should be specified in regulations or discussed in preambles as guidance;

f. The need for a third authorization Category to address major revisions to State programs, the types of program revisions a third Category might address, and the potential requirements and procedures for a third Category;

g. The degree to which the Category 1 and 2 authorization procedures discussed today should be applied as guidance when authorizing existing rules using the current program revision procedures;

h. The clarification of the definition of equivalent, and whether the proposed definition should be used for all authorization decisions, or only for the Category 2 authorization decisions discussed in today's proposal;

i. The use of Category 2 authorization procedures for authorization of those States not incorporating an approved State CAA program for the combustion standards rule by reference (as discussed in section (V)(E)(4) of today's preamble);

j. The alternative approach to HWIR-media authorization discussed in section (V)(E)(6)(a);

k. Whether final base-program authorization is the appropriate prerequisite requirement for authorization of the general HWIR-media program;

l. Whether authorization for the LDR Third Third rule is the appropriate prerequisite requirement for authorization of the LDR portion of the HWIR-media rule;

m. The alternative approach to HWIR-media eligibility that would allow States proposing to use previously authorized authorities to implement an HWIR-media program to use the Category 1 authorization procedures, discussed in section (V)(E)(6)(a);

n. The approach to authorization of LDR treatment variances discussed in section (V)(E)(7)(b);

o. The degree to which the monitoring procedures discussed today would conform to the program monitoring procedures currently in place;

p. Whether the monitoring procedures discussed today are necessary, whether they should be codified for the HWIR-media rule, and whether they should be considered for application beyond the HWIR-media rule;

q. The feasibility of partial program withdrawal and the necessity for such a provision;

r. The proposed and alternative approaches to HWIR-media implementation following program withdrawal;

s. The effect today's proposed approach to authorization might have on a State's desire to seek authorization for a State HWIR-media program; and

t. Other suggestions for improvements to the authorization process.

F. Corrective Action Management Units—§ 264.552

Today's proposed rule, at § 264.552, would withdraw the existing regulations for Corrective Action Management Units (CAMUs), which were promulgated on February 16, 1993 (58 FR 8658). Today's proposal for Part 269 would replace much of the flexibility under the current CAMU regulations as they apply to contaminated media. EPA does not intend to withdraw the CAMU regulations without, at the same time, substituting one of today's options in its stead.

States with existing CAMU regulations would need to come in for program revisions, to make their programs as stringent as the Federal program. Today's proposal would also grandfather CAMUs that have already been approved by EPA and the States, by the publication date of the final HWIR-media rule. The original CAMU rulemaking also included provisions for temporary units to be used for management of cleanup wastes. These provisions would not be affected under today's proposal, thus the Agency is not reopening these requirements for comment at this time.

The CAMU rule was the Agency's initial attempt to resolve many of the problems that have been encountered by EPA and State cleanup programs in applying the prevention-oriented Subtitle C regulations (specifically, the land disposal restrictions (LDRs) and minimum technology requirements (MTRs)) to the management of cleanup wastes. The rule has allowed regulators to designate an area at a facility as a CAMU, and has specified that placement of cleanup wastes into a CAMU does not trigger LDR or MTR requirements that would otherwise apply. Because the rule was designed to provide flexibility to regulators for prescribing site-specific management requirements for cleanup wastes, the regulations do not prescribe specific standards for design or operation of CAMUs, or generic national treatment standards for cleanup wastes that are managed in CAMUs. Since its promulgation, the final CAMU rule has been used by EPA's Superfund program, the RCRA corrective action program, and other State cleanup programs. However, the actual number of CAMUs that have been approved to date is relatively small. EPA is aware of fewer than twenty CAMUs that have been approved.

Some parties have argued that the CAMU rule allows regulators too much discretion in determining appropriate, site-specific management requirements for cleanup wastes. Those parties support the idea of having some type of minimum national LDR treatment standards for cleanup wastes (especially for sludges and other non-media wastes), rather than allowing regulators to specify treatment requirements on a case-by-case basis.

When the HWIR–FACA Committee was initiated, EPA, and most of the State participants on the committee, agreed to consider whether the CAMU regulations should be modified or replaced with a different regulatory approach.

The Agency is proposing to replace the existing CAMU regulations with today's proposed rule, except that it would retain existing CAMUs approved prior to publication of the final HWIR-media rule. The Agency believes that much of the site-specific flexibility provided in the CAMU rule has been preserved in this proposal, especially for less-contaminated media. Further, the proposal would modify the minimum LDR treatment standards specified in the Part 269 regulations specifically to be more compatible with the realities of treating contaminated media. Today's proposal should also minimize potential disruptions to site cleanups that are planned or underway, since existing CAMUs approved prior to the publication date of a final HWIR-media rule could continue to operate until their cleanup activities are complete. (See discussion below.)

At the same time, the Agency believes that the CAMU rule has been used successfully to expedite cleanups, and that it has provided much needed flexibility for remedial actions at RCRA corrective action and Superfund. Furthermore, replacing the CAMU regulations with today's HWIR-media rules could have a significant impact in some situations, particularly in remedies involving sludges and other non-media wastes. The proposal would cover only contaminated media, whereas all types of cleanup wastes can be managed in CAMUs. Actually, a number of the CAMUs that have already

been approved will be managing sludges from cleanups. Thus, the flexibility provided under the proposed HWIR-media rule would apply to a more limited spectrum of cleanup wastes. Sludges and other non-media cleanup wastes would be subject to the traditional hazardous waste regulations, including LDRs and MTRs. (See discussion in section (V)(A)(2) of this preamble.)

Therefore, the Agency requests comments on what benefits might accrue if the CAMU rule were retained. (See letter from M. L. Mullins, Vice President-Regulatory Affairs, Chemical Manufacturers Association, to Michael Shapiro, Director, Office of Solid Waste, EPA (August 22, 1995).) Specifically, the Agency requests comments on what the ramifications may be of failing to provide the degree of relief that the CAMU rule has provided. The Agency is also interested in ways that the CAMU might be modified to target the CAMU provisions on wastes that pose lower risks. For example, the Agency could incorporate a Bright Line approach in CAMU.

Today's proposed rule would grandfather CAMUs that were approved before the publication date of this rule. Thus, an owner/operator who was conducting a cleanup that involved an approved CAMU would be able to continue using the unit until the cleanup is complete, under the terms of the permit or order. EPA believes that this provision is reasonable and would help avoid delays and disruptions to ongoing cleanup actions. In addition, EPA believes that not providing this type of grandfathering would raise important questions of fairness because they were approved according to the regulations in effect at the time, and because EPA has encouraged the use of CAMUs when the flexibility they provide is necessary to selecting and implementing sensible, protective remedies.

EPA considered various grandfathering options for CAMUs, such as establishing a certain time limit (e.g., one year) for operating existing CAMUs after the Part 269 rules were promulgated. EPA does not believe that such a limitation would be necessary or desirable. Some remedies require several years to fully implement, and could be adversely affected if an existing CAMU had to cease operations. For example, risks of exposure to highly contaminated sites could continue for several more years while the regulators, owners, and operators negotiate a new site remedy, instead of implementing the CAMU remedy they had already agreed upon and determined would be protective. The CAMUs that have been approved to date have been a key factor in accelerating the cleanup process and allowing protective remedies to be implemented at considerable cost savings.

If today's rule is finalized as proposed, States that have adopted the CAMU regulations would be required to revise these regulations after the publication of final HWIR-media regulations in order to remain as stringent as the Federal program. (Except when the State CAMU rules are as stringent as the current Federal program, for example, in requiring wastes to be treated to LDRs before being placed in a CAMU.) Of course, States would still be allowed to use the Area of Contamination (AOC) concept, which would not be changed by today's proposal (55 FR 8666, 8758–8760, March 8, 1990; and also the memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers, (March 13, 1996)). More discussion on State authorization for these HWIR-media rules is presented in section (V)(E) of this preamble.

G. Remediation Piles—§§ 260.10 and 264.554

Today's rulemaking proposal would establish a new type of unit—remediation piles—that would preserve needed flexibility for conducting certain types of cleanup activities. Proposed § 260.10 specifies the following definition:

> *Remediation Pile* means a pile that is used only for the temporary treatment or storage of remediation wastes, including hazardous contaminated media (as defined in § 269.3), during remedial operations.

This definition would appear in § 260.10, where most of the RCRA hazardous waste regulatory definitions are codified, rather than in § 269.3, which defines terms specific to the Part 269 regulations. This is because remediation piles would be able to accept all types of remediation wastes, rather than only hazardous contaminated media. As a result, remediation piles could be approved for remedial actions that are not regulated by Part 269.

The primary reason for creating this new type of unit is that under current regulations, waste piles are considered land disposal units, and all hazardous wastes must be treated to LDR standards before being placed into the pile. Remediation piles, however, would not be considered land disposal units under this proposed rule; they are not listed in section 3004(k), (see discussion below); and these regulations clearly specify that they may be used only for temporary treatment or storage of cleanup wastes. For reasons noted below, the Agency believes that this type of unit, which would not trigger LDRs, would provide necessary flexibility in situations where application of the LDRs would create obstacles to common sense remedies.

One of the principal goals of this proposed rule is to achieve a net environmental benefit by facilitating the cleanup of as many contaminated sites as possible. The Agency also believes that remediation piles would be necessary to facilitate the cleanup of many previously contaminated sites. The physical, economic, and technical limitations on the operation of a cleanup program could dictate that remediation wastes be temporarily stored and/or concentrated in a centralized location onsite prior to completion of the remedial activity. Similarly, once the wastes had been placed in a remediation pile it could be advantageous to begin some form of treatment or pretreatment to reduce the level of threat posed by the wastes prior to its ultimate disposal.

Because of the potentially large volumes of contaminated media encountered during remedial action, prohibiting such wastes from being temporarily treated or stored in onsite piles (unless it met LDR standards) would be counterproductive since it would be a disincentive to the cleanup activities. The Agency believes that the temporary existence of a controlled activity using a remediation pile would be preferable to the continuing, unmanaged presence of contaminated media, and the resulting threat against human health and the environment, for an indefinite period of time. In endorsing the idea of remediation piles, the Agency is in no way authorizing the indefinite operation of the piles, or the use of them for permanent disposal. The obligatory, temporary nature of remediation piles is the primary difference between the piles and the previously used CAMUs.

The design and operating requirements for remediation piles are specified in proposed § 264.554. Although these provisions are being proposed in § 264.554, remediation piles could also be approved under orders, and at interim status facilities. As explained above, placement of remediation wastes into a remediation pile would not trigger RCRA land

disposal restrictions, because such placement would not constitute ''land disposal'' according to RCRA § 3004(k)'s definition of land disposal. For a further discussion of the Agency's position that would be reasonable to interpret § 3004(k) to exclude placement of remediation wastes into units used solely for cleanup purposes. (See 58 FR 8658, 8662, (February 16, 1993)). The unit would also not be subject to minimum technology requirements (MTRs) under section 3004(o), since the pile would not be considered a land disposal unit subject to those requirements.

Other types of piles (e.g., piles not used for cleanup purposes) would remain subject to the Subpart L requirements of Parts 264 and 265, and wastes placed into such piles would be subject to LDRs. Additionally, the use of a remediation pile does not allow remediation wastes to be entirely exempt from the LDR requirements. Since remediation piles are temporary and not intended for disposal, all wastes being held in remediation piles must eventually meet LDRs at the time of their ultimate disposal.

EPA's objective in proposing the concept of remediation piles in Part 264 rather than in Part 269 with the rest of the HWIR-media provisions is that the Agency wishes to encourage remedial action of contaminated sites by making the use of these units more widely available for those cleanups that are not mandated by RMPs under Part 269, or include remediation wastes other than contaminated media.

Remediation piles are intended to preserve flexibility for decision makers in situations where site cleanup involves the temporary storage or treatment of remediation wastes prior to disposal. Unlike CAMUs, remediation piles could not be used for disposal of wastes; remediation piles would be required to close by removal of wastes (i.e., ''clean close''), as do tanks, containers, and other types of hazardous waste storage and treatment units. As with the existing CAMU regulations, remediation piles would have to be located at the cleanup site, and could not be used to manage any wastes other than remediation wastes.

The flexibility that would be provided by the proposal for remediation piles is currently available through use of the CAMU concept; such units would currently be considered CAMUs for regulatory purposes, and would be subject to the requirements of § 264.552. The net effect of this proposal for remediation piles would thus be to preserve the existing flexibility and regulatory relief from LDRs and MTRs in situations involving the temporary placement of remediation wastes in piles. Although today's Part 269 proposal would provide some relief for these types of situations (particularly for below the Bright Line wastes), EPA believes that remediation piles would be useful in facilitating cleanups at a large number of sites.

Because wastes and media volumes, and the expected duration of cleanup activities at cleanup sites all vary, EPA believes that the Director is best able to determine the site-specific conditions for the safe and effective operation of a remediation pile on a site-specific basis. Therefore, today's proposal for remediation piles does not prescribe any specific design or operating standards; the Director would establish such requirements on a case-by-case basis, using the decision factors specified for Temporary Units. (See § 264.553(c)).

EPA considered a more prescriptive approach that would have established certain minimum standards for remediation piles. For example, standards for liners could be specified in the regulation, as could standards for covers or other methods for controlling air emissions, and wind and water dispersal, or other design and operating standards. Comments are requested as to whether more national uniformity is necessary in the design and operation of remediation piles, or whether such decisions are more appropriately made on a site-specific basis. Comments are also requested as to the types of minimum standards that should be applied to remediation piles (assuming such national standards are necessary), whether certain time limits or renewable time limits should be set for operating such units, and whether creating this new type of unit would be necessary at all.

H. Dredged Material Exclusion—§ 261.4

In addition to the media management requirements discussed above, today's proposed rule contains a provision to clarify the relationship of RCRA Subtitle C to dredged material. Specifically, EPA today proposes to establish that dredged material disposed in waters of the United States in accordance with a permit issued under section 404 of the Clean Water Act (CWA) or in ocean waters in accordance with a permit issued under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA),[31] would not be subject to Subtitle C of the Resource Conservation and Recovery Act (RCRA)(§ 261.4(h)). This approach is authorized under RCRA section 1006, which calls for the Agency, in implementing RCRA, to avoid duplication with other Federal statutes.

At present, if dredged material proposed for disposal in the aquatic environment is contaminated or suspected of being contaminated, the potential application of both RCRA Subtitle C regulations, and dredged material regulations under CWA or MPRSA, complicates efficient assessment and management of potential environmental impacts. Today's proposal would eliminate the potential overlap of RCRA Subtitle C with the CWA and MPRSA programs by establishing an integrated regulatory scheme for dredged material disposal that ensures an accurate and environmentally sound evaluation of any potential impacts to the aquatic environment.

Dredged Material Regulation Under CWA and MPRSA

Section 404 of the CWA establishes a permit program to regulate the discharge of dredged or fill material into waters of the United States that is jointly administered by the U. S. Army Corps of Engineers (Corps) and EPA. Proposed discharges must comply with the environmental criteria provided in 40 CFR Part 230 in order to be authorized. The EPA and Corps regulations under section 404 define dredged material as ''material that is excavated or dredged from waters of the United States.'' Dredged material can be mechanically or hydraulically dredged, and disposed of by barges or pipelines into river channels, lakes, and estuaries. Today's proposal does not address ''fill material,'' such as that discharged to replace portions of the waters of the United States with dry land.

In addition to such discharges as open water disposal from a barge, the section 404 regulations specifically identify the runoff or return flow from a contained land or water disposal area into waters of the United States as a discharge of dredged material. In most cases, this type of discharge occurs from a weir and outfall pipe to drain water from a confined disposal facility (CDF), including the water entrained with the solid portion of the dredged material discharged at the site and from rainwater runoff. Impacts to uplands, as well as groundwater, air, and other endpoints, can be addressed within the section 404 permitting process as potential impacts of a discharge of dredged material into waters of the U.S. However, in those cases where upland-

[31] ''Permit'' also includes the administrative equivalent, a finding of compliance with the substantive requirements of the CWA or MPRSA, for U. S. Army Corps of Engineers' civil works projects authorized by Congress.

disposed dredged material has no return flow to waters of the United States, as defined by section 404, the dredged material is not regulated under the CWA, and therefore may be subject to RCRA Subtitle C, even under today's proposed regulatory revision.

The MPRSA regulates the transportation of material, including dredged material, that will be dumped into ocean waters. Section 102 of the MPRSA requires that EPA, in consultation with the Corps, develop environmental criteria for reviewing and evaluating applications for ocean dumping permits. Section 103 of the MPRSA assigns to the Corps the responsibility for authorizing the ocean dumping of dredged material, subject to EPA review and concurrence. In evaluating proposed ocean dumping activities, the Corps is required to determine whether such proposals comply with EPA's ocean dumping criteria (40 CFR Parts 220–228).

Dredged Material Regulation Under RCRA

RCRA (42 U.S.C. 6901 *et seq.*) regulates the assessment, cleanup, and disposal of solid and hazardous wastes under Subtitles D and C, respectively. A solid waste is considered hazardous for regulatory purposes if it is listed as hazardous in RCRA regulations or exhibits any of four hazardous waste characteristics: ignitability, corrosivity, reactivity, or toxicity. Dredged material could trigger RCRA's Subtitle C requirements by exhibiting any of the four characteristics or by containing a listed hazardous waste.

EPA regulations at 40 CFR Parts 270 and 124 set forth application requirements and procedures for issuing RCRA hazardous waste permits under RCRA Subtitle C. In developing a permit, the permitting authority considers the potential pathways of human and ecological exposures to hazardous wastes resulting from releases at the unit, and the potential magnitude and nature of those exposures. Permit conditions are established as necessary to achieve compliance with the standards and restrictions set forth in Parts 264 and 266 through 268 (and proposed 269) (or the authorized State program). In addition, RCRA section 3005(c)(3) authorizes the permit writer, on a site-specific basis, to add conditions to a permit that go beyond the applicable regulations where such additional requirements are necessary to protect human health and the environment (42 U.S.C. § 6925(c)(3)).

The specific requirements of RCRA Subtitle C that would otherwise apply to the disposal of dredged materials in the aquatic environment would differ depending on whether these activities were considered to be acts of ''land disposal'' as defined in RCRA § 3004(k). If considered to be ''land disposal,'' a more extensive set of requirements under RCRA Subtitle C would apply, including land disposal restrictions treatment standards (§ 3004(m)) and minimum technology requirements (§ 3004(o)).

Clarification of Regulatory Jurisdiction

EPA proposes to revise the RCRA regulations to provide that the discharge of dredged material to waters of the United States pursuant to a permit under section 404 of the CWA or to ocean waters pursuant to a permit under section 103 of the MPRSA would not be subject to RCRA Subtitle C requirements. Specifically, 40 CFR 261.4, which lists exclusions from the hazardous waste provisions of RCRA, would be amended by adding dredged material discharges covered by CWA or MPRSA permits (or authorized administratively in the case of Corps civil works projects) to the list of exclusions.

This proposal would exclude dredged material disposal only from the requirements of Subtitle C, and would not exclude it from the requirements of Subtitle D. This exclusion would not diminish the authority of the Administrator to take action under section 7003 of RCRA to address situations of imminent hazard to human health or the environment. As noted above, upland disposal of dredged material with no return flow to waters of the United States (i.e., not regulated under section 404 of CWA) would not be subject to the exclusion, and therefore would still be subject to the requirements of RCRA Subtitle C as appropriate. Finally, management of dredged material not disposed of in waters of the United States in accordance with a permit issued under section 404 of the Clean Water Act (CWA), or not disposed of in ocean waters in accordance with a permit issued under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA), (e.g., dredged material managed for purposes of cleanup under RCRA corrective action or CERCLA), would not be eligible for this exclusion, and therefore, could be subject to RCRA Subtitle C requirements.

Today's proposed rule would establish an integrated approach to the regulation of dredged material disposal that would avoid duplicative regulatory processes, while ensuring an accurate, appropriate, and environmentally sound evaluation of potential impacts to the aquatic environment. This approach is authorized under section 1006(b) of RCRA, which states that ''the Administrator * * * shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of * * * the Federal Water Pollution Control Act (CWA), * * * the Marine Protection, Research and Sanctuaries Act, * * *, and such other Acts of Congress as grant regulatory authority to the Administrator.'' Section 1006(b) of RCRA calls for the provisions of RCRA to be integrated with other statutes, including the CWA and the MPRSA, to avoid duplication when such integration ''can be done in a manner consistent with the goals and policies expressed'' in RCRA and the other Acts.

The Agency believes that the CWA and MPRSA programs described above fully protect human health and the environment from the consequences of dredged materials disposal. These programs incorporate appropriate biological and chemical assessments to evaluate potential impacts on water column and benthic organisms, and the potential for human health impacts caused by food chain transfer of contaminants. They also make available appropriate control measures for addressing contamination in each of the relevant pathways. These programs are more fully described in support documents that are included in the record for this proposal and are available in the docket for today's proposed rule.

The Agency believes that RCRA Subtitle C coverage of dredged materials disposal in the aquatic environment, whether or not this disposal is considered to be ''land disposal'' under RCRA, is duplicative and unnecessary when considered alongside the CWA and MPRSA coverage of these activities. The overriding goal of each of the three statutory programs is to protect human health and the environment, and the CWA and MPRSA programs fully achieve this goal by addressing the proposed aquatic disposal of dredged material.

Moreover, applying the RCRA Subtitle C program together with the CWA and MPRSA permitting programs might be unduly burdensome and cause unnecessary procedural difficulties—e.g., by requiring duplicate permit applications and procedures. It is also possible that the duplicative nature of the programs could in fact increase environmental risks by causing delays in proper disposal. The Agency believes that today's proposal, which would divide coverage, would therefore be

appropriate and consistent with the goals and policies in each of these statutes. Accordingly, under RCRA § 1006(b), today's regulatory proposal would be an appropriate way to integrate the CWA and MPRSA permitting schemes with the RCRA Subtitle C program.

VI. Alternative Approaches to HWIR-media Regulations

EPA believes that the specific regulatory proposal that is presented in today's proposed rule is consistent with the objectives that EPA and the States had in mind for the HWIR-media rule. Those objectives are discussed in section III of this preamble. However, alternative approaches may offer significant advantages as well as disadvantages compared to today's proposed rule; some might be quite different from the proposal. EPA will continue to examine such alternatives, and invites commenters to address these fundamental issues in addition to providing comments on the specifics of the rule as proposed.

As explained previously in this preamble, today's proposed rule was created expressly to reflect the concepts and directions identified in the ''Harmonized Approach'' developed by the FACA Committee. Thus, although a number of alternatives were identified and considered by EPA and other parties throughout the process of developing this proposal, adhering to the Harmonized Approach in many cases precluded certain alternative concepts from being included. In addition, not all controversial issues were resolved by the FACA Committee. In fact, some issues central to the framework of today's proposed rule provoked strong disagreement. The Agency specifically requests comments on alternatives in the areas where agreement was not reached.

In EPA's view, a critical element both within the proposal and in the other alternatives identified in the preamble (e.g., the Unitary Approach) is the rationale used for exempting wastes from Subtitle C. Under today's proposed rule, implementing agencies would be able to allow lower-risk contaminated media to generally exit the Subtitle C system based on the contained-in principle (i.e., Subtitle C doesn't apply if EPA or a State determines that a medium doesn't contain wastes that present a hazard (hazardous wastes) based on site-specific circumstances or controls in a RMP). The legal theory supporting ''conditional exclusions'' is broader than the contained-in theory, and need not be limited to contaminated media. The ''conditional exclusion'' theory is based upon EPA's understanding that RCRA provides EPA and the States the discretion to determine that a waste need not be defined as ''hazardous'' where restrictions are placed on management such that no improper management could occur that might threaten human health or the environment. (See definition of hazardous waste at RCRA section 1004(5)(B)). The HWIR-waste proposal included a full discussion of the legal basis for this position (60 FR 66344–469, Dec. 21, 1995). This theory is also discussed in section (V)(A)(4)(a). For the sake of clarity, it is repeated below.

EPA's original approach to determining whether a waste should be listed as hazardous focused on the inherent chemical composition of the waste and assumed that mismanagement would occur causing people or organisms to come into contact with the waste's constituents. (See 45 FR 33113, (May 19, 1980)). Based on more than a decade of experience with waste management, EPA believes that it is inappropriate to assume that worst-case mismanagement will occur. Moreover, EPA does not believe that worst-case assumptions are compelled by statute.

In recent hazardous waste listing decisions, EPA identified some likely ''mismanagement'' scenarios that are reasonable for almost all wastewaters or non-wastewaters, and looked hard at available data to determine if any of these are unlikely for the specific wastes being considered, or if other scenarios are likely, given available information about current waste management practices. (See the Carbamates Listing Determination (60 FR 7824, (February 9, 1995)) and the Dyes and Pigments Proposed Listing Determination (59 FR 66072, (December 22, 1994)). Further extending this logic, EPA believes that when a mismanagement scenario is not likely, or has been adequately addressed by other programs, the Agency need not consider the risk from that scenario in deciding whether to classify the waste as hazardous.

EPA believes that the definition of ''hazardous waste'' in RCRA section 1004(5) permits this approach to hazardous waste classification. Section 1004(5)(B) defines as ''hazardous'' any waste that may present a substantial present or potential hazard to human health or the environment ''when improperly * * * managed.'' 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 gives it flexibility in order to consider the need to regulate as hazardous those wastes that are not managed in an unsafe manner (section 3001 requires that EPA decide, in determining whether to list or otherwise identify a waste as hazardous waste, whether a waste ''should'' be subject to the requirements of Subtitle C.) EPA's existing regulatory standards for listing hazardous wastes reflect that flexibility by allowing specific 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, based on that mismanagement scenario.

The Agency believes, therefore, that it may be appropriate for EPA and the States to consider site-specific management controls when making decisions that media and remediation wastes, managed pursuant to a RMP or RAP under the various alternatives to today's proposed rule, are exempt from Subtitle C. EPA believes that this approach may be especially appropriate in the Part 269 context, because of the significant level of oversight generally given to cleanup actions. State or EPA oversight of cleanup activities, and the requirements set out in the RMP for management controls that are tailored to site-specific circumstances, could ensure that the site-specific management controls that the Director used as a basis for the ''conditional exclusion'' decision would continue to be implemented. EPA or States could specify that media exempted under ''conditional exclusions'' would only be considered nonhazardous so long as they were managed in the manner specified by the Director in the RAP or

RMP. Deviations (any, or specific ones) would result in a reversion to Subtitle C regulation.

Using this legal theory could have several advantages in the context of an HWIR-media rule. For one, allowing all contaminated media or remediation wastes to exit from Subtitle C could avoid many of the complexities that come with regulation within the hazardous waste regulatory system. Overseeing agencies would have much more flexibility to prescribe inclusive, site-wide solutions for contaminated media, rather than a limited series of separate approaches. In particular, more types of cleanup wastes, such as old sludges, could be covered under the HWIR-media system. This would provide significantly greater relief, because many corrective actions address old wastes as well as contaminated media.

Under the proposed rule, it would be entirely possible that cleanup wastes at the same site could be subject to as many as three different sets of regulatory requirements (for example, ''base'' Subtitle C regulations for non-media, modified Subtitle C regulations for media above the Bright Line, and site-specific requirements for media below the Bright Line). Using a conditional exclusion theory without dividing remediation wastes and media, and without dividing media above and below the bright line, could allow all cleanup wastes at a site to be covered under a single regulatory regime that would be more straightforward to implement, and easier to comply with and understand.

A specific alternative, introduced earlier in this proposal, called the Unitary Approach, would take a different approach on a number of key elements from the proposed approach. The following sections present detailed discussions of (1) the Unitary Approach, (2) a hybrid conditional exclusion approach which would combine elements of both the Unitary Approach and the proposed approach and, (3) some of the key elements of these several alternatives that deserve careful consideration.

A. The Unitary Approach

1. Overview of Unitary Approach

Under the Unitary Approach suggested by Industry (see letter from James R. Roewer, USWAG Program Manager, Utilities Solid Waste Activities Group, to Michael Shapiro, Director, Office of Solid Waste, EPA (September 15, 1995) in the docket to today's proposal) and discussed previously in section IV of this preamble, management of remediation wastes would proceed according to requirements set forth in an enforceable remedial action plan (RAP) approved by EPA or an authorized State. The RAP could be part of another document, for example, a CERCLA ROD, corrective action RFI workplan, etc. The non-RAP portions of the document might deal with other aspects of the investigation and cleanup not addressed in this proposed rule, such as the cleanup goals to be achieved, the extent of materials to be excavated during the cleanup, or the scope of the pre-cleanup investigation. This would be intended to avoid duplication and overlap with existing cleanup program requirements, while assuring that the RAP adequately described how remediation wastes will be managed protectively. In that manner, the RAP would be similar to the RMP in today's proposed rule.

More than one RAP might be used during the course of a remediation. For example, one document might govern management of wastes from the investigation or pilot study phase, while another might be employed for the remediation phase. A RAP might also be prepared and submitted for approval to allow subsequent management as remediation wastes, of materials that were originally produced as ''hazardous wastes'' during remediation and that had previously been staged as such, for example, drill cuttings or produced ground water.

Remediation wastes that would otherwise be hazardous wastes would not be subject to regulation as hazardous wastes when managed in accordance with an approved RAP. All hazardous remediation wastes managed during the cleanup, including during the investigation phases, would be eligible for management under a RAP. This is consistent with today's proposed approach for RMPs.

Management standards for the remediation wastes would be set forth in the approved RAP. The management standards would be tailored to be protective of human health and the environment, as determined by the overseeing Agency. EPA or the authorized State could employ such standards as it deemed appropriate for the specific remediation wastes involved, the location where the remediation wastes would be managed, and the site-specific risk posed by the contemplated management approach. For example, the substantive standards of the RCRA containment building regulations might be suitable in a given situation, or local ground water considerations might make it advisable for particular treatment tanks to have secondary containment. In setting the standards for a given RAP, the overseeing agency could turn to existing State or federal standards or remediation waste management practice or experience appropriate for the wastes as managed during the remedial activities contemplated by the RAP.

The RAP would have to describe how the wastes to be managed under it would be aggregated and stored, both on-site, and if applicable, off-site. The nature and effectiveness of any treatment methodologies to be used would need to be described as well. The specific method and location for disposal of any wastes or treatment residuals that would otherwise be required to be managed as hazardous waste would also be addressed. Of course, the option of simply managing a particular remediation waste as a hazardous waste would remain available and, in such an instance, that aspect of remediation waste management would not be addressed in the RAP subject to review and approval pursuant to this Part.

In the Unitary Approach proposed by industry, RCRA treatment requirements and the land disposal restrictions would not apply to remediation wastes, and there would be no Bright Line concept ensuring that higher-concern wastes were managed under Subtitle C-like standards. EPA and overseeing States would have the authority to prescribe in RAPs whatever management and treatment standards they deemed appropriate; the only specific regulatory standard would be that remedies be protective of human health and the environment. EPA recognizes that this approach would give program implementers much needed flexibility in overseeing cleanups. In its economic analysis supporting today's rulemaking (discussed later in this preamble), EPA assumed that the costs of waste treatment would be comparable under both the proposed and the Unitary approaches, because the overseeing agencies in both cases would generally require some level of treatment where a remedy involved management of highly contaminated waste. EPA acknowledges that the specific language of the Unitary Approach, as proposed by industry, does not provide guidance on when treatment might be needed. EPA solicits comments on whether the Unitary Approach (if adopted) should include specific direction in this area, and what language might be appropriate. One approach would be to include a Bright Line with a presumption for treatment of wastes above the Bright Line. This approach, however, would raise the implementation difficulties discussed

elsewhere. Another approach would be to capture the same intent through more general and flexible regulatory language. For example, the rule might specify that the overseeing agency consider, and as appropriate require, waste treatment before land disposal, where the remediation waste might present a substantial risk, either because of high concentrations of hazardous constituents or because it could not be contained reliably over time. This language would not prescribe a specific approach in any given situation, but it would ensure that treatment was seriously considered where wastes presented significant risks and effective treatment was available.

2. Legal Authority for the Unitary Approach

As discussed above (introduction to section VI), EPA believes that RCRA provides the Agency with the discretion to determine that wastes should not be defined as ''hazardous'' when mismanagement of the waste is not likely.

If EPA were to finalize a rule similar to the one suggested in the Unitary Approach, which is based upon a ''conditional exclusion'' or ''conditional exemption'' theory, the Agency would base the finding that mismanagement of the covered wastes and media is unlikely on the Agency's belief that States that are authorized for the HWIR-media program will set appropriate management standards, and provide an appropriate level of oversight of remedial actions, so as to ensure that such wastes are managed protectively. Specifically, EPA's conclusion that mismanagement is not likely would be based primarily on the rule's provisions for prior State program approval, public notice and comment on all RAPs, and ''streamlined'' State program withdrawal where a State is found not to be operating its HWIR-media program in a protective manner.

The Agency requests comment on whether this conclusion would be appropriate.

3. LDRs Under the Unitary Approach

Earlier in today's proposal, EPA discussed the applicability of the land disposal restrictions (LDRs) to contaminated media and requested comments on alternatives to the approach to the LDRs taken today. Under the Unitary Approach, remediation wastes (including contaminated media) addressed in a RAP would, as a general matter, be excluded from all RCRA Subtitle C requirements, including LDRs. The proponents of the Unitary Approach have not put forth a legal rationale to explain why LDRs would not continue to apply to hazardous wastes that are determined not to be hazardous after their point of generation. As was discussed in section (V)(A)(4) of this preamble, following the logic of the court in *Chemical Waste Management* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992), elimination of a waste's ''hazard'' designation does not necessarily eliminate LDR obligations. Thus, for wastes that have entered the Subtitle C system, and for which LDRs have attached, a finding that such wastes are conditionally exempt from RCRA may not eliminate LDR obligations.

If EPA were to promulgate a program modeled after the Unitary Approach, the Agency would likely address the residual LDR issue by applying the ''new treatability group'' approach to LDRs [instead of the approach proposed today]. As discussed earlier, changes in treatability group can result when the properties of a waste that affect treatment performance change enough so that the waste is no longer considered similar to the wastes EPA evaluated when it established the applicable LDR treatment standards. Each change in treatability group is a new point of generation for purposes of determining whether a waste is hazardous under RCRA Subtitle C. Therefore, if contaminated media were, by definition, considered a new treatability group under the LDR program, and, as discussed in the Unitary Approach, media addressed in a RAP is, by definition, not considered hazardous waste, media addressed in a RAP would not be subject to the LDR treatment standards. This would typically remove contaminated media addressed in a RAP from the duty to comply with the LDR requirements.[32]

For remediation wastes other than media, as long as the wastes were not prohibited from land disposal when first placed (i.e., when first land disposed), the land disposal restrictions do not attach unless these wastes are still considered hazardous when they are removed from the land. Therefore, if, due to issuance of a RAP, such wastes were determined to be non-hazardous before they were removed from the land, the land disposal restrictions would not apply. This approach would remove most non-media remediation wastes addressed in a RAP from the duty to comply with LDR requirements.[33]

As discussed above, EPA has struggled with the application of LDR requirements in developing today's proposal. The Agency requests comments on alternative approaches to the LDR requirements which would support a program modeled after the Unitary Approach consistent with the requirements of RCRA section 3004(m). For example, since a program modeled after the Unitary Approach would not automatically release all remediation wastes from the duty to comply with the LDRs, should the Agency concurrently promulgate the other approaches to the LDRs proposed today?

4. The RAP Process Under the Unitary Approach

To initiate the RAP process, the owner or operator of a facility at which the remediation would be conducted, would submit the proposed RAP to the Director. Upon receipt of the RAP, the Director would give public notice via local newspapers of the availability of the RAP and the opening of a minimum thirty-day comment period. If significant written opposition that also requested a hearing on the RAP were received during the comment period, an informal hearing might be held at a location in the vicinity of the facility at which the remediation would be conducted. Fifteen days advance notice of the hearing would have to be given. Not later than thirty days after the close of the public comment period or the conclusion of any informal hearing, whichever were later, the Director would have to inform the applicant in writing of whether the RAP satisfied the appropriate criteria. In the case of a denial, the Director must include a written statement of the reasons for denial. The Director's decision would be final Agency action for purposes of judicial review.

Major modifications and terminations of RAPs would follow the same procedures. The Director could terminate the RAP for cause at any time. A ''for cause'' event could include noncompliance with RAP provisions, failure of a remediation waste treatment methodology to perform as expected, or some unexpected negative impact of a treatment technology, for example.

[32] The exception would be media that are still considered hazardous (e.g., because a RAP has not been issued) when removed from the land. In this case, the applicable LDRs would attach and the media would have to attain compliance with the standards of RCRA section 3004(m) even if it were later made subject to a RAP and therefore determined to no longer be hazardous.

[33] The exception would be non-media hazardous remediation wastes (e.g., sludges, hazardous debris) which were first land-disposed (placed) after the effective date of the applicable land disposal prohibition.

5. State Authorization for the Unitary Approach

The Unitary Approach presented a proposal for State Authorization which was based on self-certification by States. EPA is not soliciting comment on this aspect of the Unitary Approach as proposed by Industry, because the Agency believes that there are statutory limitations to authorizing States by self-certification. If the Agency were to finalize the Unitary Approach, EPA would likely authorize States according to the process described in section (V)(E) of this proposal. EPA would adjust the essential elements described in that section in order to reflect the essential elements of the Unitary Approach, as opposed to today's proposed approach.

6. Enforcement Authorities Under the Unitary Approach

As with the proposed approach, EPA would retain its remedial and enforcement authorities with respect to solid wastes and hazardous substances that are not hazardous wastes (e.g., section 7003 of RCRA and sections 104 and 106 of CERCLA). Furthermore, EPA would have authority to revoke a State's authorization for this program without revoking any other Subtitle C program authorization held by the State, in which case EPA would then oversee completion of any ongoing activities under RAPs previously approved by the State in question. In any instance where a remediation waste was not managed in accordance with the approved RAP an appropriate enforcement response could be initiated by the authorized State, or if the State was dilatory in that respect, by EPA. (As in the proposed approach, remediation wastes that were managed out of compliance with the RAP could lose their exemption from Subtitle C.)

7. State Jurisdiction Under the Unitary Approach

Once a State has obtained authorization for this program, it would have authority to issue and oversee the contents and implementation of RAPs. Of course, that authority would extend only to management of remediation wastes within the authorized State. A State's authority with regard to RAP approval, however, would not run to wastes that would be managed in full accord with otherwise applicable hazardous waste management requirements. In other words, in the same way as in the proposed approach, if the owner or operator elected to manage hazardous wastes produced during remediation in full accord with otherwise applicable hazardous waste management requirements, there would simply be no need to seek redundant approval for such activities by means of RAP submission.

Of course, a State's authority would not extend beyond its borders. Accordingly, if an entity managing remediation wastes wished to manage remediation wastes in a RAP in a State other than that in which the remediation would be conducted, it would be required to get approval from the other State for that portion of the RAP addressing management in that other State. If the entity managing the remediation wastes wished to manage them in accordance with the otherwise applicable hazardous waste management requirements of the other State, no RAP approval would be necessary from that State for those activities. (In this respect, the Unitary Approach is similar to today's proposed approach).

As described above, all remediation wastes (including contaminated media, debris and non-media wastes) would be eligible for management under a RAP. Remediation waste might be defined, consistent with § 260.10, as ''all solid and hazardous wastes, and all media (including groundwater, surface water, soils and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous characteristic, that are managed for the purpose of implementing cleanup. For a given facility or media remediation site, remediation wastes may originate only from within the facility or site boundary, but may include waste managed in implementing RCRA sections 3004(v) or 3008(h) for releases beyond the facility boundary.'' This Unitary Approach would not have a Bright Line. Nor would this approach use a contained-in theory, but rather a conditional exclusion theory for excluding remediation wastes from the definition of hazardous wastes under Subtitle C.

The Agency requests comments on the approach outlined above. In particular, the Agency requests comments on whether the Unitary Approach should be adopted as described, or whether some combination of the several approaches discussed in today's preamble would be more appropriate.

B. Hybrid Approach

The Unitary Approach (discussed above) as an alternative to today's proposed rule would use a conditional exclusion theory to exempt all remediation wastes from Subtitle C regulation (except, in some cases, LDRs).

A more limited use of a conditional exemption for the HWIR-media rule would be compatible with (i.e., would not preclude) most of today's proposed rule. There are, in fact, a variety of ways in which one might combine important features of today's proposed rule with the Unitary Approach. For example, the rule could retain a Bright Line provision to distinguish between higher-risk and lower-risk media and wastes. Under this kind of an alternative, wastes above Bright Line concentrations could remain subject to modified Subtitle C requirements, similar to the approach proposed today. Another option would be to have all above and below the Bright Line wastes and media exempt from Subtitle C, but subject to different alternative management requirements. Either way, the rule could prescribe alternative management standards that might be very similar to ''base'' Subtitle C standards, or to the modified LDR standards specified in the proposal for above the Bright Line media.

The Agency also notes that a conditional exclusion approach could be implemented either on a national or site-specific basis. Specifically, as is urged by industry supporting the Unitary Approach, the Agency could make a generic determination that any remediation wastes managed according to a RAP that is issued by an approved program (subject to appropriate public participation requirements) would not be considered a hazardous waste under the RCRA program. Alternatively, the rule could leave that decision up to the overseeing agency on a site-specific basis, thus requiring the regulator explicitly to make the determination that, because of the management conditions imposed, all or some part of the media and wastes at the site do not present a ''hazard'' and thus should not be considered ''hazardous'' wastes. The Agency requests comment on which approach would be appropriate for implementing an HWIR-media rule based on a conditional exclusion theory.

For purposes of illustration, one such approach could use a conditional exclusion to exempt all remediation wastes below a Bright Line from Subtitle C. (This approach is presented as the hybrid contingent management option in Table 1.) Under this approach, the rule would define a Bright Line, either as constituent concentrations, or qualitatively. Then, the rule could specify that if EPA or an authorized State determined that remediation wastes were below a Bright Line at a specific site, and site-specific management requirements were written into a RAP or RMP, then those remediation wastes would be exempt

from Subtitle C so long as they were managed in accordance with the provisions of the RAP/RMP. In this type of a HWIR-media program, LDRs would be required for remediation wastes where LDR attached. (See (V)(C)). Also, a RMP for remediation wastes that were above the Bright Line would have to be the equivalent of a RCRA permit, because those remediation wastes would be subject to Subtitle C.

This hybrid option could have several advantages over the approach proposed today. This option would not set requirements for contaminated media that are different than those for other remediation wastes, which could simplify remedy decisions at cleanup sites. Also this option would eliminate the uncertainty of whether remediation wastes below the Bright Line would be subject to Subtitle C. The proposed approach allows the overseeing Agency to determine whether contaminated media below the Bright Line should be exempted from Subtitle C or not. Under this alternative option, remediation wastes below the Bright Line would be exempt from Subtitle C as long as they were managed in accordance with the RAP or RMP. Also, RAPs for wastes below the Bright Line could be simpler because they would not have to meet all the procedural requirements for RCRA permits.

The Agency requests comments on this alternative approach, and on other alternatives that could be adopted to exempt remediation wastes, as appropriate, from Subtitle C regulation. In doing so, the Agency is particularly interested in comments on the key elements of an HWIR-media rule discussed in the following section.

C. Key Elements of an HWIR-media Rule

EPA believes that many of the key elements of the different options and alternatives presented in this proposal could be combined in different ways to construct an effective HWIR-media program. The following is a discussion of those key elements, and a table illustrating three different combinations of the key elements. This table is intended to facilitate comparison of options. EPA requests comments on the combinations of key elements as presented, or on other combinations.

TABLE 1

Key elements	Proposed option	Hybrid contingent management option	Unitary approach
Legal Theory	Contained-in	Conditional Exclusion for below the Bright Line.	Conditional Exclusion.
Scope	Media only	All remediation wastes	All remediation wastes.
Bright Line	Bright Line—10^{-3} and Hazard index of 10.	Bright Line (a) (for media) same as proposal, or (b) qualitative Bright Line*.	No Bright Line.
Hazardous vs. Non-hazardous.	All media above Bright Line are subject to Subtitle C; below is site-specific decision.	All remediation wastes above Bright Line are subject to Subtitle C; below (when managed according to RAP or RMP) are not hazardous.	All remediation wastes managed according to RAP or RMP are not hazardous.
LDRs	LDRs required for media where LDRs attaches**.	LDRs required for wastes where LDRs attaches**.	LDRs required for wastes where LDRs attaches***.
Permitting	RMP serves as RCRA permit for media that remain subject to Subtitle C.	RMP serves as RCRA permit for wastes that are above the Bright Line; for wastes below the Bright Line, RMP does not have to serve as RCRA permit.	No requirement that RAP/RMP serve as RCRA permit, since wastes are not subject to Subtitle C.

* See discussion of qualitative Bright Line below.
** See discussion of applicability of LDRs in section (V)(C).
*** See discussion of alternative option for LDR applicability in section (VI)(A)(3).

1. Scope of the Rule (Regarding Non-media Remediation Wastes)

The proposed rule would apply only to contaminated media. Therefore, as discussed in section (V)(A)(2) of this preamble, hazardous cleanup wastes that are not media (such as sludges or other wastes that have not been mixed with soils or ground water), would only be eligible under the proposal for the limited regulatory relief provided by the provisions allowing management in remediation piles and through remediation management plans. Otherwise, these remediation wastes would be subject to existing Subtitle C requirements.

EPA recognizes that at many sites, cleanups involve excavating and managing large volumes of these non-media remediation waste materials. Therefore, the HWIR-media proposal is only a partial solution to the overall problem of regulating cleanups under RCRA Subtitle C. The Agency recognizes that excluding non-media from the HWIR-media rule coverage would leave in place many of the Subtitle C problems that arise in the course of cleanup. This issue was the subject of much discussion during the HWIR FACA process. As discussed above, today's proposed approach for resolution of this issue is linked to the contained-in theory that is used for exempting wastes from Subtitle C jurisdiction. Since the contained-in theory only applies to media that ''contain'' or do not ''contain'' hazardous wastes, the theory cannot, by definition, be extended to non-media wastes. These wastes are regulated under Subtitle C not because they ''contain'' hazardous wastes, but because they are hazardous wastes.

A conditional exclusion approach, like the Unitary Approach discussed above, would not make a distinction between media and non-media remediation wastes. All remediation wastes would be eligible for relief.

Because ''pure'' remediation wastes (i.e., those that have not been mixed with environmental media) are often similar—if not identical to—the ''as generated'' wastes for which the land disposal restrictions and other Subtitle C requirements were originally created, it has been argued that existing LDR and other requirements are more appropriate for management of these wastes than the HWIR-media requirements. To address this concern for the more concentrated wastes, the Agency could retain the concept of the Bright Line, for example, but determine that all remediation wastes above the Bright Line would be subject to the current national Subtitle C LDR standards, and all remediation wastes below the Bright Line would be eligible for a ''conditional exclusion''

from Subtitle C requirements under a site-specific RAP or RMP. This alternative would be identical to today's proposed approach, except that it would include non-media remediation wastes, and rely on a conditional exclusion theory (see discussion below) to exclude wastes below the Bright Line from Subtitle C as opposed to the contained-in theory. The Agency requests comments on this and any other alternative approaches for the scope of today's proposed rule.

Commenters should also review section (V)(A)(2) of today's preamble and § 269.2 of today's proposed rule for a further discussion of the scope of the proposal, including a discussion of whether and how contaminated debris should be included in the rule.

2. The Bright Line

The Bright Line concept originated as a compromise between those on the FACA Committee who favored setting uniform national standards for most, if not all, contaminated media, and those who favored a large degree of site-specific flexibility in the rule. In essence, the Bright Line serves to provide certainty that higher-risk media (if they are land disposed) would be treated to established national standards, while overseeing agencies would have considerable discretion in prescribing management standards for lower-risk media. This is conceptually similar to the ''principal threat'' concept that has been used in the Superfund program for several years (''A Guide to Principal Threat and Low Level Threat Wastes'' EPA/Superfund Publication: 9380.3–06FS (November 1991) and 40 CFR 300.430(a)).

In any case, distinguishing between higher- and lower-risk remediation wastes, and ensuring that the higher-risk wastes are handled according to certain minimum standards, has a number of positive aspects that are consistent with established Agency policies. However, reaching consensus on exactly how to calculate Bright Line concentrations is a considerable challenge. The Bright Line concept has something of a ''philosophical lightning rod'' among the various stakeholders.

The Agency has proposed one method of calculating the Bright Line, but has analyzed three alternative methods for calculating the Bright Line in the ''Economic Assessment.'' The Agency used the Soil Screening Levels (SSLs) from Superfund as the basis for calculating the proposed Bright Line. The SSLs are set using a residential exposure scenario. The Agency has already received comments from stakeholders that the residential exposure setting is not an appropriate basis for calculating the Bright Line at many remediation sites. The Agency acknowledges that, by using certain exposure assumptions in determining the Bright Line, especially residential exposure assumptions, the actual risks posed by remediation wastes at the site could be, in some circumstances, significantly lower than the 10^{-3} implied by the Bright Line. However, as discussed in section (V)(A)(4) the Bright Line is not intended to be an indication of actual risk, but is intended to reflect relative risks. Nonetheless, it is possible that setting the Bright Line in this way could lead to confusion, for example, in communicating to the public the actual risks posed by the site, and other similar problems. The 10^{-3} level is used to determine which wastes would typically receive stringent oversight, including treatment according to national treatment standards, but it does not reflect actual risks at actual sites. An alternative approach would be to use industrial land use assumptions in setting Bright Line levels. At this time, however, EPA does not believe that there is enough consensus around a methodology for non-residential exposure scenarios (e.g., industrial exposure scenarios) that could be used as the basis for a national rulemaking. The Agency requests suggestions of widely accepted methodologies for determining non-residential exposure scenarios (e.g., industrial exposure scenarios). The Agency also requests comments on whether the Bright Line should be based on different exposure scenarios (e.g., industrial). If so, how should the appropriate scenarios for a site be determined? How should the methodology for assessing alternative exposure scenarios be developed or used? Finally, the Agency has received comments from stakeholders that 10^{-3} may be too high of a risk for the Bright Line. The Agency requests comments on using alternative risk levels (such as 10^{-4}) to set the Bright Line.

The Agency also requests comment on the alternative of setting a qualitative Bright Line. The rule could describe qualitatively what should constitute ''above the Bright Line'' wastes and ''below the Bright Line wastes.'' The overseeing agency approving the RMP or RAP could determine for each specific site whether wastes were above or below the Bright Line, and specify that in the RMP or RAP. For example, the rule could define ''above the Bright Line wastes'' as wastes that have unusually high concentrations compared to the rest of the remediation waste at the site, or wastes that are highly mobile, or highly toxic. If the overseeing agency evaluated those criteria and determined that remediation wastes at that site met those criteria, then those wastes would be required to be managed as ''above the Bright Line wastes.'' The Agency requests comments on the merits of promulgating a qualitative Bright Line.

The combination of the Bright Line with the contained-in principle was of particular concern to the States. Although the Bright Line (as originally designed by the HWIR FACA Committee) was supposed to be a ''bright,'' clear distinction between media regulated under national standards and media subject to site-specific requirements, the Agency (at the request of the States), decided to propose the Bright Line not as an automatic contained-in concentration, but as an upper limit (or ''ceiling'') for contained-in determinations.

The Agency requests comments on whether the Bright Line concept should be retained, or whether all contaminated media (or all remediation wastes) should be subject to the same set of standards.

3. RAPs, RMPs, and RCRA Permits

The final key element of an HWIR-media program is whether the RAP or RMP must serve as a RCRA permit. Substantively, RAPs (discussed under the Unitary Approach) and RMPs (discussed under the proposed approach) serve the same purpose, but they differ in certain procedural respects. Under the proposed approach, some contaminated media and remediation wastes managed under RMPs would remain subject to Subtitle C. In those cases, RMPs must serve as RCRA permits for those wastes and media. Because all remediation wastes managed under RAPs under the Unitary Approach would be exempt from Subtitle C, RAPs need not serve as RCRA permits. Therefore, RMPs are proposed as meeting the minimum statutory requirements for public participation for RCRA permits, while RAPs are discussed as requiring even more simplified public participation requirements. Although neither the proposed approach nor the Unitary Approach propose to require it, it is EPA's expectation that in cases of extensive cleanups or significant on-site treatment, public participation procedures under either option would be more extensive than the statutory minimum. At the same time, the RAP approach would allow simplified procedures for routine responses (for example, removals) involving low concentration wastes.

4. Request for Comments

EPA requests comments on all of these key elements of an HWIR-media rule. EPA also requests comments on different combinations of these elements, including, but not limited to, the combinations discussed in this proposal as the proposed approach, the Unitary approach and the hybrid option.

VII. Effective Date of Final HWIR-Media Rule

Regulations promulgated pursuant to RCRA Subtitle C generally become effective six months after promulgation. RCRA section 3010 provides, however, for an earlier, or immediate, effective date in three circumstances: (1) Where the industry regulated by the rule at issue does not need six months to come into compliance; (2) the regulation is in response to an emergency situation; or (3) for other good cause.

Most of the rule proposed today would become effective within six months after promulgation. EPA is proposing, however, to make the CAMU rule withdrawal and ''grandfathering'' provisions, discussed in section (V)(F) above, effective upon publication. The basis for this decision is that the Agency does not believe that the regulated community requires six months to come into compliance with the CAMU withdrawal. Since all CAMUs approved at the time of publication of the final rule are ''grandfathered,'' withdrawal of the rule would not require any action on the part of those with approved CAMUs.

The Agency requests comments on whether it would be appropriate to make the CAMU withdrawal immediately effective.

VIII. Regulatory Requirements

A. Assessment of Potential Costs and Benefits

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant.'' Significant regulatory actions must be assessed in detail and are subject to full OMB review 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, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(c) Materially alter the budgetary impact of entitlements, 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 Executive Order.

The Agency has determined that today's proposed rule is a ''significant regulatory action'' under part (a) and possibly part (d) above. These parts are discussed fully in Executive Order 12866. This proposed rulemaking action is subject to full OMB review under the requirements of the Executive Order. The Agency has prepared an ''Economic Assessment of the Proposed Hazardous Waste Identification Rule for Contaminated Media,'' in support of today's action. A summary of this assessment is presented under section 4 below.

2. Background

As discussed in section (V)(A)(4)(a) of this preamble, the Agency has determined that media which ''contain'' hazardous waste must be managed as hazardous waste until they no longer contain such waste. Under this approach, EPA Regions and authorized States determine, on a case-by-case basis, what media ''contain'' hazardous waste, and therefore must be managed as hazardous waste.

RCRA Subtitle C regulatory requirements may be applied to contaminated media generated during several different types of site cleanups, including CERCLA remedial actions, State Superfund actions, RCRA corrective actions, RCRA closures, and voluntary cleanups. If contaminated media containing hazardous wastes are excavated in the process of site cleanup, they are required to be managed according to RCRA Subtitle C standards. These stringent requirements for excavated media, which often contain low levels of hazardous waste, have resulted in site cleanup decisions that effectively leave in place large volumes of contaminated media. As discussed in section (II)(A), EPA and the States have recognized that there are fundamental differences in the incentives and objectives for prevention-orientated versus cleanup-orientated waste management programs. Today's proposal seeks to alleviate many of the disincentives currently associated with the application of traditional RCRA Subtitle C requirements to cleanup programs.

3. Need for Regulation

Traditional RCRA Subtitle C management requirements for all excavated media containing any level of hazardous waste have resulted in less than optimal resource allocation. From a social perspective, too many resources are required to be devoted to the management of very low-risk media. This misallocation restricts availability of limited resources for use in other investments, including effective management of high-risk media and wastes. In addition, this disconnect between risk and management requirements creates disincentives for cleanup, impedes ongoing cleanup processes, and restricts the protective cleanup options available for consideration by the stakeholders. These unanticipated market distortions resulting from traditional RCRA Subtitle C management requirements for all excavated media containing any level of hazardous waste has convinced the Agency that reform is necessary. Through many discussions with stakeholders, particularly State and Federal cleanup programs, the Agency has determined that such reforms should provide meaningful regulatory structure and guidance designed to ensure safe management while, at the same time, providing site-specific flexibility that will help facilitate accelerated cleanups around the country. Particularly, as this proposal was designed specifically for the cleanup scenario, EPA believes that it will be better suited to the situations encountered at typical cleanup sites than some of the current regulations which are more appropriate for as-generated wastes. Specifically, EPA believes that reforms presented in today's proposal will facilitate more timely and less costly cleanups while maintaining protection of human health and the environment.

4. Assessment of Potential Costs and Benefits

The Agency has prepared an ''Economic Assessment'' to accompany today's proposed rulemaking. This ''Economic Assessment'' has been submitted to the Office of Management and Budget in accordance with Executive Order 12866.

a. Description of the HWIR-media proposal. HWIR-media will address an important limitation of the current RCRA Subtitle C program. The Subtitle C regulatory framework was designed primarily to ensure the safe cradle-to-grave management of currently generated hazardous wastes. Furthermore, the Subtitle C program

seeks to prevent releases, minimize generation, and maximize the legitimate reuse and recycling of hazardous waste. Subtitle C regulations contain detailed procedural and substantive management requirements that, when applied to the cleanup of contaminated media, often create incentives to leave this material in place or to select remedies that otherwise minimize the applicability of RCRA regulations. In addition, the level of regulation is not always commensurate with the risks posed by contaminated media. For example, media having very low levels of contamination are often regulated as hazardous waste under RCRA Subtitle C as a result of the contained-in policy.

The proposed rule would revise existing RCRA Subtitle C regulations by creating a new decision process for identifying and managing contaminated media. Under this framework, a set of hazardous constituent concentration levels would constitute a ''Bright Line'' for separating higher and lower levels of contaminated media. One Bright Line is proposed for soil and a second Bright Line for ground water and surface water. The proposed rule does not include a Bright Line for sediments; instead, site-specific decisions alone would determine whether sediment contains hazardous waste. Media that contain levels of contamination above the Bright Line would be managed as ''hazardous contaminated media'' under revised Subtitle C standards. Contaminated media with all constituent concentrations below the Bright Line would be eligible for a determination by the EPA, or authorized State agency overseeing the cleanup, that the media do not contain hazardous waste.

Today's proposal would also replace and withdraw the requirements for Corrective Action Management Units (CAMUs), simplify the state authorization procedures for RCRA program revisions, and streamline the permitting requirements for management of all types of remediation waste. Furthermore, the proposal would exempt from RCRA Subtitle C, dredged material permitted under the Clean Water Act or the Marine Protection, Research and Sanctuaries Act (MPRSA).

b. HWIR-media options analyzed. Executive Order 12866 requires and assessment of reasonably feasible alternatives to the proposed regulatory option. The Agency analyzed several options for this ''Economic Assessment.'' These options vary in two dimensions:

(i) *types of remediation waste* eligible for exclusion from Subtitle C.[34] The options include either:

—Contaminated media only (soils, non-navigational sediments, ground water, surface water), or

—All remediation waste (the above contaminated media plus old waste and debris); and

(ii) *partial or complete exclusion* of such wastes from Subtitle C. The options include potential exclusion from Subtitle C regulation of either:

—Media with all constituent concentrations below a proposed Bright Line, or

—All media, regardless of the extent of contamination.

The primary options analyzed are identified in Exhibit A below.

EXHIBIT A.—PRIMARY OPTIONS ANALYZED

Remediation wastes eligible for exclusion	Levels of contamination potentially excluded from subtitle C regulation	
	Lower risk (bright line)*	Lower and higher risk (No bright line)
Contaminated Media Only	Proposed Bright Line Option (Proposed Rule).	Conditional Exemption Option.
All Remediation Waste	Expanded Bright Line Option	Expanded Conditional Exemption Option** (Unitary Approach).

* Three other Bright Line options were examined applying alternative Bright Line concentrations. These findings are present in the Appendix to the full Economic Assessment, located in the RCRA Docket materials for this Action.

** This option is similar to the ''Unitary Approach'' proposed by industry.

NOTE: The Proposed Option contains no Bright Line for sediments. Only site-specific determination is proposed for the cleanup of contaminated sediments.

The Bright Line for contaminated soil under the proposed and expanded Bright Line options is defined for approximately one hundred hazardous constituents for which EPA has calculated Soil Screening Levels (SSLs). These SSLs are based on potential human health risk and were developed using risk equations and exposure assumptions specified in EPA's ''Risk Assessment Guidance for Superfund (RAGS).'' A lifetime cancer risk of 10^{-6} for carcinogens and a hazard quotient of one for non-carcinogens was applied to determine the Soil Screening Levels (SSLs). The HWIR-media soil Bright Line levels were derived from the inhalation and ingestion pathways of the SSLs, and correspond to an excess lifetime cancer risk of 10^{-3} for carcinogens and a hazard quotient of 10.

The levels from the inhalation and ingestion pathways from the Superfund SSLs are multiplied by 10 if the constituent is a non-carcinogen, and by 1,000 if the constituent is a carcinogen to achieve the target risk levels (referred to as the ''risk adjustment''). The Bright Line concentration is the lower of the risk-adjusted inhalation or soil ingestion-based levels. All Bright Line levels are capped at 10,000 ppm and the lead Bright Line is set at 4,000 ppm. The Conditional Exemption Options (base and expanded) do not rely on Bright Line constituent contamination levels. All contaminated media or all remediation waste would be exempt from RCRA Subtitle C under these options. Rather than using the Bright Line to determine management regimes, site-specific Remediation Management Plans would specify the management standards.

The Agency examined three alternative Bright Lines for the ''Economic Assessment.'' The findings are presented in Appendix C to the full

[34] Although, throughout this analysis, the Agency characterizes media determined to no longer contain, or wastes no longer considered hazardous, to be excluded or otherwise not subject to RCRA Subtitle C, as discussed in section (V)(C) of this Preamble, those wastes may nevertheless continue to be subject to LDRs.

''Economic Assessment,'' which is located in the docket for this action. The Bright Line for Alternative One (1) matches the proposed Bright Line but includes ground water leachate as an additional exposure pathway. The Alternative Two (2) Bright Line is based upon a compilation of the most stringent levels combining numbers from the Multipathway Analysis, constituent-specific ground water levels, and Exemption Quantitation Criteria (EQCs) for constituents without adequate analytical methods, or for which exit levels are below detection. The Alternative Three (3) Bright Line multiplies Soil Screening Levels for both carcinogens and non-carcinogens by 1,000, corresponding to a 10^{-3} cancer risk and a hazard quotient of 1,000, respectively. Appendix A of the full ''Economic Assessment'' provides the Bright Line levels for each constituent for the proposed Bright Line and the three alternative Bright Lines. Appendix C of the ''Economic Assessment'' discusses the findings for Alternatives 1, 2, and 3.

c. Data sources and methodology. The ''Economic Assessment'' of this proposed action analyzes the impact of HWIR-media options on the following types of remediation wastes: soils, sediments, ground water, old waste, and debris. Soils, sediments, and ground water are analyzed under the contaminated media only options (see Exhibit A), while old waste and debris are included under the all remediation waste options. Sludges at remediation sites frequently are found to be mixed with soil and sediment. These sludges are generally inseparable and occasionally indistinguishable from their host media. Such mixtures are included in the soil volumes analyzed under all options. Sludges were also found to be occasionally classified as old waste. Sludges identified in this manner are included in the old waste volumes examined under the all remediation waste options. The vast majority of media-like sludges, however, are believed to be generated from operating Subtitle C and Subtitle D surface impoundments and managed as hazardous waste. A sensitivity analysis presented in the Economic Assessment examines potential cost savings of applying the proposed Bright Line to sludges from these facilities. Data and analytical limitations have prevented an analysis of surface water impacts under the HWIR-media options.

The ''Economic Assessment'' projects a full range of potential cost savings from HWIR-media options; it does not attempt to estimate the actual cost savings. EPA used this approach because of the substantial uncertainties affecting the implementation of HWIR-media, including (1) the extent of State adoption of the rule; (2) the impact of the existing corrective action management unit (CAMU) rule, which has been disrupted by litigation; and (3) the extent of voluntary use of the HWIR-media flexibility by remediation decision-makers. To simplify the analysis, the Economic Assessment first estimates high-end potential cost savings by assuming that (1) all States quickly adopt HWIR-media; (2) the CAMU rule is ineffective; and (3) less expensive management methods are chosen when available under HWIR-media. Sensitivity analyses are then developed that address the impacts of these assumptions, resulting in a broad range of potential economic impacts. The Agency recognizes that HWIR-media may stimulate a certain degree of accelerated cleanup activity and corresponding cost impacts immediately following promulgation but has not developed a sensitivity analysis for this potential scenario.

For soil and sediment, EPA's analysis of potential cost savings of HWIR-media was conducted in six steps: (1) Develop an HWIR-media database of a sample of CERCLA remedial action and RCRA corrective action contaminated soil and sediment sites, detailing the amount of contaminated soil and sediment at each site and the maximum concentration of each hazardous constituent in each volume; (2) develop a basis for predicting the management technologies and costs for each site in the database under both the baseline and the HWIR-media options; (3) project the methods and costs of managing contaminated soil and sediment under the baseline of current Subtitle C requirements for the sample of sites in the HWIR-media database; (4) project the methods and costs of managing soil and sediment under the HWIR-media options for the sites in the database; (5) estimate the annual volume of soil and sediment to be remediated at all CERCLA remedial action, RCRA corrective action, RCRA closure, State superfund, and voluntary cleanup sites; and (6) estimate potential high-end aggregate cost savings by multiplying the changes in weighted average management costs under Steps 3 and 4 by the annual volumes from Step 5.

The Agency compiled a soil and sediment database using available data reported in CERCLA Records of Decision (RODs) signed in Federal fiscal years 1989 through 1993, the Corrective Action Regulatory Impact Analysis, and supporting research. Management methods were assigned to particular volumes of contaminated soil and sediment in the HWIR-media database based on the type of hazardous constituents in the contaminated media, the concentration of these hazardous constituents, and the volume to be remediated. The baseline and HWIR-media contaminated soil and sediment volumes reflect the amount of contaminated media planned to be managed at cleanup sites under current regulations. This analysis assumes a baseline site characterization cost that remains unchanged under HWIR-media. Beyond this, the HWIR-media analysis assumes that the unit or general area of contamination initially identified as containing constituents above the Bright Line will incur the cost of additional sampling and analysis costs. This is necessary to refine estimates of ''hot spot'' volumes and to distinguish between volumes above and below the Bright Line at specific sites. These incremental sampling and analysis costs are estimated at two dollars per ton for all soils and sediments. Volumes below the Bright Line will not incur these new costs. The Agency has not estimated the difference in implementation costs between the Bright Line and Expanded Bright Line options. The Expanded Bright Line option may result in lower incremental implementation costs because it avoids the need to separately characterize and manage contaminated media and other remedial wastes that are mixed together. Additional sampling and analysis costs are not incurred for volume partitioning under the no Bright Line option.

The media volume and cost estimates developed in Steps 1 through 4 above apply to a sample of RCRA and CERCLA facilities included in the HWIR-media database. The HWIR-media proposal, as written, will affect additional soil and sediment volumes from other actions, including RCRA closures, State Superfund sites, and voluntary cleanups. The baseline rate of contaminated soil and sediment generation for all potentially affected actions is estimated at 8.1 million tons annually for the period from 1996 through 2000. The results of the HWIR-media database analysis for the sample of sites were used to determine the fraction of annual contaminated soil and sediment volumes above and below the Bright Line and corresponding net cost impacts.

The methodology used to estimate ground water volumes, costs, and cost savings differs from the methodology for contaminated soil and sediment because of the lack of site-specific data on volumes of contaminated ground water. The ground water analysis used data on

the hazardous constituents present at actual CERCLA ground water cleanup sites (contained in the HWIR-media database) combined with randomly generated ground water volume estimates that reflect the national distribution of contaminated ground water plume volumes. Cleanup cost data were based on an analysis using a modified version of EPA's Cost of Remedial Action (CORA) Model. For estimating potential ground water cleanup cost savings under HWIR-media, EPA developed a methodology consisting of two major components: (1) A Monte Carlo simulation that generates hypothetical sites and estimates cleanup volumes associated with different target contaminant concentrations; and (2) a costing component based on EPA's CORA Model.

For the analyses conducted under the ''expanded'' options, old waste is defined as waste generated prior to the enactment of RCRA. The nationwide baseline volume generation of old waste under both RCRA and CERCLA is estimated at 1.8 million tons annually. This volume was estimated based on a comparison of the results of RCRA Corrective Action RIA analysis, HWIR-database results for RCRA soil, and database results for old waste at RCRA sites. Experts indicate that management methods for old wastes are typically similar to those for contaminated soil. Cost savings from HWIR-media, therefore, are estimated by applying the approach used for contaminated soils. Only the expanded options, which incorporate all remediation wastes into the HWIR-media analysis, address old waste.

The expanded options, which incorporate all remediation waste, also address hazardous debris. EPA gathered information on the current and projected management of hazardous debris from past regulatory and cost impact analyses, supplemented by expert opinion and best professional judgment. Total baseline contaminated debris generation is estimated at 0.36 million tons annually. The cost and economic impact analysis prepared for the Phase I Land Disposal Restrictions (LDR) rule for hazardous debris provided information on the amount of debris generated from cleanup activities, technologies used to manage the debris, and the projected average cost of treating debris under the baseline. EPA contacted several industry experts to discuss potential management practices under HWIR-media. The Agency also used the Corrective Action RIA for costs of Subtitle C and on-site disposal units, while the Subtitle D cost was derived from published sources.

d. Findings. This section presents the key findings of the ''Economic Assessment.'' The volumes of remediation wastes affected and associated net cost savings for the proposed option are presented. Findings for the primary alternatives are also presented. In addition, this section briefly summarizes key sensitivity analyses, non-monetary effects (both positive and negative), and industry impacts.

i. Volume Impacts and Cost Savings Proposed and Expanded Bright Line Options. Exhibit B identifies the portion of remediation waste that is estimated to be above and below the Proposed Bright Line Option (Proposed Rule) and the Expanded Bright Line Option. Ground water is excluded from this summary because the volume of ground water treated under the baseline and under HWIR-media is a function of the treatment duration required to achieve target constituent concentrations. Therefore, the total volume of contaminated ground water cannot be simply divided into volumes above and below the HWIR-media Bright Line. The Agency, however, estimates that only about 5 percent of CERCLA ground water sites contaminated with HWIR-media constituents have constituent concentrations that are all below the Bright Line.

EXHIBIT B.—REMEDIATION WASTES ABOVE AND BELOW THE PROPOSED AND EXPANDED BRIGHT LINE OPTIONS

[Million tons per year]

Media type	Baseline	Above bright line		Below bright line	
		Volume	Percent	Volume	Percent
Soil—CERCLA, State, and Voluntary	3.08	1.23	40	1.85	60
Soil—RCRA	4.56	0.46	10	4.10	90
Sediment—CERCLA	0.14	0.04	25	0.10	75
Sediment—RCRA	0.32	0.03	10	0.29	90
Proposed Bright Line Option	8.10	1.76	22	6.34	78
Old Waste—CERCLA	0.65	0.24	37	0.41	63
Old Waste—RCRA	1.14	0.42	37	0.72	63
Debris	0.36				
Expanded Bright Line Option	10.25	2.42	24	7.47	76

NOTE: The above and below bright line estimates exclude debris. Representative constituent concentration data for debris were unavailable.

The total annual volume of soil and sediment subject to RCRA Subtitle C jurisdiction may decline by up to 78 percent under the proposed option. Subtitle C volume under the proposed option drops from the baseline of 8.10 million tons to 1.76 million tons annually. The addition of old waste and debris under the expanded Bright Line option increases the total annual Subtitle C baseline volume to 10.25 million tons annually, an increase of 27 percent. The total volume eligible for exclusion from Subtitle C increases 18 percent, going from 6.34 million tons to 7.47 million tons annually.

The potential reduction in the volume of remediation waste managed under Subtitle C is the major reason for the cost savings of the Proposed HWIR-media Rule. Management procedures for remediation wastes below the Bright Line are substantially less costly due to less stringent requirements. In addition, treatment requirements for volumes above the Bright Line are modified, resulting in additional cost savings. The ''Economic Assessment'' estimates that about 84 percent of the potential cost savings of the proposed rule are from volumes below the Bright Line; the remaining savings are from volumes above the Bright Line.

Exhibit C presents point estimates for high-end total cost savings potentially resulting from the HWIR-media Proposal. These estimates are presented by remediation waste type, for the Proposed and the Expanded Bright Line Options. The potential high-end aggregate nationwide cost savings under the Proposed Bright Line Option are

estimated at $1.2 billion, annually. This estimate is derived from an annual baseline management cost estimate of $2.4 billion, covering soil, sediment, and groundwater. Most of the savings under the proposed option, $1.1 billion, result from reduced RCRA and CERCLA soil management costs. The Expanded Bright Line Option has a baseline management cost estimate of $3.2 billion, annually. The management costs under this HWIR-media option are reduced to $1.6 billion, resulting in net cost savings of approximately $1.6 billion per year. All estimated cost savings are net of implementation costs for the affected volumes, as discussed under section (4)(c) above. Actual nationwide cost savings may be significantly less than high-end estimates presented here. As noted earlier, several factors may contribute to reduced savings, including: the extent of State adoption, the impact of existing CAMU rule, and the extent to which remediation decision-makers adopt the less expensive media management technologies available under HWIR-media.

EXHIBIT C.—ESTIMATED HIGH-END COST SAVINGS UNDER THE PROPOSED AND EXPANDED BRIGHT LINE OPTIONS

Media type	Annual total cost		Net annual cost savings
	Baseline	HWIR-media options	
	Million Dollars		
Soil—CERCLA, State, and Voluntary	1,152	522	630 (55%)
Soil—RCRA	670	251	419 (63%)
Sediment—CERCLA	47	19	28 (63%)
Sediment—RCRA	52	22	30 (57%)
Ground Water—CERCLA	223	169	54 (24%)
Ground Water—RCRA Corrective Action	281	213	68 (24%)
Proposed Bright Line Option	2,425	1,196	1,229 (51%)
Old Waste—CERCLA	165	85	80 (49%)
Old Waste—RCRA	290	149	141 (49%)
Debris	294	203	91 (31%)
Expanded Bright Line Option	3,174	1,633	[35] 1,541 (49%)

[35] Inclusion of sludges increases this total to $1,732 million annually.

Conditional Exemption and Expanded Conditional Exemption (no Bright Line) Options. Volume impacts and potential net cost savings under the Conditional Exemption Options are difficult to estimate because these options do not establish specific Bright Line levels for contaminant concentrations, or any minimum treatment standards. Instead, the management of contaminated media (Conditional Exemption) or contaminated media and other remediation wastes (Expanded Conditional Exemption) would be determined by individual States or oversight agencies based on site-specific cleanup plans. Because of the lack of cleanup management standards or detailed guidance, States or oversight authorities may continue to follow current standards and cleanup decisions may be delayed or continue to be delayed. Thus, the conditional exemption options, despite increased flexibility, may actually achieve fewer cost savings than the Proposed Bright Line Option in the near term.

Over time, however, States are likely to develop their own explicit standards and guidelines for cleanup decisions that may be roughly equivalent to the Bright Line scenario. Conversations with various State officials have indicated that contaminated media containing concentrations close to the proposed Bright Line levels would likely be managed as if it were above the Bright Line. Eventually, therefore, State standards may likely be set similar to the proposed Bright Line levels. This would result in similar cost savings for the Conditional Exemption Options, over the longer term. The Conditional Exemption Options do, however, allow more management flexibility than the Bright Line Options. The Agency is not able to predict how various factors will affect State selection of cleanup remedies under the Conditional Exemption Options. EPA, therefore, has no basis to believe that, over the long term, cost savings under the Conditional Exemption Options are likely to be significantly different compared to the Bright Line Options.

ii. Sensitivity analyses. The ''Economic Assessment'' contains several sensitivity analyses, including analyses of three major analytical assumptions used to develop the baseline:

—all States quickly adopt and implement the HWIR-media Proposal;
—corrective action management units (CAMUs) and temporary units (TUs) are not used at any cleanup sites; and
—cleanup waste containing only a hazardous characteristic, in addition to media contaminated with listed hazardous wastes, are affected by HWIR-media.

The Agency has also developed a table designed to illustrate the distinctions between the baseline and corresponding management costs and cost savings under alternative policy options and implementation scenarios. This table is presented under ''Other Sensitivity Analyses'' at the end of this section.

State adoption. The options analyses presented above assume all States adopt, receive EPA authorization, and implement HWIR-media upon promulgation of the Final Rule. This scenario may not be completely realistic. Some States may not develop HWIR-media programs. Furthermore, programs that are developed are not likely to become effective immediately after the final rule is promulgated. These State programs will likely receive EPA authorization over a few years. In addition, States that do not adopt HWIR-media may influence program development and cleanup decisions in other States because of such factors as industry pressures, local or regional environmental issues, or public concerns and perceptions.

California, Illinois, New Jersey, New York, and Pennsylvania are the major generators of contaminated media in the United States. These States, combined, generate roughly 35 percent of the total annual volume of contaminated media managed ex-situ in the nation. These

States may be more likely to develop HWIR-media programs than other States for several reasons. For example, generators located in these States may be large potential beneficiaries from the rule. In addition, these States are likely to have larger and better developed cleanup programs and resources, allowing for protective site-specific cleanup decisions, and oversight. If only these States adopt HWIR-media, total annual cost savings may be reduced by approximately 60 to 70 percent. This assumes the remediation waste types and contaminants in these States are representative of the national total.

Another method for estimating the potential impacts of State adoption is a phased-in approach. Previous Agency-State interaction experience under RCRA indicates roughly 33 percent of the impacts of HWIR-media may begin accruing within one year after promulgation, 67 percent after two years, and 100 percent after three years. Total cost savings under HWIR-media may correspond to such a phased-in scenario.

Corrective Action Management Units (CAMUs). On February 16, 1993, the Agency published final regulations for corrective action management units (CAMUs) and temporary units (TUs). Under this action, placement of remediation wastes in an approved CAMU would not trigger land disposal restriction (LDR) requirements or minimum technology requirements (MTRs). Critics of this action brought suit against the Agency, challenging both the legal and policy basis for the CAMU Rule. The Agency has agreed to reexamine the CAMU regulations in the context of HWIR-media. Because of the litigation, the resulting limited use of CAMUs and the likely CAMU phase-out, the HWIR-media analysis assumed that CAMUs do not, and have never existed. Some CAMUs, however, currently exist and are grandfathered into the HWIR-media proposal. The Agency has conducted a sensitivity analysis, assuming the final ''expanded'' CAMU is effective in the baseline, in an effort to analyze the potential maximum impact of the CAMU provision.

There are some differences in the types of benefits achieved by CAMU and HWIR-media rules. This analysis assumes that the two rules achieve similar benefits for contaminated soils and sediments. The Agency's analysis in support of the final expanded CAMU Rule (''Regulatory Impact Analysis of the Final Rulemaking on Corrective Action Management Units and Temporary Units,'' Office of Solid Waste, U.S. EPA, January 11, 1993) estimated that the rule would reduce the volume of contaminated soil and sediment subject to LDR standards by 57 percent for CERCLA volumes and 72 percent for RCRA volumes. Based on these percentages, the Agency estimates that potential soil and sediment cost savings HWIR-media would decline by approximately $640 million or 52 percent if the final ''expanded'' CAMU rule was fully effective.

Listed versus characteristic contaminated media. The proposed rule does not distinguish between media contaminated with listed hazardous wastes, and media that must be managed as hazardous waste because it exhibits a characteristic. In both cases, the concentration levels of individual hazardous constituents in the media determine how the media will be regulated under HWIR-media. Early HWIR-media discussions focused only on media contaminated with listed hazardous waste. A sensitivity analysis was conducted for CERCLA and RCRA contaminated soil volumes. This analysis indicates the potential net savings from the Proposed Bright Line Option may be reduced by up to 10 percent if characteristic only media volumes were removed from HWIR-media consideration.

Other sensitivity analyses. Previous sensitivity analyses independently examined potential impacts on cost savings associated with limited state adoption, fully effective expanded CAMU, and characteristic contaminated media. This discussion compares the effects of limited state adoption, CAMU impacts under alternative implementation scenarios, and extends the analysis to the expanded Bright Line and no Bright Line (Unitary Approach) option. The purpose of this discussion is to present a direct comparison of impacts potentially associated with alternative policy options and implementation scenarios relevant to CAMU and HWIR-media.

The HWIR-media analysis is difficult to compare to the CAMU cost savings analysis. There is wide variation in assumptions related to baseline treatments, affected facilities, remediation waste types and volumes, and the projected remediation time frame for each analysis. The relationship between CAMU and alternative HWIR-media options presented in this section should be considered for general comparative purposes only.

Limited implementation of HWIR-media, as defined in this analysis, assumes HWIR-media adoption by the five states listed above. Limited implementation of CAMUs implies that only grand fathered CAMUs will operate. Aggressive implementation assumes 100 percent state adoption of HWIR-media and the final ''expanded'' CAMU rule. Total annual baseline management costs for HWIR-media affected remediation wastes, assuming full LDR compliance, are estimated at $3.52 billion (Exhibit D). This estimate covers RCRA and CERCLA soils and sediments, groundwater, old waste, debris, and sludges. Aggressive implementation of the expanded CAMU rule, covering all remediated waste except groundwater, would reduce this estimate to $2.67 billion, resulting in annual cost savings of approximately $0.84 billion. These savings were estimated to range from $1.20 to $2.00 billion in the January 11, 1993 Regulatory Impact Analysis for CAMU. A significant reduction in the level of incineration applied in the baseline accounts for the majority of this difference. Furthermore, CAMU assumed accelerated clean-up (remediation) levels in the years immediately following rule promulgation. Data available to the Agency since completion of the CAMU analysis in 1993 have proven both of these factors to be significantly overestimated. Cost savings attributable to only the current in-place (grand fathered) CAMUs are estimated at $0.04 billion annually.

The HWIR-media proposal and options reflect annual aggregate cost savings above and beyond the revised estimate for expanded CAMU. Aggressive implementation of the HWIR-media proposal, without CAMU consideration, is estimated to result in high-end cost savings of $1.23 billion beyond the baseline for soils, sediments, and groundwater. These savings are reduced to approximately $0.43 billion under the limited implementation scenario. Annual cost savings with the inclusion of old waste, debris, and sludges under the Expanded Bright Line and Unitary options may range anywhere from $0.61 to $2.07 billion, depending upon the option and extent of state adoption.

The Agency also examined the potential aggregate cost savings assuming both promulgation of HWIR-media, and retaining the expanded CAMU rule. Annual cost savings assuming full state adoption increase by approximately $0.59 billion beyond the HWIR-media proposal without CAMU. These incremental savings are derived from the inclusion of additional facilities previously unaffected by CAMU, plus an expanded media scope covering soils, sediments, and groundwater. With limited state adoption of HWIR-media, savings

increase by about $0.04 billion annually, derived only from groundwater. While not presented in Exhibit D, full implementation of the HWIR-media Unitary Approach option was found to provide no incremental savings beyond the expanded CAMU rule. The extent of implementation of both CAMU and HWIR-media has a significant impact on incremental and aggregate cost savings. Aggressive implementation of the HWIR-media proposal, combined with the final ''expanded'' CAMU, results in aggregate annual cost savings of $1.44 billion, or approximately 17 percent beyond the HWIR-media only scenario. Aggregate savings, while significantly lower overall, increase from $0.43 to $0.88 billion when the HWIR-media limited implementation scenario is combined with the final ''expanded'' CAMU.

EXHIBIT D.—ESTIMATED REMEDIATION WASTE MANAGEMENT COSTS UNDER ALTERNATIVE POLICY OPTIONS AND IMPLEMENTATION SCENARIOS

Remediation waste baseline and policy option	Implementation Scenario			
	Aggressive Implementation		Limited Implementation	
	Remediation waste management costs	Cost savings	Remediation waste management costs	Cost savings
	Billion Dollars Per Year			
Baseline [36] management costs: (no CAMU, no HWIR-media, all remediation waste)	3.52	.....	3.52	.....
Policy option and impact from baseline: Corrective Action Management Units (CAMU)	2.67	[37] 0.84	3.48	0.04
HWIR-media bright-line Proposal: (no CAMU consideration)	2.29	1.23	3.09	0.43
Aggregate Cost Savings: HWIR-Media Bright-Line proposal with expanded CAMU	2.08	1.44	2.63	0.88
HWIR-media expanded bright-line option: (no CAMU consideration)	1.79	1.73	2.91	0.61
HWIR-media expanded no bright-line option (unitary approach): (no CAMU consideration)	1.45	2.07	2.79	0.73

[36] This baseline includes CERCLA cleanup volumes managed under the Area of Contamination (AOC) concept. Current AOC management of RCRA volumes is believed to be negligible and is not included in this baseline.

[37] Updated data leading to significant revisions in baseline treatment methods, costs, volumes affected, and remediation schedule have led the Agency to adjust this figure from earlier estimates.

iii. Nonmonetary positive and negative effects. Currently, cleanup activities generating contaminated media containing a listed hazardous waste or exhibiting a hazardous characteristic are subject to the LDRs and MTRs when they involve placement of waste upon the land. When LDRs are triggered, contaminated media are subject to stringent and often costly treatment standards. Cleanup decision-makers, therefore, often prefer remedies that leave contaminated media in place in an effort to avoid triggering the LDRs. When MTRs are triggered by the creation, expansion, or replacement of landfills and surface impoundments managing hazardous waste, contaminated media are subject to technical standards for liner, cover, and leachate collection systems. Thus, cleanup decision-makers have, in the past, avoided consolidating or otherwise moving contaminated media during cleanup to bypass the MTRs.

When the costs resulting from LDRs and MTR are incorporated into a cleanup decision many cleanups become economically infeasible. The Agency believes, however, that with the increased flexibility and corresponding cost savings under the HWIR-media Proposed Rule, facility and site managers will conduct more cleanups than are currently being performed. Several factors would provide incentives to perform cleanups if excessive LDR and MTR costs were not incurred. For example, cleaning up a site reduces future potential liability, increases the salability of the land, and may generate public good will. Exhibit E summarizes the anticipated changes in management methods under HWIR-media.

EXHIBIT E.—ANTICIPATED INCENTIVES CREATED BY HWIR-MEDIA

Baseline management plans	HWIR-media incentives for non-hazardous media	Reason for change or no change
No excavation or treatment (e.g., containment).	Manage in-situ or ex-situ	LDRs either would not apply or would be more flexible and therefore a less costly ex-situ method may be chosen. Could also encourage in-situ or on-site ex-situ management because HWIR-media lets a facility operate under a Remediation Management Plan instead of a more costly Part B permit for in-situ or ex-situ treatment.
Manage in-situ	Manage ex-situ	LDRs either would not apply or would be more flexible and therefore a less costly (non-LDR) ex-situ method may be chosen.
Manage ex-situ	None; would still choose ex-situ treatment.	Previously preferred ex-situ to in-situ or no treatment; ability to select a less costly ex-situ method under HWIR-media will not cause shift from ex-situ management. May, however, choose a less expensive ex-situ method.

Although HWIR-media will reduce the stringency of regulation for some media currently managed as hazardous waste, EPA does not expect any of the options to significantly increase risks to human health and the environment for two reasons. First, there is a built-in process to minimize these risks under the HWIR-media proposal, namely State or EPA oversight of cleanups through Remediation Management Plan review, approval, and oversight. Second, under all of the options considered, active management of contaminated media is likely to eliminate possible exposure pathways. Thus, the Agency believes that the potential for negative benefits, that is, potential increases in risk, is negligible. Thus, EPA's selection of a regulatory option is driven primarily by balancing option protectiveness, improved long-term effectiveness of cleanups, implementation issues, and overall cost savings.

iv. Industry impacts. The economic impacts of HWIR-media will be distributed across industries that generate contaminated media and other remediation waste, as well as the environmental services industry which helps manage such contamination. All regulatory options will result in cost savings for generating industries and revenue losses, to some extent, for the commercial environmental services industry.

Petroleum and coal products (SIC 29), chemicals and allied products (SIC 28), and fabricated metals products (SIC 34), are the major industries generating contaminated media that will be affected by HWIR-media. Firms in these industries will be the main beneficiaries of cost savings from changes in cleanup practices. Total potential cost savings by industry, however, are estimated to represent less than 0.1 percent of each industry's aggregate annual revenues. Firm level impacts within affected industries are likely to be more diverse, depending upon the nature and extent of individual facility/firm cleanup responsibilities. Potential remedial action cost savings for an affected ''typical firm'' in the chemicals or fabricated metals industry are estimated to represent less than 2.0 percent of annual revenues.

The initial HWIR-media cost savings associated with a particular cleanup or set of cleanups could range from a one-time event (for firms with a single unit), to a continuous stream over the next 15 to 20 years for firms with multiple units/sites. These cost savings may help stimulate productive efficiencies, both on a micro- and macroeconomic level, depending upon how the cost savings are managed. Investment of the savings in the form of increased capital reserves, new capital purchases, or increased research and development may have long-term positive economic impacts on affected firms, and the general economy. Furthermore, much of the cost of most cleanup activities often falls on insurance companies. A reduction in projected remedial action costs as a result of HWIR-media may stimulate competitive insurance companies to lower premiums in an effort to expand market share.

Unlike in the case of generators, the effect of any cost savings associated with this rule will be to reduce the revenue stream to firms in the commercial environmental services industry. These firms work for a variety of generators who schedule cleanups at different times in the future. HWIR-media will not, however, have a uniform impact on the entire industry. Instead, the impacts will vary across three distinct industry segments: (1) the solid waste management industry segment, which provides transportation and disposal services for non-hazardous waste and contaminated media, (2) the hazardous waste management industry segment, which provides transportation and disposal services for hazardous waste and contaminated media, and, (3) the cleanup services industry segment, which provides engineering and technical advice for management of hazardous wastes.

The demand for the services of the solid waste management industry segment will increase under HWIR-media as more remediation wastes are disposed of in Subtitle D landfills. In contrast, the hazardous waste management industry segment could face a reduction in their revenue streams as smaller volumes are likely to be managed at commercial Subtitle C facilities. In addition, volumes that continue to be managed at such facilities may require less extensive treatment. The cleanup services industry segment is likely to incur reductions in their revenue streams under HWIR-media because over 95 percent of hazardous wastes and media are managed on-site. This implies that a large portion of projected cost savings to generators may translate into reduced revenues for this industry.

These industry segments are not mutually exclusive. Many of the larger firms in the environmental services industry operate in more than one segment of the industry. In addition, the analysis does not consider the impact of HWIR-media in increasing the speed of cleanup and stimulating new cleanups, which will offset revenue losses.

A decrease in demand for the services of the environmental services industry under HWIR-media will lower prices in the short-run as firms compete for the lower demand. At a lower price, however, services may be offered at a loss. Consequently, environmental services firms may exit the industry, consolidate, or decrease in size, and the supply of services may decline, until a new long-run equilibrium is reached.

5. Regulatory Issues

Regulatory issues most pertinent to this proposed action include environmental justice and Federal unfunded mandates. Both of these issues are discussed below.

a. Environmental Justice. Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. To address this goal, EPA examined the impacts of HWIR-media on low-income populations and minority populations. EPA concluded that HWIR-media will advance environmental justice, as follows:

—By encouraging the use of innovative treatment techniques, HWIR-media will reduce the number of hazardous waste incinerators that need to be located throughout the nation. This, in turn, will reduce the likelihood of an incinerator being sited in a low-income or minority community, thereby avoiding the negative public perceptions associated with incinerators.

—HWIR-media will assist in expediting site cleanups across the nation, by reducing the need for time-consuming permitting of on-site cleanup activities, increasing the flexibility of decision-makers to respond to site-specific conditions, and lessening administrative and regulatory complications and delays. This may free Superfund and other remediation resources to address additional sites. By encouraging excavation of contaminated media, the HWIR-media proposal will expedite the restoration of sites and lead to their beneficial use, which may result in new jobs and increased economic activity in low-income or minority communities. This economic activity could take the form of increased employment of local community members at the

cleanup sites; the sale and redevelopment of sites for new economic activities; and new beneficial uses for remediated properties, such as parks, transportation facilities, and even hospitals.

—HWIR-media's public participation provisions will enable local residents and other members of the public to participate in the development and approval of Remediation Management Plans.

The Agency believes that the oversight restrictions required under the HWIR-media proposal will ensure that increased human health risks to local communities are highly unlikely.

b. Unfunded mandates. The Agency also evaluated the proposed HWIR-media rule for compliance with the Unfunded Mandates Reform Act of 1995. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate or to the private sector, of $100 million or more in one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because the UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. Rather, State and tribal organizations are under no obligation to participate in the Part 269 program. In addition, promulgation of the HWIR-media rule, because it is considered generally less stringent than current requirements, is not expected to result in mandated costs estimated at $100 million or more to any State, local, or tribal governments, in any one year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. Finally, EPA has determined that the proposed HWIR-media rule contains no regulatory requirements that might significantly or uniquely affect small governments. Specifically, the program is generally less stringent than the existing program and makes no distinctions between small governments and any potentially regulated party.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires Federal agencies to assess whether proposed regulations will have a significant economic impact on a substantial number of small entities. EPA's ''Guidelines for Implementing the Regulatory Flexibility Act'' (May 1992), have determined that a Regulatory Flexibility Analysis (RFA) is required for all rulemakings, unless no impact is expected on any small entity. These guidelines further require the Agency to develop and consider alternatives that mitigate the impact of the rule on small entities. Furthermore, the Agency reserves the flexibility to tailor the level of effort devoted to an RFA based on the severity of a rule's anticipated impacts on small entities.

The Agency has determined that today's proposed rule will not have a significant adverse economic impact on a substantial number of small entities. HWIR-media confers remediation waste management cost savings on the regulated community while imposing implementation costs in cases where firms voluntarily seek cost savings. Therefore, in cases where remediation wastes are managed in the same manner under any option as under the baseline, no additional costs will be incurred under HWIR-media. If a different management method is used, a generator may have to incur additional implementation costs to obtain management cost savings. An economically rational generator, however, will change the management method and incur these additional implementation costs only if it is confident of obtaining net benefits, such as savings on remediation waste management.

In summary, the rule will confer net benefits in situations where the generator changes the management method under HWIR-media or impose zero net costs in situations where the generator uses baseline management methods. Because HWIR-media is not expected to impose net costs on any small entities, the Agency has not considered options to mitigate the impacts of the proposed rule on such entities. A full discussion of HWIR-media in the context of small entities is presented in Chapter 6 of the ''Economic Assessment.''

C. 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. 1775.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W., Washington, D.C. 20460 or by calling (202) 260–2740. This Information Collection Request is titled ''Hazardous Waste Identification Rule for Contaminated Media'' (or ''HWIR-media'').

The Agency has estimated the burden associated with complying with the requirements of this proposed rule. Included in that burden are estimates for industry respondents for complying with the specific requirements for: reading the regulations; media treatment variances; review of treatment results; content of RMPs; treatability studies; approval of RMPs; and expiration, termination and revocation of RMPs. For State respondents, the burden was estimated for interstate movement of contaminated media; and procedures for authorization of State hazardous waste programs.

The Agency has determined that this collection of information is necessary to determine compliance with the requirements of this proposal. In addition, the Agency will use the data collected to determine if Federal treatment standards are appropriate and whether they should be revised in the future. Responses to the collection of

information will be required to obtain or retain a benefit. For industry respondents, that benefit would be the more flexible requirements for management of hazardous contaminated media proposed in this proposal, instead of having to comply with the current Subtitle C standards. For State respondents, adoption of this regulation is optional, and the benefit would be for receiving authorization for this regulation. Section 3007(b) of RCRA and 40 CFR Part 2, Subpart B, which define EPA'sgeneral policy on the public disclosure of information, contain provisions for confidentiality. EPA has tried to minimize the burden of this collection of information on respondents.

The universe of respondents is expected to be sites conducting cleanup under: RCRA corrective action and closure; State and Federal CERCLA (or CERCLA-like) removal and remedial actions; and State voluntary cleanup programs which involve approval of RMPs. EPA estimates that the industry sites most likely to be affected by these requirements will be associated with the following SIC codes: 28 (Chemical and Allied Products); 2911 (Petroleum Refining); 34 (Fabricated Metal Products); and 3568 (Power Transmission Equipment).

EPA estimates that the annual respondent burden hours will be: for industry 259,165; for States 3,058; for a total of 262,223. The annual costs will be: for industry $63,661,186; for States $88,387; for a total of $63,749,573. The average per response for industry respondents would be 121.2 hours, and the average per response for state respondents would be 174.3 hours. The frequency of response would be once. The number of industry respondents would be 2,139 per year, and State respondents would be 16 per year.

EPA estimates total capital and start-up annualized over expected useful life to be: for industry $0.00; for states $0.00; total operation and maintenance to be: for industry $8.00; for States $8.00; and purchases of services to be: for industry $61,497; for States $0.00.

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 for HWIR-media'' to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; 725 17th Street, N.W., Washington, D.C. 20503; marked ''Attention: Desk Officer for EPA.'' Include the ICR No. 1775.01 in any correspondence.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 29, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by May 29, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 260

Hazardous Waste.

40 CFR Part 261

Hazardous Waste.

40 CFR Part 264

Hazardous Waste.

40 CFR Part 269

Administrative practice and procedures, Hazardous Waste, reporting and record keeping requirements.

40 CFR Part 271

Administrative practice and procedure and Intergovernmental relations.

Authority: These regulations are proposed under the authority of sections 2002(a), 3001, 3004, 3005, 3006, and 3007 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, 6924, 6926, and 6927.

Dated: April 12, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 260, 261, 262, 264, 268, 270 and 271 are proposed to be amended, and Part 269 is proposed to be added as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subpart A—General

1. The authority citation for part 260 continue to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6937, 6938, 6939, and 6974.

1a. Section 260.1 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), (b)(3) and (b)(4) to read as follows:

§ 260.1 Purpose, scope, and applicability.

(a) This part provides definitions of terms, general standards, and overview information applicable to Parts 260 through 269 of this chapter.

(b) In this part:

(1) Section 260.2 sets forth the rules that EPA will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to EPA under Parts 260 through 269 of this chapter.

(2) Section 260.3 establishes rules of grammatical construction for Parts 260 through 269 of this chapter.

(3) Section 260.10 defines the terms which are used in Parts 260 through 269 of this chapter.

(4) Section 260.20 establishes procedures for petitioning EPA to amend, modify, or revoke any provision of parts 260 through 269 of this chapter and establishes procedures governing EPA's action on such petitions.

* * * * *

2. Section 260.2 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

(a) Any information provided to EPA under Parts 260 through 269 of this chapter will be made available to the public to the extent and in the manner authorized by the Freedom of

Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b), part 2 of this chapter, as applicable.

(b) Any person who submits information to EPA in accordance with parts 260 through 269 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. * * *

3. Section 260.3 is amended by revising the introductory text to read as follows:

§ 260.3 Use of number and gender.

As used in parts 260 through 269 of this chapter:

* * * * *

Subpart B—Definitions

4. Section 260.10 is amended by revising the first sentence, by removing the second sentence, and by adding paragraph (3) to the definition for ''facility'' and adding the definition for ''remediation pile'' to read as follows:

§ 260.10 Definitions.

When used in Parts 260 through 273 of this chapter, the following terms have the meanings given below:

* * * * *

Facility * * *

* * * * *

(3) Notwithstanding paragraphs (1) and (2) of this definition, a media remediation site, as defined in § 269.3, does not constitute a facility for the purposes of § 264.101.

* * * * *

Remediation Pile means a pile that is used only for the temporary treatment or storage of remediation wastes, including hazardous contaminated media (as defined in 40 CFR 269.3), during remedial operations.

* * * * *

Subpart C—Rulemaking Petitions

5. Section 260.20(a) is amended by revising the first sentence to read as follows:

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provisions in Parts 260 through 273 of this chapter.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

6. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6933. 6a. Section 261.1(a)(1) is revised to read as follows:

§ 261.1 Purpose and scope.

(a) * * *

(1) Subpart A defines the terms ''solid waste'' and ''hazardous waste,'' identifies those wastes which are excluded from regulation under Parts 262 through 270 of this chapter and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

* * * * *

7. Section 261.4 is amended by adding paragraphs (g) and (h) to read as follows:

§ 261.4 Exclusions.

* * * * *

(g) Non-hazardous contaminated media. Media that are managed as part of remedial activities and that the Director has determined do not contain hazardous wastes (according to 269.4), but would otherwise be hazardous contaminated media, are not hazardous wastes.

(h) Dredged material discharged in accordance with a permit issued under section 404 of the Federal Water Pollution Control Act [33 U.S.C. § 1344] or in accordance with a permit issued for the purpose of transporting material for ocean dumping under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1413] is not a hazardous waste. For purposes of this subsection, the following definitions apply:

(1) The term ''dredged material'' has the same meaning as defined in 40 CFR 232.2.

(2) The term ''dredged material discharged'' has the same meaning as discharge of ''dredged material'' as defined in 40 CFR 232.2.

(3) The terms ''ocean'' and ''dumping'' have the same meaning as defined in 40 CFR 220.2.

(4) The term ''permit'' means a permit issued by the U.S. Army Corps of Engineers (Corps) or approved State under section 404 of the Federal Water Pollution Control Act [33 U.S.C. § 1344]; and/or a permit issued or by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1413]; or in the case of a Corps civil-works project, the administrative equivalent of a permit, as provided for in Corps regulations (e.g., see 33 CFR 336.1(b), 33 CFR 336.2(d), and 33 CFR 337.6).

Subpart C—Characteristics of Hazardous Wastes

8. Section 261.20(b) is revised to read as follows:

§ 261.20 General.

* * * * *

(b) A hazardous waste which is identified by a characteristic in this subpart is assigned every EPA Hazardous Waste Number that is applicable as set forth in this subpart. This number must be used in complying with the notification requirements of section 3010 of the Act and all applicable record-keeping and reporting requirements under parts 262 through 265 and parts 268 through 270 of this chapter.

* * * * *

Subpart D—Lists of Hazardous Wastes

9. Section 261.30(c) is revised to read as follows:

§ 261.30 General.

* * * * *

(c) Each hazardous waste listed in this subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of section 3010 of the Act and certain record-keeping and reporting requirements under parts 262 through 265 and parts 268 through 270 of this chapter.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

10. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6925, 6937, and 6938.

10a. Section 262.11(d) is revised to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264 through 269 and part 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

11. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

11a. Section 264.552 is amended by redesignating paragraphs (a) through (h) as paragraphs (c) through (j); and by adding new paragraphs (a) and (b) to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) Corrective Action Management Units may not be approved under this subpart after (date of publication of final rule).

(b) A Corrective Action Management Unit that was approved according to the provisions of the subpart prior to (date of publication of final HWIR-media rule) remains subject to the requirements of this part.

* * * * *

12. Part 264 is amended by adding new § 264.554 to subpart S to read as follows:

§ 264.554 Remediation piles.

(a) For piles that are used only for the temporary treatment or storage of remediation waste (including hazardous contaminated media as defined in 40 CFR 269.3) during remedial operations that are conducted in accordance with an approved permit or order, the Director may prescribe on a case-by-case basis design and operating standards for such units that are protective of human health and the environment. In establishing case-by-case standards for remediation piles, the Director shall consider the decision factors for temporary units, as specified in § 264.553.

(b) Placement of remediation waste (including hazardous contaminated media) into a remediation pile designated in an approved permit or order shall not constitute placement in a land disposal unit for the purposes of section 3004(k) of RCRA.

(c) Any remediation pile to which site-specific requirements are applied in accordance with paragraph (a) of this section shall be:

(1) Located within the boundary of the facility or media remediation site (as defined in 40 CFR 269.3); and

(2) Used only for the temporary treatment or storage of remediation wastes (as defined in 40 CFR 260.10).

(d) The Director shall specify in the permit or order the design, operating, and closure requirements for any remediation pile, the length of time the remediation pile will be allowed to operate, and any requirements for control of cross-media contaminant transfer. Remediation piles shall not be permitted to operate beyond the time that remedial operations are completed.

PART 268—LAND DISPOSAL RESTRICTIONS

13. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

13a. Section 268.1(b) is revised to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(b) Except as specifically provided otherwise in this part, Part 261 of this chapter, or in cases where hazardous contaminated media are subject to treatment standards under Part 269 in this chapter, the requirements of this part apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

* * * * *

14. 40 CFR is amended by adding part 269 to read as follows:

PART 269—REQUIREMENTS FOR MANAGEMENT OF HAZARDOUS CONTAMINATED MEDIA

Subpart A—General Provisions

Sec.
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269.2 Purpose and applicability.
269.3 Definitions.
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Appendix A to Part 269—HWIR-Media Bright Line Numbers
Appendix A–1 to Part 269—Bright Line Numbers
Appendix A–2 to Part 269—Bright Line Numbers for Ground Water
Appendix B to Part 269—Submittal of Treatability Data

Authority: 42 U.S.C. 6912(a), 6921, 6924, 6925, and 6926.

Subpart A—General Provisions

§ 269.1 Scope.

(a) The provisions of this part apply only to contaminated media that would otherwise be subject to regulation as hazardous wastes under RCRA Subtitle C regulations. The only exception is Subpart D of this part, which applies to all remediation wastes, including contaminated media.

(b) The provisions of this part modify and replace only certain specific Subtitle C regulations as they apply to the management of hazardous contaminated media. Other Subtitle C regulations that are not specifically addressed under this part will continue to apply to the management of hazardous contaminated media.

(c) The provisions of this part apply only to the treatment, storage, transportation and disposal of hazardous contaminated media that is conducted pursuant to site remediation activities. This part is not intended to affect remedy selection decisions. This part is intended to affect only decisions regarding the management of hazardous contaminated media as part of cleanup activities.

(d) The constituent concentration levels specified in Appendix A to this part are not cleanup levels, and the Environmental Protection Agency does not support their use as cleanup levels under Federal or State cleanup programs.

(e) The provisions of this part are not self-implementing. They may be applied to specific remedial actions only as approved by EPA, or a State authorized for this part.

§ 269.2 Purpose and applicability.

(a) The purpose of this part is to establish standards for management of hazardous contaminated media that are generated as part of remedial activities.

(b) The provisions of this part apply to treatment, storage and disposal of hazardous contaminated media which is conducted in accordance with a Remediation Management Plan (RMP) approved by EPA or a State program authorized for this part.

(c) The provisions of this part do not apply to non-media hazardous remediation wastes (except Subpart D) or to hazardous contaminated media that are not managed in a way that would otherwise subject the media to the requirements of this chapter.

§ 269.3 Definitions.

For the purposes of this part, the following definitions apply:

Bright Line constituent means any constituent found in media that is listed in Appendix A of this part, and that is:

(1) The basis for listing of a hazardous waste (as specified in Appendix VII of 40 CFR Part 261) found in that media; or

(2) A constituent that causes the media to exhibit a hazardous characteristic.

Hazardous contaminated media means media that contain hazardous wastes listed in Part 261 Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in Part 261 Subpart C of this chapter, except media which the Director has determined do not contain hazardous wastes pursuant to § 269.4 of this part (non-hazardous contaminated media).

Media means materials found in the natural environment such as soil, ground water, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. This definition does not include debris (as defined in 40 CFR 268.2).

Media remediation site means an area contaminated with hazardous waste that is subject to cleanup under State or Federal authority, and areas in close proximity to the contaminated area at which remediation wastes are being or will be managed pursuant to State or Federal remediation authorities (such as RCRA corrective action or CERCLA). A media remediation site is not a facility for the purpose of implementing corrective action under 40 CFR 264.101, but may be subject to such corrective action requirements if the site is located within such a facility (as defined in 40 CFR 260.10).

Non-hazardous contaminated media means media that are managed as part of remedial activities and that the Director has determined do not contain hazardous wastes (according to § 269.4), but would otherwise be subject to Subtitle C regulation.

Remediation Management Plan means the plan that describes specifically how hazardous contaminated media will be managed in accordance with this part. Such a plan may also include, where appropriate, requirements for other remediation wastes and any other (non-Part 269) requirements applicable to hazardous contaminated media.

Sediment is the mixture of assorted material that settles to the bottom of a water body. It includes the shells and coverings of mollusks and other animals, transported soil particles from surface erosion, organic matter from dead and rotting vegetation and animals, sewage, industrial wastes, other organic and inorganic materials and chemicals.

Soil means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil.

§ 269.4 Identification of media not subject to regulation as hazardous wastes.

(a) The Director may, as appropriate, determine that media which are generated and managed as part of remedial activities, and which would otherwise be subject to regulation under this chapter, do not contain hazardous wastes, provided that:

(1) There are no Bright Line constituents (as defined in § 269.3) in the media in concentrations equal to or greater than those specified in Appendix A of this part;

(2) The basis for the decision that the media do not contain hazardous wastes is documented in a Remediation Management Plan (RMP) approved in accordance with Subpart D of this part; and

(3) Appropriate requirements for the management of the media are specified in such RMP. Such materials will be considered non-hazardous contaminated media (as defined in § 269.3).

(b) [Reserved]

Subpart B—Other Requirements Applicable to Management of Hazardous Contaminated Media

§ 269.10 Applicability of other requirements.

(a) Except where expressly indicated, for hazardous contaminated media that are regulated under this part, the applicable requirements of 40 CFR Parts 262–267 and 270 continue to apply to the treatment, storage, and disposal of hazardous contaminated media.

(b) For hazardous contaminated media and non-hazardous contaminated media that remain subject to LDRs, the provisions of 40 CFR Part 268 do not apply, except for the following: 40 CFR 268.2 through 268.7 (definitions, dilution prohibition, surface impoundment treatment variance, case-by-case extensions, no migration petitions, and waste analysis and recordkeeping), and 40 CFR 268.50 (prohibition on storage prior to land disposal). Compliance with these provisions of Part 268, and with the provisions of Subpart C of this part, shall constitute compliance with the provisions of section 3004(m) of RCRA.

§ 269.11 Intentional contamination of media prohibited.

No generator, transporter, or owner or operator of a treatment, storage, or disposal facility shall in any way deliberately combine media and hazardous waste so as to become subject to the provisions of this part.

§ 269.12 Interstate movement of contaminated media.

(a) Hazardous contaminated media and non-hazardous contaminated media that are transported out of the State in which they are generated are subject to the requirements of 40 CFR parts 262–268 and 270 outside of the originating State, unless:

(1) The receiving State and any State through which the waste will be transported has been authorized to implement this part (or EPA is implementing this part in that State); and

(2) The generating State notifies the authority implementing Part 269 in the receiving State and any State through which the material will be transported of the plans to transport such media into or through that State and provides an opportunity to comment on the draft RMP setting out the basis for the classification of such media.

(b) If a receiving State or a State through which such media are transported is authorized for this part 269, that State may determine that media originating in other States:

(1) Contains hazardous waste and must be managed under Parts 261–268 and 270 when in that State; or

(2) Contains hazardous waste and must be managed under this part when in that State; or

(3) Contains solid waste and must be managed under that State's solid waste or other applicable authorities; or

(4) Contains no waste.

Subpart C—Treatment Requirements

§ 269.30 Minimum LDR treatment requirements for media.

(a) The requirements of this subpart apply to the following materials when they are removed from the land, except as identified in paragraph (b) of this section:

(1) Media subject to the requirements of this part as identified by § 269.1(a), (including media that have been determined, pursuant to § 269.4, to no longer contain hazardous wastes) when the waste contaminating the media was prohibited from land disposal at the time it was placed.

(2) Media subject to the requirements of this part as identified by § 269.1(a), (including media that have been determined, pursuant to § 269.4, to no longer contain hazardous wastes) when the waste contaminating the media is prohibited from land disposal at the time the media is removed from the land. To identify the effective date of applicable land disposal prohibitions, see 40 CFR part 268, Appendix VII.

(b) The requirements of this subpart do not apply to media identified by paragraph (a)(2) of this section when they are determined, pursuant to § 269.4, not to contain hazardous wastes before they are removed from the land.

(c) Media treatment standards must be specified in each RMP for all media identified by paragraph (a) of this section.

(d) Prior to land disposal, media identified in paragraph (a) of this section must be treated according to the applicable treatment requirements specified in paragraphs (e) and (f) of this section unless a variance is given according to § 269.31 (Media Treatment Variances), or the Director requires more stringent treatment standards according to § 269.32.

(e) (1) For soils, treatment must achieve the following standards for all constituents subject to treatment that are present in the soils at concentrations greater than 10 times the Universal Treatment Standard for the constituent(s):

(i) For non-metals, 90 percent reduction in total constituent concentrations, except as provided by paragraph (e)(2) of this section.

(ii) For metals, 90 percent reduction in constituent concentrations as measured in leachate from the treated media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations, except as provided by paragraph (e)(2) of this section.

(2) When treatment of any constituent subject to treatment to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, 10 times the Universal Treatment Standard shall be the treatment standard. Universal Treatment Standards are identified in 40 CFR 268.48 Table UTS.

(3) In addition to the treatment required by paragraph (e)(1) of this section, soils that exhibit the characteristic of ignitability, corrosivity, or reactivity must be treated by deactivation technologies which eliminate these characteristics.

(4) In addition to the treatment requirements of paragraphs (e)(1) and (3) of this section, the following treatment is required for soils that contain nonanalyzable constituents:

(i) Where the soil also contains analyzable constituents, treatment of those analyzable constituents to the levels specified in paragraph (e)(1) of this section; and

(ii) For soils containing only nonanalyzable constituents, treatment by the method specified in § 268.42 for the waste contained in the media.

(f) For media other than soils, such as ground water and sediments, treatment must achieve the applicable part 268 treatment standard(s) for each constituent subject to treatment.

(g) Constituents subject to treatment are:

(1) For media identified by paragraph (a) of this section because they contain or contained wastes listed under part 261, subpart D of this chapter, the constituents identified as regulated hazardous constituents in the table ''Treatment Standards for Hazardous Wastes'' in § 268.40 of this chapter for such waste; and

(2) For media identified by paragraph (a) of this section because it exhibits a characteristic of hazardous wastes as defined by part 261, subpart C of this chapter, any constituent listed in 40 CFR 268.48, Table UTS—Universal Treatment Standards that is present in the media, except zinc and vanadium.

(h) Treatment technologies employed in meeting these treatment standards must be designed and operated in a manner that controls the transfer of contaminants to other media.

§ 269.31 Media treatment variances.

(a) The Director may approve a variance from a treatment standard(s) specified in § 269.30, if the owner/operator demonstrates to the satisfaction of the Director that:

(1) Compliance with the standard(s) is technically impracticable; or

(2) Compliance with the standard(s) would require the use of a technology which is inappropriate for the media to be treated because the physical or chemical properties of media differ significantly from the media EPA examined in establishing the standard, or the standard is otherwise inappropriate for the hazardous contaminated media; or

(b) For media containing all constituents at levels below those specified in Appendix A of this part, the Director may approve a variance from a treatment standard specified in § 269.30 by specifying a level or method of treatment, if any, which substantially diminishes the toxicity of the waste or substantially reduces likelihood of migration of hazardous constituents from the waste so that short- and long-term threats to human health and the environment are minimized based on site-specific considerations.

(c) The Director may request any additional information, including additional sampling and analysis, if necessary to evaluate a media treatment variance demonstration.

(d) The Director may specify a media treatment variance as a numerical standard or as a specified treatment method or technology.

(e) Technologies used to comply with media treatment variances must optimize efficiency, result in substantial reductions in toxicity or mobility of constituents, and control cross media transfer.

(f) Proposed media treatment variances must be identified in RMPs and shall, at a minimum, be subject to the public participation requirements for RMPs specified in § 269.43.

§ 269.32 More stringent treatment standards.

For soil, the Director may require that constituents subject to treatment be treated to achieve standards more stringent than the standards specified in § 269.30, if s/he determines that the treatment required under § 269.30(e) and (f) would not substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized, based on site-specific circumstances.

§ 269.33 Review of treatment results.

If data indicate that the treatment standards specified in a RMP have not been met, the owner/operator shall:

(a) Submit a new or modified RMP containing procedures for treating the media subject to treatment to compliance with the specified treatment standard; or

(b) Submit an application for a media treatment variance under § 269.31(a) (1) or (2); or

(c) If appropriate, request that the Director specify a level or method of treatment, if any, that would meet the requirement of § 269.31(b).

§ 269.34 Management of treatment residuals.

(a) Treatment residuals from treating media identified by § 269.30(a) shall be managed as follows:

(1) Media residuals shall be subject to the standards of this part;

(2) Non-media residuals shall be subject to the RCRA Subtitle C or D standards applicable to the waste contaminating the media before treatment.

Subpart D—Remediation Management Plans (RMPs)

§ 269.40 General requirements.

(a) Before hazardous contaminated media may be managed according to the provisions of this part, the owner/operator must receive approval by the Director of a Remediation Management Plan (RMP), in accordance with the procedures in § 269.43.

(b) A RMP must be an enforceable document, and shall specify requirements for management of hazardous and non-hazardous contaminated media at a media remediation site, according to the provisions of this part and according to other applicable requirements of Subtitle C, including 40 CFR part 264 (except subparts B and C). A RMP may also incorporate requirements for the management of other remediation wastes at a media remediation site, in compliance with applicable provisions of part 264 of this chapter.

(c) For remedial activities involving treatment, storage or disposal of remediation wastes that would require a RCRA permit under 40 CFR 270.1, a RMP approved by the Director, and containing the necessary 40 CFR part 264 substantive requirements, shall constitute a RCRA permit for those activities, for the purposes of section 3005(c) of RCRA.

(d) The corrective action requirements of sections 3004 (u) and (v) of RCRA do not apply to persons engaging in treatment, storage, or disposal of hazardous wastes solely as part of a cleanup action pursuant to a RMP.

(e) A RMP may be:

(1) A stand-alone document that addresses only the requirements of this part, and does not address other remedial activities or units; or

(2) Included as part of a more comprehensive document that specifies requirements for compliance with this part, in addition to requirements for other remedial activities for the site. Such documents must be approved by the Director according to procedures that allow equivalent or greater opportunities for public involvement than those prescribed in § 269.43. Examples of such documents may include enforcement orders (that meet the minimum notice requirements of § 269.43), RCRA permits or permit modifications issued to hazardous waste management facilities, or other similar remedial documents approved by the Director.

(f) Approval of a RMP does not convey any property rights of any sort, or any exclusive privilege.

(g) Approval of a RMP does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 269.41 Content of RMPs.

(a) A draft RMP submitted to the Director for approval must contain sufficient information to demonstrate to the Director that the proposed management activities for contaminated media at the site will comply with the requirements of this part. If a draft RMP is submitted as part of a more comprehensive document(s) (in accordance with § 269.40(e)(2)), it may simply reference or otherwise identify where the information pertaining to part 269 requirements can be found in such document(s).

(b) If a RMP will be used only for the management of investigation derived wastes or for treatability studies, the RMP need only include the relevant information necessary to determine that the investigation or treatability study will be conducted in accordance with applicable requirements. It may not be necessary to include all the information specified in paragraph (c) of this section.

(c) The following information must be included in any RMP (except as specified in paragraph (b) of this section):

(1) Information demonstrating that the materials to be managed in accordance with this part are media, as defined in § 269.3.

(2) If applicable, information identifying hazardous remediation wastes (other than hazardous contaminated media) which will be managed according to the RMP but not under the requirements of 40 CFR part 269, and specifying that management of those wastes will comply with the applicable requirements of 40 CFR parts 260 through 268.

(3) If applicable, information identifying non-hazardous contaminated media, and specifying how such media will be managed.

(4) Description of the remediation wastes to be managed in accordance with the RMP, including information on constituent concentrations, and other properties of media and wastes that may affect how such materials should be treated and/or otherwise managed.

(5) Estimates of volumes of the hazardous contaminated media to be managed according to the provisions of this part;

(6) Plans or proposals specifying the technology(s), handling systems, design and operating parameters to be used in treating remediation wastes prior to disposal, in accordance with applicable LDR standards of §§ 269.30 through 269.34, or 40 CFR part 268, as applicable.

(7) Information which demonstrates to the Director that any proposed treatment system will be designed and operated in a manner that will adequately control the transfer of pollutants to other environmental media.

(8) Information which describes planned sampling and analysis procedures necessary to characterize the wastes or media to be managed, to ensure effective treatment of the materials has occurred, and to demonstrate compliance with the treatment standard, including quality assurance and quality control procedures.

(9) Agreement to submit data as specified in Appendix B of this part regarding treatment information from both treatability studies and full scale implementation of treatment systems conducted for the remedial activities under this RMP. Data from treatability studies shall be submitted as soon as the treatability study (or studies) has been completed. Full scale implementation data shall be submitted every three years, or after cleanup has been completed, whichever is first.

(10) Other information determined by the Director to be necessary for demonstrating compliance with the provisions of this part.

§ 269.42 Treatability studies.

(a) If the Director determines that a treatability study is necessary to determine the efficacy of a proposed treatment technology, and if conduct of the study requires a RCRA permit, the study may be approved under a RMP. In addition to the other requirements of this part, such RMPs shall specify how the study(s) will be conducted, including relevant data on system design and operating parameters, waste

characteristics, sampling, and, analytical procedures.

(b) Upon conclusion of a treatability study conducted according to an approved RMP, data shall be submitted to (EPA Headquarters) in the manner specified in appendix B of this part.

§ 269.43 Approval of RMPs.

(a) Draft RMPs shall be reviewed and approved according to the procedures specified in paragraphs (b) through (f) of this section. Alternative procedures which provide the same or greater opportunities for public review and comment may also be used, including the RCRA permit procedures of 40 CFR part 270, or the permit modification procedures of 40 CFR 270.41.

(b) A proposed RMP shall be signed in accordance with 40 CFR 270.11.

(c) The Director may, if necessary, add provisions to a draft RMP specifying the conditions under which media will be managed pursuant to the RMP, and concentration levels below which media will be determined not to contain hazardous waste. Such provisions may not be necessary when:

(1) The Director has established applicable State-wide contained-in concentration levels; or

(2) All media to be managed at the site will be managed as hazardous contaminated media, therefore making contained-in levels unnecessary.

(d) The Director may, if necessary, add provisions to a draft RMP specifying when threats to human health and the environment will be considered to have been minimized.

(e) When the Director determines that a draft RMP is complete and adequately demonstrates compliance with applicable requirements, the RMP shall be approved according to the following minimum procedures. If appropriate, the Director may require additional review and comment procedures.

(1) A notice of the Director's intention to approve the RMP shall be:

(i) Published in a major local newspaper of general circulation and broadcast over a local radio station, according to the procedures of 40 CFR 124.10(d); and

(ii) Sent to each unit of local government having jurisdiction over the area in which the site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site. The notice shall provide an opportunity for the public to submit written comments on the RMP within no fewer than 45 days.

(2) If within the comment period the Director receives written notice of opposition to the Director's intention to approve the RMP and a request for a hearing, the Director shall hold an informal hearing (including an opportunity for presentation of written and oral views) to discuss issues relating to the approval of the RMP. The Director may also determine independently that an informal hearing on the RMP is appropriate. Whenever possible, the Director shall schedule such hearing at a location convenient to the nearest population center to the site and give notice in accordance with paragraph (i)(1) of this section, of the date, time and subject matter of such hearing.

(3) The Director shall consider and respond to any significant written or oral comments received by the comment deadline on the proposed RMP, and may modify the RMP based on those comments as appropriate.

(4) When the Director determines that the RMP adequately demonstrates compliance with all applicable requirements, s/he shall notify the owner/operator, and all other commenters on the proposed RMP, in writing, that the RMP has been approved. The Director's approval of a RMP shall constitute final Agency action (not subject to the administrative appeals in 40 CFR 124.19).

(f) For remedial actions involving on-site combustion of hazardous remediation wastes, the procedural requirements for issuance of RCRA permits (specified in 40 CFR Parts 124 and 270 shall at a minimum be followed for review and approval of RMPs.

§ 269.44 Modification of RMPs.

(a) The Director shall specify in the RMP procedures for modifying the RMP. Such procedures must provide adequate opportunities for public review and comment on any modification that would result in a major or significant change in the management of contaminated media at the site, or which otherwise merits public review and comment.

(b) The Director may unilaterally modify an approved RMP, through appropriate procedures for public review and comment, based on new information which indicates that such modification may be necessary to ensure the effective implementation of remedial actions at the site.

§ 269.45 Expiration, termination, and revocation of RMPs.

The Director shall specify in an approved RMP the procedures under which the RMP will expire, be terminated or revoked. RMPs that pursuant to § 269.40(c) constitute RCRA permits for the purposes of section 3005(c), shall be for a fixed term, not to exceed 10 years, although they may be renewed. In addition, any such RMP for a hazardous waste land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with currently applicable requirements of RCRA sections 3004 and 3005. All RMPs which constitute RCRA permits must be renewed at least every 10 years (if they will remain in effect longer than that).

Appendix A to Part 269—HWIR-Media Bright Line Numbers

Appendix A–1 presents the Bright Lines for soil for the 107 HWIR-media constituents with Soil Screening Levels (SSLs). Appendix A–2 presents the Bright Lines for groundwater ingestion for 211 HWIR-media constituents.[1] The Bright Lines for both soil and groundwater exposures are calculated using a target risk of 10^{-3} for carcinogens and RfD x 10 for non-carcinogens. For constituents that have both carcinogenic and non-carcinogenic health effects, the lower of the two Bright Lines is reported.

Appendix A–1 to Part 269—Bright Line Numbers for Soil

The Bright Lines for soil in Appendix A–1 are based upon SSLs presented in the Superfund Soil Screening Guidance, which is available in the docket for this proposed rule. SSLs have been developed for 107 HWIR-media constituents and are calculated using risk equations presented in EPA's ''Risk Assessment Guidance for Superfund (RAGS).'' SSLs are either based on exposure by direct soil ingestion or by inhalation of volatiles from soil. The SSLs for these two exposure pathways are calculated using different risk equations. In addition, since carcinogens and non-carcinogens pose different kinds of health effects, there are two separate equations for each exposure pathway, depending upon the carcinogenicity of the constituent. These equations for each pathway are presented below:

Inhalation of Soil Contaminants

For cancer health effects:

[1] EPA was unable to develop ground water Bright Lines for nine constituents that lacked both an oral reference dose and an oral slope factor.

$$SSL = \frac{TR \times AT \times 365\ days/yr}{URF \times 1000 ug/mg \times EF \times ED \times \left[\frac{1}{VF} + \frac{1}{PEF}\right]}$$

For non-cancer health effects:

$$SSL = \frac{THQ \times AT \times 365\ days/yr}{EF \times ED \times \left[\frac{1}{RfC} + \left(\frac{1}{VF} + \frac{1}{PEF}\right)\right]}$$

The exposure assumptions used in the above risk equations for inhalation of soil contaminants are presented in Exhibit 1.

Ingestion of Soil Contaminants

For cancer health effects:

$$SSL = \frac{TR \times AT \times 365\ days/yr}{SF \times 10^{-6}\ kg/mg \times EF \times IF}$$

For non-cancer health effects:

$$SSL = \frac{THQ \times BW \times AT \times 365\ days/yr}{\left(\frac{1}{RfD}\right) \times 10^{-6}\ kg/mg \times EF \times ED \times IR}$$

The exposure assumptions used in the above risk equations for ingestion of soil contaminants are presented in Exhibit 2.

The calculated soil screening values for both the inhalation and ingestion pathways correspond to a cancer risk level of 10^{-6} for carcinogens and a non-cancer hazard quotient of one for non-carcinogens. The SSLs for cancerous and non-cancerous constituents are, therefore, multiplied by 1,000 and 10 respectively, so that the reported Bright Lines correspond to a target risk of 10^{-3} for carcinogens and RfD × 10 for non-carcinogens. All Bright Lines for soil are capped at 10,000 parts per million (ppm).

The soil saturation limit (Csat) for a constituent is reported as the inhalation pathway SSL if the Csat is lower than the calculated SSL. Csats are not risk-adjusted (i.e., they are not multiplied by a factor of 10 or 1,000) when calculating Bright Lines. When the Csat is lower than the risk-adjusted SSL for the soil ingestion pathway, the Bright Line is set at the Csat. The soil Bright Lines for 17 constituents are set at their Csat.

Exhibit 1.—Exposure Assumptions Used To Calculate Soil Inhalation

[Soil Screening Levels]

	Corresponding HWIR-media assumptions	
	Cancer	Non-cancer
SSL=soil screening level	calculated	calculated.
TR=target excess lifetime cancer	(mg/kg)	(mg/kg).
THQ=risk	10^{-6}	
AT=target hazard quotient		1.
URF=averaging time	70 years	30 years.
RfC=inhalation unit risk factor	constituent	
EF=inhalation reference	specific	constituent
ED=concentration	$(ug/m^3)^{-1}$	specific.
VF=exposure frequency		(mg/m^3).
PEF=exposure duration	350 days/yr	350 days/yr.
soil-to-air volatilization	30 years	30 years.
factor	constituent	constituent.
particulate emission factor	specific	specific.
	m^3/kg	m^3/kg.
	6.79×10^8	6.79×10^8.
	m^3/kg	m^3/kg.

Exhibit 2.—Exposure Assumptions Used To Calculate Soil Ingestion

[Soil Screening Levels]

	Corresponding HWIR-media assumptions	
	Cancer	Non-Cancer
SSL = soil screening level	calculated	calculated.
TR = target excess lifetime cancer	(mg/kg)	(mg/kg).
THQ = risk	10^{-6}	
AT = target hazard quotient		1.
BW = averaging time	70 years	6 years.
SF = body weight		15 kg.
RfD = oral slope factor	constituent	
IF = oral reference dose	specific	constituent.
IR = age-adjusted soil ingestion	$(mg/kg/day)^{-1}$	specific.
EF = factor		(mg/kg/day).
ED = soil ingestion rate	114 mg-yr/kg-day	
exposure frequency		200 mg/day.
exposure duration		350 days/yr.
	350 days	6 years.

APPENDIX A–1.—BRIGHT LINE NUMBERS FOR SOIL

CAS No.	Constituent	Bright Line for soil (ppm)	Path	Basis
630–20–6	1,1,1,2-Tetrachloroethane			
71–55–6	1,1,1-Trichloroethane	980	Inhal	Csat.
79–34–5	1,1,2,2-Tetrachloroethane	400	Inhal	Cancer.
79–00–5	1,1,2-Trichloroethane	800	Inhal	Cancer.
76–13–1	1,1,2-Trichloro-1,2,2-trifluoroethane			
75–34–3	1,1-Dichloroethane	9800	Inhal	Non-Cancer.
75–35–4	1,1-Dichloroethylene	40	Inhal	Cancer.
96–18–4	1,2,3-Trichloropropane			
95–94–3	1,2,4,5-Tetrachlorobenzene			
120–82–1	1,2,4-Trichlorobenzene	2400	Inhal	Non-Cancer.
96–12–8	1,2-Dibromo-3-chloropropane			
107–06–2	1,2-Dichloroethane	300	Inhal	Cancer.
78–87–5	1,2-Dichloropropane	110	Ingest	Cancer.
122–66–7	1,2-Diphenylhydrazine			
542–75–6	1,3-Dichloropropene	100	Inhal	Cancer.
99–65–0	1,3-Dinitrobenzene			
123–91–1	1,4-Dioxane			
99999–04–0	12378 PeCDFuran			
58–90–2	2,3,4,6-Tetrachlorophenol			
95–95–4	2,4,5-Trichlorophenol	10000	Cap	Non-Cancer.
93–76–5	2,4,5-Trichlorophenoxyacetic acid			
88–06–2	2,4,6-Trichlorophenol	10000	Cap	Cancer.
120–83–2	2,4-Dichlorophenol	2400	Ingest	Non-Cancer.
94–75–7	2,4-Dichlorophenoxyacetic acid (2,4–D)			
105–67–9	2,4-Dimethylphenol	10000	Cap	Non-Cancer.
51–28–5	2,4-Dinitrophenol	1600	Ingest	Non-Cancer.
121–14–2	2,4-Dinitrotoluene	1600	Ingest	Non-Cancer.
95–80–7	2,4-Toluenediamine			
606–20–2	2,6-Dinitrotoluene	780	Ingest	Non-Cancer.
823–40–5	2,6-Toluenediamine			
57117–31–4	23478 PeCDFuran			
99999–03–0	2378 HpCDDioxins			
99999–06–0	2378 HpCDFurans			
99999–02–0	2378 HxCDDioxins			
99999–05–0	2378 HxCDFurans			
99999–01–0	2378 PeCDDioxins			
1746–01–6	2378 TCDDioxin			
51207–31–9	2378 TCDFuran			
95–57–8	2-Chlorophenol	3900	Ingest	Non-Cancer.
126–99–8	2-Chloro-1,3-butadiene			
110–80–5	2-Ethoxyethanol			
91–59–8	2-Naphthylamine			
79–46–9	2-Nitropropane			
88–85–7	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)			
91–94–1	3,3'-Dichlorobenzidine	1000	Ingest	Cancer.
119–90–4	3,3'-Dimethoxybenzidine			
119–93–7	3,3'-Dimethylbenzidine			
107–05–1	3-Chloropropene			
56–49–5	3-Methylcholanthrene			
57–97–6	7,12-Dimethylbenz(a)anthracene			
83–32–9	Acenaphthene	10000	Cap	Non-Cancer.
67–64–1	Acetone (2-propanone)	10000	Cap	Non-Cancer.
75–05–8	Acetonitrile (methyl cyanide)			
98–86–2	Acetophenone			
107–02–8	Acrolein			
79–06–1	Acrylamide			
107–13–1	Acrylonitrile			
309–00–2	Aldrin	40	Ingest	Cancer.
319–84–6	alpha-HCH	100	Ingest	Cancer.
62–53–3	Aniline (benzeneamine)			
7440–36–0	Antimony (and compounds N.O.S.)	310	Ingest	Non-Cancer.
140–57–8	Aramite			
7440–38–2	Arsenic (and compounds N.O.S.)	400	Ingest	Cancer.
7440–39–3	Barium (and compounds N.O.S.)	10000	Cap	Non-Cancer.
71–43–2	Benzene	500	Inhal	Cancer.
92–87–5	Benzidine			
98–07–7	Benzotrichloride			
50–32–8	Benzo(a)pyrene	90	Ingest	Cancer.
205–99–2	Benzo(b)fluoranthene	900	Ingest	Cancer.
100–51–6	Benzyl alcohol			

APPENDIX A–1.—BRIGHT LINE NUMBERS FOR SOIL—Continued

CAS No.	Constituent	Bright Line for soil (ppm)	Path	Basis
100–44–7	Benzyl chloride			
56–55–3	Benz[a]anthracene	900	Ingest	Cancer.
7440–41–7	Beryllium (and compounds N.O.S.)	100	Ingest	Cancer.
319–85–7	beta-HCH	400	Ingest	Cancer.
111–44–4	Bis(2-chloroethyl) ether	300	Inhal	Cancer.
39638–32–9	Bis(2-chloroisopropyl) ether			
117–81–7	Bis(2-ethylhexyl) phthalate	210	Inhal	Csat.
75–27–4	Bromodichloromethane	1800	Inhal	Csat.
74–83–9	Bromomethane	20	Inhal	Non-Cancer.
71–36–3	Butanol	9700	Inhal	Csat.
85–68–7	Butyl benzyl phthalate	530	Inhal	Csat.
7440–43–9	Cadmium (and compounds N.O.S.)	390	Ingest	Non-Cancer.
75–15–0	Carbon disulfide	110	Inhal	Non-Cancer.
56–23–5	Carbon tetrachloride	200	Inhal	Cancer.
57–74–9	Chlordane	500	Ingest	Cancer.
108–90–7	Chlorobenzene	940	Inhal	Non-Cancer.
510–15–6	Chlorobenzilate			
124–48–1	Chlorodibromomethane	1900	Inhal	Csat.
67–66–3	Chloroform	200	Inhal	Cancer.
74–87–3	Chloromethane			
7440–47–3	Chromium (and compounds N.O.S.)	3900	Ingest	Non-Cancer.
218–01–9	Chrysene	10000	Cap	Cancer.
156–59–2	cis-1,2-Dichloroethene	1500	Inhal	Csat.
10061–01–5	Cis-1,3-Dichloropropene			
7440–50–8	Copper			
1319–77–3	Cresols			
98–82–8	Cumene			
57–12–5	Cyanide (amenable)	10000	Cap	Non-Cancer.
72–54–8	DDD	3000	Ingest	Cancer.
72–55–9	DDE	2000	Ingest	Cancer.
50–29–3	DDT	2000	Ingest	Cancer.
2303–16–4	Diallate			
53–70–3	Dibenz(a,h)anthracene	90	Ingest	Cancer.
74–95–3	Dibromomethane (methylene bromide)			
75–71–8	Dichlorodifluoromethane			
75–09–2	Dichloromethane (Methylene Chloride)	7000	Inhal	Cancer.
60–57–1	Dieldrin	40	Ingest	Cancer.
84–66–2	Diethyl phthalate	520	Inhal	Csat.
56–53–1	Diethylstibestrol			
60–51–5	Dimethoate.			
131–11–3	Dimethyl phthalate	1600	Inhal	Csat.
122–39–4	Diphenylamine			
298–04–4	Disulfoton			
84–74–2	Di-n-butyl phthalate	1100	Inhal	Csat.
117–84–0	Di-n-octyl phthalate	10000	Cap	Non-Cancer.
115–29–7	Endosulfan	40	Ingest	Non-Cancer.
72–20–8	Endrin	230	Ingest	Non-Cancer.
106–89–8	Epichlorohydrin			
141–78–6	Ethyl acetate			
60–29–7	Ethyl ether			
97–63–2	Ethyl methacrylate			
62–50–0	Ethyl methanesulfonate			
100–41–4	Ethylbenzene	260	Inhal	Csat.
106–93–4	Ethylene dibromide			
96–45–7	Ethylenethiourea			
52–85–7	Famphur			
206–44–0	Fluoranthene	10000	Cap	Non-Cancer.
86–73–7	Fluorene	10000	Cap	Non-Cancer.
50–00–0	Formaldehyde			
64–18–6	Formic acid			
110–00–9	Furan			
58–89–9	gamma-HCH (Lindane)	500	Ingest	Cancer.
76–44–8	Heptachlor	100	Ingest	Cancer.
1024–57–3	Heptachlor epoxide (a,b,g isomers)	70	Ingest	Cancer.
118–74–1	Hexachlorobenzene	400	Ingest	Cancer.
608–73–1	Hexachlorocyclohexane			
77–47–4	Hexachlorocyclopentadiene	20	Inhal	Non-Cancer.
67–72–1	Hexachloroethane	10000	Cap	Cancer.
70–30–4	Hexachlorophene			
87–68–3	Hexachloro-1,3-butadiene	1000	Inhal	Cancer.

APPENDIX A–1.—BRIGHT LINE NUMBERS FOR SOIL—Continued

CAS No.	Constituent	Bright Line for soil (ppm)	Path	Basis
193–39–5	Indeno(1,2,3-cd)pyrene	900	Ingest	Cancer.
78–83–1	Isobutyl alcohol			
78–59–1	Isophorone	3400	Inhal	Csat
143–50–0	Kepone			
7439–92–1	Lead (and compounds N.O.S.)	4000	Fixed.	
108–31–6	Maleic anhydride			
7439–97–6	Mercury (and compounds N.O.S.)	70	Inhal	Non-Cancer.
126–98–7	Methacrylonitrile			
67–56–1	Methanol			
72–43–5	Methoxychlor	3900	Ingest	Non-Cancer.
78–93–3	Methyl ethyl ketone			
108–10–1	Methyl isobutyl ketone			
80–62–6	Methyl methacrylate			
298–00–0	Methyl parathion			
7439–98–7	Molybdenum			
108–39–4	m-Cresol			
91–20–3	Naphthalene-			
7440–02–0	Nickel (and compounds N.O.S.)	10000	Cap	Non-Cancer.
98–95–3	Nitrobenzene	390	Ingest	Non-Cancer.
62–75–9	N-Nitrosodimethylamine			
86–30–6	N-Nitrosodiphenylamine	10000	Cap	Cancer.
621–64–7	N-Nitrosodi-n-propylamine	90	Ingest	Cancer.
10595–95–6	N-Nitrosomethylethylamine			
100–75–4	N-Nitrosopiperidine			
930–55–2	N-Nitrosopyrrolidine			
55–18–5	N-Nitroso-diethylamine			
924–16–3	N-Nitroso-di-n-butylamine			
3268–87–9	OCDD			
99999–07–0	Octachlorodibenzofuran (OCDF)			
152–16–9	Octamethyl pyrophosphoramide			
95–48–7	o-Cresol	10000	Cap	Non-Cancer.
95–50–1	o-Dichlorobenzene	300	Inhal	Csat.
95–53–4	o-Toluidine			
56–38–2	Parathion			
608–93–5	Pentachlorobenzene			
82–68–8	Pentachloronitrobenzene (PCNB)			
87–86–5	Pentachlorophenol	3000	Ingest	Cancer.
108–95–2	Phenol	10000	Cap	Non-Cancer.
25265–76–3	Phenylenediamine			
298–02–2	Phorate			
85–44–9	Phthalic anhydride			
1336–36–3	Polychlorinated biphenyls	1000	Ingest	Cancer.
23950–58–5	Pronamide			
129–00–0	Pyrene	10000	Cap	Non-Cancer.
110–86–1	Pyridine			
106–47–8	p-Chloroaniline	3100	Ingest	Non-Cancer.
106–44–5	p-Cresol			
106–46–7	p-Dichlorobenzene	10000	Cap	Cancer.
106–49–0	p-Toluidine			
94–59–7	Safrole			
7782–49–2	Selenium (and compounds N.O.S.)	3900	Ingest	Non-Cancer.
7440–22–4	Silver (and compounds N.O.S.)	3900	Ingest	Non-Cancer.
93–72–1	Silvex (2,4,5-TP)			
57–24–9	Strychnine and salts			
100–42–5	Styrene	1400	Inhal	Csat.
99–35–4	sym-Trinitrobenzene			
127–18–4	Tetrachloroethylene	10000	Cap	Cancer.
3689–24–5	Tetraethyl dithiopyrophosphate			
7440–28–0	Thallium			
108–88–3	Toluene	520	Inhal	Csat.
8001–35–2	Toxaphene	600	Ingest	Cancer.
156–60–5	trans-1,2-Dichloroethene	3600	Inhal	Csat.
10061–02–6	Trans-1,3-Dichloropropene			
75–25–2	Tribromomethane (Bromoform)	10000	Cap	Cancer.
79–01–6	Trichloroethylene	3000	Inhal	Cancer.
75–69–4	Trichlorofluoromethane			
126–72–7	Tris(2,3-dibromopropyl)phosphate			
7440–62–2	Vanadium	5500	Ingest	Non-Cancer.
75–01–4	Vinyl chloride (Chloroethene)	2	Inhal	Cancer.
1330–20–7	Xylenes	320	Inhal	Csat.

APPENDIX A–1.—BRIGHT LINE NUMBERS FOR SOIL—Continued

CAS No.	Constituent	Bright Line for soil (ppm)	Path	Basis
7440–66–6	Zinc (and compounds N.O.S.)	10000	Cap	Non-Cancer.

Appendix A–2 to Part 269—Bright Line Numbers for Ground Water

The Bright Lines for ground water in Appendix A–2 were calculated directly from risk equations in RAGS. Since carcinogens and non-carcinogens pose different kinds of health effects, two sets of risk equations and exposure assumptions are used to calculate Bright Lines for groundwater: For cancer health effects:

$$C = \frac{TR \times AT \times BW \times 365 \text{ days}}{SF \times IR \times EF \times ED}$$

For non-cancer health effects:

$$C = \frac{RfD \times 10 \times BW \times AT \times \times 365 \text{ days}}{IR \times EF \times ED}$$

The exposure assumptions used in the above risk equations are presented in Exhibit 3. These exposure assumptions are consistent with those used to develop the SSLs. For constituents with calculated Bright Lines for ground water less than the detection limit, the groundwater Bright Line is set at the detection limit, as defined by the Exemption Quantitation Criteria (EQC). The ground water Bright Lines for 15 constituents are set at their EQC's.

EXHIBIT 3.—EXPOSURE ASSUMPTIONS USED TO CALCULATE GROUND WATER BRIGHT LINES

			Corresponding HWIR-media assumptions	
			Cancer	Non-Cancer
C	=	Constituent concentration in groundwater	Calculated (mg/l)	Calculated (mg/l).
TR	=	Target excess lifetime cancer risk	$10^{-3—1}$ 70 years	—30 years.
AT	=	Averaging time	70 kg	70 kg.
BW	=	Body weight	Constituent	
SF	=	Oral cancer slope factor	Specific	Constituent.
RfD	=	Oral reference dose	$(mg/kg/day)^{-1}$	Specific.
IR	=	Groundwater ingestion rate		(mg/kg/day).
EF	=	Exposure frequency	2 liters/day	2 liters/day.
ED	=	Exposure duration	350 days, 30 years	350 days, 30 years.

TABLE TO APPENDIX A–2.—BRIGHT LINES FOR GROUNDWATER

CAS No.	Constituent	Groundwater Bright Line (mg/l)	Basis
630–20–6	1,1,1,2-Tetrachloroethane	3	Cancer.
71–55–6	1,1,1-Trichloroethane	(1)	
79–34–5	1,1,2,2-Tetrachloroethane	0.4	Cancer.
79–00–5	1,1,2-Trichloroethane	1	Non-Cancer.
76–13–1	1,1,2-Trichloro-1,2,2-trifluoroethane	10000	Non-Cancer.
75–34–3	1,1-Dichloroethane	0.9	Cancer.
75–35–4	1,1-Dichloroethylene	0.1	Cancer.
96–18–4	1,2,3-Trichloropropane	2	Non-Cancer.
95–94–3	1,2,4,5-Tetrachlorobenzene	0.1	Non-Cancer.
120–82–1	1,2,4-Trichlorobenzene	4	Non-Cancer.
96–12–8	1,2-Dibromo-3-chloropropane	0.06	Cancer.
107–06–2	1,2-Dichloroethane	0.9	Cancer.
78–87–5	1,2-Dichloropropane	1	Cancer.
122–66–7	1,2-Diphenylhydrazine	0.1	Cancer.
542–75–6	1,3-Dichloropropene	0.1	Non-Cancer.
99–65–0	1,3-Dinitrobenzene	0.04	Non-Cancer.
123–91–1	1,4-Dioxane	8	Cancer.
99999–04–0	12378 PeCDFuran	0.00001	Cancer.
58–90–2	2,3,4,6-Tetrachlorophenol	10	Non-Cancer.
95–95–4	2,4,5-Trichlorophenol	40	Non-Cancer.
93–76–5	2,4,5-Trichlorophenoxyacetic acid	4	Non-Cancer.
88–06–2	2,4,6-Trichlorophenol	8	Cancer.
120–83–2	2,4-Dichlorophenol	1	Non-Cancer.
94–75–7	2,4-Dichlorophenoxyacetic acid (2,4-D)	4	Non-Cancer.
105–67–9	2,4-Dimethylphenol	7	Non-Cancer.
51–28–5	2,4-Dinitrophenol	0.7	Non-Cancer.
121–14–2	2,4-Dinitrotoluene	0.1	Cancer.
95–80–7	2,4-Toluenediamine	0.03	Cancer.
606–20–2	2,6-Dinitrotoluene	0.1	Cancer.
823–40–5	2,6-Toluenediamine	70	Non-Cancer.
57117–31–4	23478 PeCDFuran	0.000001	Cancer.
99999–03–0	2378 HpCDDioxins	0.00005	Cancer.
99999–06–0	2378 HpCDFurans	0.00005	Cancer.

TABLE TO APPENDIX A–2.—BRIGHT LINES FOR GROUNDWATER—Continued

CAS No.	Constituent	Groundwater Bright Line (mg/l)	Basis
99999–02–0	2378 HxCDDioxins	0.000005	Cancer.
99999–05–0	2378 HxCDFurans	0.000005	Cancer.
99999–01–0	2378 PeCDDioxins	0.000001	Cancer.
1746–01–6	2378 TCDDioxin	0.0000005	Cancer.
51207–31–9	2378 TCDFuran	0.000005	Cancer.
95–57–8	2-Chlorophenol	2	Non-Cancer.
126–99–8	2-Chloro-1,3-butadiene	(1)	
110–80–5	2-Ethoxyethanol	100	Non-Cancer.
91–59–8	2-Naphthylamine	0.1	Cancer.
79–46–9	2-Nitropropane	(1)	
88–85–7	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	0.4	Non-Cancer.
91–94–1	3,3′-Dichlorobenzidine	0.2	Cancer.
119–90–4	3,3′-Dimethoxybenzidine	6	Cancer.
119–93–7	3,3′-Dimethylbenzidine	0.01	EQC Floor.
107–05–1	3-Chloropropene	(1)	
56–49–5	3-Methylcholanthrene	0.01	EQC Floor.
57–97–6	7,12-Dimethylbenz(a)anthracene	0.01	EQC Floor.
83–32–9	Acenaphthene	20	Non-Cancer.
67–64–1	Acetone (2-propanone)	40	Non-Cancer.
75–05–8	Acetonitrile (methyl cyanide)	2	Non-Cancer.
98–86–2	Acetophenone	40	Non-Cancer.
107–02–8	Acrolein	7	Non-Cancer.
79–06–1	Acrylamide	0.1	EQC Floor.
107–13–1	Acrylonitrile	0.2	Cancer.
309–00–2	Aldrin	0.005	Cancer.
319–84–6	alpha-HCH	0.01	Cancer.
62–53–3	Aniline (benzeneamine)	10	Cancer.
7440–36–0	Antimony (and compounds N.O.S.)	0.1	Non-Cancer.
140–57–8	Aramite	3	Cancer.
7440–38–2	Arsenic (and compounds N.O.S.)	0.05	Cancer.
7440–39–3	Barium (and compounds N.O.S.)	30	Non-Cancer.
71–43–2	Benzene	3	Cancer.
92–87–5	Benzidine	0.03	EQC Floor.
98–07–7	Benzotrichloride	0.007	Cancer.
50–32–8	Benzo(a)pyrene	0.01	Cancer.
205–99–2	Benzo(b)fluoranthene	0.1	Cancer.
100–51–6	Benzyl alcohol	100	Non-Cancer.
100–44–7	Benzyl chloride	0.5	Cancer.
56–55–3	Benz[a]anthracene	0.2	Cancer.
7440–41–7	Beryllium (and compounds N.O.S.)	0.02	Cancer.
319–85–7	beta-HCH	0.05	Cancer.
111–44–4	Bis(2-chloroethyl) ether	0.08	Cancer.
39638–32–9	Bis(2-chloroisopropyl) ether	1	Cancer.
117–81–7	Bis(2-ethylhexyl) phthalate	6	Cancer.
75–27–4	Bromodichloromethane	0.7	Cancer.
74–83–9	Bromomethane	0.5	Non-Cancer.
71–36–3	Butanol	40	Non-Cancer.
85–68–7	Butyl benzyl phthalate	70	Non-Cancer.
7440–43–9	Cadmium (and compounds N.O.S.)	0.2	Non-Cancer.
75–15–0	Carbon disulfide	40	Non-Cancer.
56–23–5	Carbon tetrachloride	0.3	Non-Cancer.
57–74–9	Chlordane	0.02	Non-Cancer.
108–90–7	Chlorobenzene	7	Non-Cancer.
510–15–6	Chlorobenzilate	0.3	Cancer.
124–48–1	Chlorodibromomethane	1	Cancer.
67–66–3	Chloroform	4	Non-Cancer.
74–87–3	Chloromethane	(1)	
7440–47–3	Chromium (and compounds N.O.S.)	2	Non-Cancer.
218–01–9	Chrysene	1	Cancer.
156–59–2	cis-1,2-Dichloroethene	4	Non-Cancer.
10061–01–5	Cis-1,3-Dichloropropene	0.1	Non-Cancer.
7440–50–8	Copper	10	Non-Cancer.
1319–77–3	Cresols	20	Non-Cancer.
98–82–8	Cumene	10	Non-Cancer.
57–12–5	Cyanide (amenable)	7	Non-Cancer.
72–54–8	DDD	0.4	Cancer.
72–55–9	DDE	0.3	Cancer.
50–29–3	DDT	0.2	Non-Cancer.
2303–16–4	Diallate	1	Cancer.
53–70–3	Dibenz(a,h)anthracene	0.002	Cancer.

TABLE TO APPENDIX A–2.—BRIGHT LINES FOR GROUNDWATER—Continued

CAS No.	Constituent	Groundwater Bright Line (mg/l)	Basis
74–95–3	Dibromomethane (methylene bromide)	4	Non-Cancer.
75–71–8	Dichlorodifluoromethane	70	Non-Cancer.
75–09–2	Dichloromethane (Methylene Chloride)	10	Cancer.
60–57–1	Dieldrin	0.005	Cancer.
84–66–2	Diethyl phthalate	300	Non-Cancer.
56–53–1	Diethylstibestrol	0.02	EQC Floor.
60–51–5	Dimethoate	0.07	Non-Cancer.
131–11–3	Dimethyl phthalate	4000	Non-Cancer.
122–39–4	Diphenylamine	9	Non-Cancer.
298–04–4	Disulfoton	0.01	Non-Cancer.
84–74–2	Di-n-butyl phthalate	40	Non-Cancer.
117–84–0	Di-n-octyl phthalate	7	Non-Cancer.
115–29–7	Endosulfan	0.02	Non-Cancer.
72–20–8	Endrin	0.1	Non-Cancer.
106–89–8	Epichlorohydrin	0.7	Non-Cancer.
141–78–6	Ethyl acetate	300	Non-Cancer.
60–29–7	Ethyl ether	70	Non-Cancer.
97–63–2	Ethyl methacrylate	30	Non-Cancer.
62–50–0	Ethyl methanesulfonate	0.02	EQC Floor.
100–41–4	Ethylbenzene	40	Non-Cancer.
106–93–4	Ethylene dibromide	0.001	Cancer.
96–45–7	Ethylenethiourea	0.03	Non-Cancer.
52–85–7	Famphur	0.02	EQC Floor.
206–44–0	Fluoranthene	10	Non-Cancer.
86–73–7	Fluorene	10	Non-Cancer.
50–00–0	Formaldehyde	70	Non-Cancer.
64–18–6	Formic acid	700	Non-Cancer.
110–00–9	Furan	0.4	Non-Cancer.
58–89–9	gamma-HCH (Lindane)	0.07	Cancer.
76–44–8	Heptachlor	0.02	Cancer.
1024–57–3	Heptachlor epoxide (alpha, beta, gamma)	0.005	Non-Cancer.
118–74–1	Hexachlorobenzene	0.05	Cancer.
608–73–1	Hexachlorocyclohexane	0.05	Cancer.
77–47–4	Hexachlorocyclopentadiene	3	Non-Cancer.
67–72–1	Hexachloroethane	0.4	Non-Cancer.
70–30–4	Hexachlorophene	0.1	Non-Cancer.
87–68–3	Hexachloro-1,3-butadiene	1	Cancer.
193–39–5	Indeno(1,2,3-cd)pyrene	0.1	Cancer.
78–83–1	Isobutyl alcohol	100	Non-Cancer.
78–59–1	Isophorone	70	Non-Cancer.
143–50–0	Kepone	0.02	EQC Floor.
7439–92–1	Lead (and compounds N.O.S.)	(1)	
108–31–6	Maleic anhydride	40	Non-Cancer.
7439–97–6	Mercury (and compounds N.O.S.)	0.1	Non-Cancer.
126–98–7	Methacrylonitrile	0.04	Non-Cancer.
67–56–1	Methanol	200	Non-Cancer.
72–43–5	Methoxychlor	2	Non-Cancer.
78–93–3	Methyl ethyl ketone	200	Non-Cancer.
108–10–1	Methyl isobutyl ketone	20	Non-Cancer.
80–62–6	Methyl methacrylate	30	Non-Cancer.
298–00–0	Methyl parathion	0.09	Non-Cancer.
7439–98–7	Molybdenum	2	Non-Cancer.
108–39–4	m-Cresol	20	Non-Cancer.
91–20–3	Naphthalene	10	Non-Cancer.
7440–02–0	Nickel (and compounds N.O.S.)	7	Non-Cancer.
98–95–3	Nitrobenzene	0.2	Non-Cancer.
62–75–9	N-Nitrosodimethylamine	0.01	EQC Floor.
86–30–6	N-Nitrosodiphenylamine	20	Cancer.
621–64–7	N-Nitrosodi-n-propylamine	0.01	EQC Floor.
10595–95–6	N-Nitrosomethylethylamine	0.01	EQC Floor.
100–75–4	N-Nitrosopiperidine	0.02	EQC Floor.
930–55–2	N-Nitrosopyrrolidine	0.04	Cancer.
55–18–5	N-Nitroso-diethylamine	0.02	EQC Floor.
924–16–3	N-Nitroso-di-n-butylamine	0.02	Cancer.
3268–87–9	OCDD	0.0005	Cancer.
99999–07–0	Octachlorodibenzofuran (OCDF)	0.0005	Cancer.
152–16–9	Octamethyl pyrophosphoramide	0.7	Non-Cancer.
95–48–7	o-Cresol	20	Non-Cancer.
95–50–1	o-Dichlorobenzene	30	Non-Cancer.
95–53–4	o-Toluidine	0.4	Cancer.

TABLE TO APPENDIX A–2.—BRIGHT LINES FOR GROUNDWATER—Continued

CAS No.	Constituent	Groundwater Bright Line (mg/l)	Basis
56–38–2	Parathion	2	Non-Cancer.
608–93–5	Pentachlorobenzene	0.3	Non-Cancer.
82–68–8	Pentachloronitrobenzene (PCNB)	0.3	Cancer.
87–86–5	Pentachlorophenol	0.7	Cancer.
108–95–2	Phenol	200	Non-Cancer.
25265–76–3	Phenylenediamine	2	Non-Cancer.
298–02–2	Phorate	0.07	Non-Cancer.
85–44–9	Phthalic anhydride	700	Non-Cancer.
1336–36–3	Polychlorinated biphenyls	0.01	Cancer.
23950–58–5	Pronamide	30	Non-Cancer.
129–00–0	Pyrene	10	Non-Cancer.
110–86–1	Pyridine	0.4	Non-Cancer.
106–47–8	p-Chloroaniline	1	Non-Cancer.
106–44–5	p-Cresol	([1]).	
106–46–7	p-Dichlorobenzene	4	Cancer.
106–49–0	p-Toluidine	0.4	Cancer.
94–59–7	Safrole	0.5	Cancer.
7782–49–2	Selenium (and compounds N.O.S.)	2	Non-Cancer.
7440–22–4	Silver (and compounds N.O.S.)	2	Non-Cancer.
93–72–1	Silvex (2,4,5–TP)	3	Non-Cancer.
57–24–9	Strychnine and salts	0.1	Non-Cancer.
100–42–5	Styrene	70	Non-Cancer.
99–35–4	sym-Trinitrobenzene	0.02	Non-Cancer.
127–18–4	Tetrachloroethylene	4	Non-Cancer.
3689–24–5	Tetraethyl dithiopyrophosphate	0.2	Non-Cancer.
7440–28–0	Thallium	([1])	
108–88–3	Toluene	70	Non-Cancer.
8001–35–2	Toxaphene	0.08	Cancer.
156–60–5	trans-1,2–Dichloroethene	7	Non-Cancer.
10061–02–6	Trans-1,3–Dichloropropene	0.1	Non-Cancer.
75–25–2	Tribromomethane (Bromoform)	7	Non-Cancer.
79–01–6	Trichloroethylene	([1])	
75–69–4	Trichlorofluoromethane	100	Non-Cancer.
126–72–7	Tris(2,3-dibromopropyl)phosphate	0.2	EQC Floor.
7440–62–2	Vanadium	3	Non-Cancer.
75–01–4	Vinyl chloride (Chloroethene)	0.04	Cancer.
1330–20–7	Xylenes	700	Non-Cancer.
7440–66–6	Zinc (and compounds N.O.S.)	100	Non-Cancer.

[1] No Data.

Appendix B to Part 269—Submittal of Treatability Data

Both treatability data and full-scale operating data shall be submitted to EPA for entry into the National Risk Management Research Laboratory (NRMRL) treatability database system. Data from treatability studies shall be submitted as soon as the treatability study (or studies) has been completed. Full-scale operating data shall be submitted every three years, or after the cleanup has been completed, whichever is first.

Data shall be submitted to: Chief, Site Management Support Branch,National Risk Management Research Laboratory,26 West Martin Luther King Drive,Cincinnati, Ohio 45268.

A copy of the entire treatability/performance study should be submitted if possible. No particular format is required for presentation of the data; however, the following information must be included:

—Site/laboratory name and address
—Point of contact
—Technology (or technologies) used
—Chemicals of contamination
—Size of study (i.e., bench top, pilot plant, full scale)
—Volumes treated
—Description of study/abstract
—Beginning and ending concentrations
—Percent removal
—Analytical method
—Source matrix
—Any important operational parameters
—Any other information that the site feels is important

Sites should be aware that any data submitted will be available to the general public through the NRMRL treatability database. Sites should not submit confidential business information (CBI) material.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

Subpart A—General Information

15. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

15a. Section 270.1 (a)(1) is revised to read as follows:

§ 270.1 Purpose and scope of these regulations.

(a) Coverage. (1) These permit regulations establish provisions for the Hazardous Waste Permit Program under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), (Pub. L. 94–580, as amended by Pub. L. 95–609 and by Pub. L. 96–482; 42 U.S.C. 6091 et seq.). They apply to EPA and to approved States to the extent provided in part 271 of this chapter. Other requirements can be found in Part 269 of this chapter.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

16a. Section 271.21 is amended by revising paragraph (b) introductory text, (b)(1), (b)(2) and (e)(2) introductory text; by reserving paragraph (h) and by adding paragraphs (i), (j) and (k) and by adding a table to the end of the section to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's Statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances. Submittals to support Category 1 and Category 2 program revisions (as listed in Table 1) shall be in accordance with paragraph (i) of this section.

(2) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act. In approving or disapproving program revisions, the Administrator shall follow the procedures of paragraph (b) (3) or (4) of this section. Procedures for review and approval of Category 1 and Category 2 program revisions (as listed in Table 1) shall be in accordance with paragraph (i) of this section.

* * * * *

(e) * * *

(2) Federal program changes are defined for purposes of this section as promulgated amendments to 40 CFR parts 124, 270, 260–269 and any self-implementing statutory provisions (i.e., those taking effect without prior implementing regulations) which are listed as State program requirements in this subpart. States must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

* * * * *

(h) (Reserved).

(i) Category 2 program revisions. Category 2 program revisions and prerequisite requirements are identified in Table 1 of this section. The procedures for authorization of Category 2 program revisions are as follows:

(1) The State shall submit an application for authorization of Category 2 program revision(s). The State application shall include:

(i) A certification by the State Attorney General (or the attorney for the State agency(ies) which have independent legal counsel) that the laws and regulations of the State provide adequate authority to implement a State program equivalent to the Federal program as listed in Table 1;

(ii) A certification by the Director (as ''Director'' is defined in 40 CFR 270.2) that the State intends to and has the capability to implement a State program equivalent to the Federal program. EPA may establish essential program elements for any Category 2 rule. When established, the Director's certification shall address each essential element individually.

(iii) An update to the State/EPA Memorandum of Agreement (MOA) provided in § 271.8 or a certification by the Director stating that the current MOA provides for adequate implementation of the program revision(s).

(iv) An update to the Program Description provided in § 271.6 or a certification by the Director stating that the current Program Description adequately addresses implementation of the program revision(s).

(v) Copies of all cited State laws and regulations showing that the cited State laws and regulations are lawfully adopted and fully effective at the time the certifications are signed.

(vi) At the State's discretion, any additional information which the State believes will support the application.

(2) Within 30 days of receipt of a Category 2 program revision application, EPA will review the application to determine if it is complete. If EPA determines that the application is not complete, EPA will provide the State a concise written Statement of the deficiencies of the application.

(3) Within 60 days of determining a Category 2 application is complete, EPA will review the application to determine whether the application describes a State program equivalent to the Federal program and follow the procedures of paragraph (b)(3) of this section for an immediate final rule to publish its decision to authorize or deny authorization of the program revision. The State and EPA may agree to a longer or shorter review period. The State and EPA may agree to use the procedures of paragraph (b)(4) of this section for a proposed/final rule.

(j) For purposes of Category 2 program revisions, State programs will be considered equivalent to the Federal program if the laws and regulations cited by the State provide for a program no less stringent than the analogous Federal program.

(k) For purposes of Category 2 program revisions, State certifications will be considered incomplete when:

(1) Copies of cited statutes or regulations were not included;

(2) The statutes or regulations cited by the State are not in effect;

(3) The State is not yet authorized for certain RCRA rules specified as necessary before seeking authorization of the program revision at issue, as identified in Table 1;

(4) The certification contains significant errors or omissions.

TABLE 1 to § 271.21

Program revision	Prerequisite regulations	Category
HWIR-media rule 40 CFR Part 269 (except 40 CFR 269.30–26934)	Final authorization as defined in § 270.2	2
LDR treatment requirements for media 40 CFR 269.30–26934	LDR Third Third Rule, 55 FR 22520 Jun. 1, 1990.	2
Site-specific LDR treatment variances 40 CFR 268.44	LDR Third Third, 55 FR 22520 Jun. 1, 1990.	2
HWIR-waste rule (60 FR 66344–663469, December 21, 1995)	Final authorization as defined in § 270.2	2
Revised Technical Standards for Hazardous Waste Combustion Facilities April 19, 1996.	Final authorization as defined in § 270.2	2

17. Add a new § 271.28 to subpart A to read as follows:

§ 271.28 Specific authorization provisions for an HWIR-media program.

(a) The essential elements of an HWIR-media program are:

(1) Authority to address all media that contain hazardous wastes listed in Part 261, Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in part 261, subpart C of this chapter.

(2) Authority to address the hazards associated with media that are managed as part of remedial activities and that the Director has determined do not contain hazardous wastes (according to 40 CFR 269.4), but would otherwise be subject to Subtitle C regulation. States that choose to make contained-in decisions only when the concentrations of hazardous constituents in any given media are protective of human health and the environment, absent any additional management standards (i.e., eatable, drinkable concentrations), may receive HWIR-media authorization without certifying their ability to impose management standards on media that no longer contain hazardous waste.

(3) Authority to include, in the definition of media, materials found in the natural environment such as soil, ground water, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids that are inseparable by simple mechanical removal processes and made up primarily of media.

(4) Authority to exclude debris (as defined in 40 CFR 268.2) and non-media cleanup wastes from the requirements of 40 CFR part 269 (except the requirements for Remediation Management Plans).

(5) Authority to use the contained-in principle (or equivalent principles) to remove contaminated media from the definition of hazardous waste only if they contain hazardous constituents at concentrations at or below those specified in appendix A of part 269 of this chapter.

(6) Authority to require compliance with LDR requirements listed in 40 CFR 269.30 through 269.34.

(7) Authority to issue, modify and terminate (as appropriate) permits, orders, or other enforceable documents to impose management standards for media as described in essential elements 1–6 and 8 and 9.

(8) Requirements for public involvement in management decisions for hazardous and non-hazardous media as described in 40 CFR 269.43(e).

(9) Authority to require that data from treatability studies and full scale treatment of media that contain hazardous waste be submitted to EPA for inclusion in the National Risk Management Research Laboratory treatability database.

(b) EPA may withdraw authorization of a State HWIR-media program whenever:

(1) The State has failed to adequately address EPA concerns; or

(2) The State's HWIR-media program does not provide authority for all of the HWIR-media program essential elements as set forth in this section; or

(3) The State's HWIR-media program meets any one of the criteria for general program withdrawal as set forth in § 271.22. When withdrawing a State's HWIR-media program authorization, EPA will use the procedures of § 271.21(b)(4) for a proposed/final rule to provide notice of the proposed authorization decision.

(c) Following withdrawal of a State's HWIR-media program, the State is barred from making contained-in decisions or from approving RMPs and EPA will implement the Federal HWIR-media program in the State. RMPs issued by a State pursuant to its HWIR-media program prior to program withdrawal will remain in effect; however, EPA may use its enforcement authorities to impose additional requirements on media managed pursuant to such RMPs, as necessary to protect human health and the environment.

(d) Any person may, at any time, submit written information to EPA alleging inadequate State performance of an authorized HWIR-media program and EPA will consider such information when making decisions about the appropriate phase of monitoring for a State HWIR-media program. EPA will provide copies of all such written information to the Director and give the State at least 30 days to respond. Following receipt of the State's response, EPA will respond to all such information in writing. EPA and the State may agree to waive the opportunity for State response.

[FR Doc. 96–10096 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

federal register

Monday
April 29, 1996

Part II

Environmental Protection Agency

40 CFR Part 260, et al.

Requirements for Management of Hazardous Contaminated Media; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 268, 269 and 271

[FRL–5460–4]

RIN 2050–AE22

Requirements for Management of Hazardous Contaminated Media (HWIR-Media)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: As part of the President's regulatory reform initiative, the United States Environmental Protection Agency (EPA) is proposing new regulations for contaminated media, including contaminated soils, ground water, and sediments, that are managed during government-overseen remedial actions. The proposed rule would address contaminated media that are currently subject to regulation as ''hazardous waste'' under the Resource Conservation and Recovery Act (RCRA). The rule's purpose is to develop more flexible management standards for media and wastes generated in the course of site cleanups.

To accomplish the objective, the proposal would establish modified Land Disposal Restrictions (LDR) treatment requirements, and modified permitting procedures for higher-risk, contaminated media that remain subject to hazardous waste regulations; and give EPA and authorized States the authority to remove certain lower-risk, contaminated media from regulation as ''hazardous wastes'' under most of Subtitle C of RCRA. Under this proposal, many contaminated media management units would be relieved from the obligation to comply with Minimum Technological Requirements (MTRs). The State-authorization procedures for RCRA program revisions would be simplified for this proposed rule; the Hazardous Waste Identification Rule (HWIR-waste); and the Revised Technical Standards for Hazardous Waste Combustion Facilities. Today's proposal also proposes to withdraw the regulations for corrective action management units (CAMUs). In addition, dredged material permitted under CWA or MPRSA would be exempted from Subtitle C.

DATES: Written comments on this proposal should be submitted on or before July 29, 1996.

The Agency will hold a public hearing on this proposal on June 4, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–MHWP–FFFFF to: (1) If using regular US Postal service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460 or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: RCRA-Docket@epamail.epa.gov. These comments should be identified by the docket number F–96–MHWP–FFFFF, and submitted as an ASCII file to avoid the use of special characters and encryptions.

Please do not submit any Confidential Business Information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC) located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, please make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies will cost $.15/page.

The June 4, 1996 public hearing will be held at the Key Bridge Marriott, located at 1401 Lee Highway, Arlington, VA 22209. The main switchboard number for the hotel is (703) 524–6400. Individuals interested in more complete directions or room reservations should contact the hotel directly. Registration for the hearing will begin at 8:30 a.m.. The hearing will begin at 9:00 a.m. and end at 5:00 p.m. unless concluded earlier. Oral and written statements may be submitted at the public hearing. Time for the public hearing is limited; oral presentations will be made in the order that requests are received and will be limited to 15 minutes, unless additional time is available. Requests to speak at the hearing should be submitted in writing to: Carolyn Hoskinson (5303W) U. S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Please clearly mark your request as a request to speak at the public hearing and include both the scheduled date of the hearing (June 4, 1996) and the docket number (F–96–MHWP–FFFFF). Requests to speak may also be made on the day of the hearing by registering at the door; requests to speak by individuals who choose to register at the door on the day of the hearing will be granted in the order received, as time permits. Individuals are requested to provide a copy of their testimony for the record.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Carolyn L. Hoskinson, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (703) 308–8626. For further information on EPA's development of the guidance document ''Best Management Practices for Soils Treatment Technologies,'' contact Subijoy Dutta (703) 308–8608, (internet address: dutta.subijoy@epamail.epa.gov). For further information on EPA's development of a guidance document for sampling and analysis, which is associated with today's proposal, contact James R. Brown (703) 308–8656, (internet address: brown.jamesr@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: The index is available on the Internet. Please follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: (919) 558–0335

This report can be accessed from the main EPA Gopher menu in the directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Hazardous Waste/Corrective Action/(HWIRMDIA).

FTP: ftp.epa.gov
Login: anonymous
Password: Your Internet Address
Files are located in /pub/gopher/OSWRCRA

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, with all of the comments received in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA's responses to comments, whether written or electronic, will be printed in the Federal Register, or in a ''response to comments document'' placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to clarify electronic comments that may be garbled during transmission or conversion to paper form.

Outline

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1. Proposed Subpart S Corrective Action Requirements
2. Final Rules for Corrective Action Management Units (CAMUs)
3. Proposed Land Disposal Restrictions for Hazardous Soils
4. Deferral of the Toxicity Characteristic for Petroleum Contaminated Media and Debris from Cleanup of Releases from Underground Storage Tanks (USTs)
5. Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media (proposed rule)
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I. Authority

These regulations are proposed under the authority of sections 2002(a), 3001, 3004, 3005, 3006, and 3007 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, 6924, 6925, 6926, and 6927.

II. Background

A. Purpose and Context for Today's Proposed Rule

Since 1980, the Environmental Protection Agency (EPA) has developed a comprehensive regulatory framework under Subtitle C of RCRA that governs the identification, generation, transportation, treatment, storage, and disposal of hazardous wastes. The RCRA program is generally considered prevention- rather than response-oriented. The regulations center around two broad objectives: to prevent releases of hazardous wastes and constituents through a comprehensive and conservative set of management requirements (commonly referred to as ''cradle to grave management''); and to minimize the generation and maximize the legitimate reuse and recycling of hazardous wastes.

The RCRA regulations constitute minimum national standards for management of hazardous wastes. In general, they apply equally to all hazardous wastes, regardless of where or how generated, and to all hazardous waste management facilities, regardless of how much government oversight any given facility receives. In order to ensure an adequate level of protection nationally, the RCRA regulations have

been conservatively designed to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies.

In the course of administering current RCRA regulations, to contaminated media generated during site cleanups, EPA and the States have recognized fundamental differences in both incentives and objectives for prevention- and cleanup-oriented programs. For example, the stringent treatment requirements established by RCRA land disposal restrictions (LDRs) have encouraged many generators to reduce the amount of hazardous waste they generate. On the other hand, when these requirements are applied in the context of site cleanup, they often provide a strong incentive to leave hazardous waste and contaminated media in place, or to select alternate remedies that will minimize the applicability of RCRA regulations. This can result in remedies that are less protective of human health and the environment. (See 54 FR 41566, October 10, 1989; 58 FR 8658, (February 16, 1993); and the information in the docket to today's proposed rule)).

In the administration of remedial programs such as Superfund and the RCRA corrective action program, EPA and the States are already faced with an unacceptable situation that must be remedied while operating within the technical and practical realities of the site. Remedial actions generally receive intensive government oversight, and remedial decisions are made by a State or Federal Agency only after site-specific conditions have been thoroughly investigated. In contrast, prevention-oriented hazardous waste regulations are generally implemented independently by facility owner/operators through compliance with national regulatory requirements.

In addition to differences in the incentives and objectives of cleanup- and prevention-oriented programs, EPA and the States recognize that frequently there are significant differences between ''as-generated'' process wastes and contaminated media or other remediation wastes. For example, contaminated media are often physically quite different from as-generated wastes. Contaminated soils often contain complex mixtures of multiple contaminants, and are highly variable in their composition, handling, and treatability characteristics. For this reason, treatment of contaminated soils can be particularly complex, involving one or a series of custom-designed treatment systems. As-generated wastes, however, are usually more consistent in composition, since they are derived from specific known manufacturing processes.

Historically, EPA and the States have sought to address the application of RCRA's prevention-oriented standards to remedial actions through a series of regulatory and policy directives. These policies aim at preserving RCRA's goal of protectiveness, while providing government regulators the flexibility and tools necessary to craft effective site-specific remedies. These include the ''Area of Contamination'' policy, the ''Contained-in'' policy, the presumption for LDR treatment variances for contaminated soils, and the regulations for Corrective Action Management Units and Temporary Units, which are discussed in section (V)(F) of this preamble. (See e.g., memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers, (March 13, 1996); section (V)(A)(4)(a) of today's preamble; 55 FR 8666, 8758–8760 (March 8, 1990); ''Superfund LDR Guide #6A (2nd Edition) Obtaining a Soil and Debris Treatability Variance for Remedial Actions'' EPA/Superfund Publication: 9347.3–06FS (September 1990); ''Superfund LDR Guide #6B Obtaining a Soil and Debris Treatability Variance for Removal Actions'' EPA/Superfund Publication: 9347.3–06BFS (September 1990); and 58 FR 8658 (February 16, 1993)).

With the exception of the Corrective Action Management Unit regulations, EPA is not proposing that this rulemaking withdraw any of these policies or directives.

Instead, EPA seeks to formally recognize the differences between as-generated waste and contaminated media, by creating a framework that: (1) Allows State and Federal regulators to impose site-specific management requirements on lower-risk contaminated media, and (2) modifies LDR treatment and other requirements that are applicable to higher-risk contaminated media. Since EPA proposes that higher-risk contaminated media remain subject to regulation as ''hazardous waste,'' management of these media would remain subject to most of the other applicable RCRA Subtitle C requirements.

EPA has found that the administrative procedures associated with issuance of RCRA permits can often significantly delay cleanup actions. To relieve this problem, EPA is also proposing to streamline the administrative requirements for hazardous waste permits that are needed for government-overseen remedial actions. In addition, the proposal contains provisions for State authorization not only for today's proposal, but for all RCRA program revisions, specifically including the Revised Technical Standards for Hazardous Waste Combustion Facilities and the HWIR waste proposals. These are much more streamlined than the RCRA program's current procedures.

In today's notice, EPA is also soliciting comment on an approach that would remove remediation wastes—defined broadly— from the definition of solid waste, if they were managed under a State or EPA-approved plan.

In another matter, today's proposal would exclude dredged material from RCRA Subtitle C when it is managed according to a permit under CWA or MPRSA.

Finally, EPA wishes to emphasize that this proposal and other alternatives discussed address only the management of wastes that are generated during cleanup actions—it does not consider issues associated with what wastes should be cleaned up, what the cleanup levels should be, or how remedies are selected. EPA believes that these and other ''how clean is clean'' issues are best determined by other State and Federal regulations and guidelines.

Throughout the development of today's proposal, EPA has worked very closely with States as ''co-regulators,'' and the Agency believes that most States share the views and goals expressed in these pages by EPA.

B. Relationship to Previous Regulatory Initiatives

As noted above, the need for an alternative regulatory scheme for management of contaminated media and remediation waste has been recognized for some time. In recent years, EPA has developed several regulatory initiatives to address that need. Today's proposal is intended to address the issues and problems discussed above in a single, comprehensive regulatory package. As such, it modifies and/or replaces many of the Agency's previous regulatory initiatives, as discussed below.

1. Proposed Subpart S Corrective Action Regulations

In July 1990, EPA proposed comprehensive regulations to address the substantive and procedural requirements for implementing corrective actions at RCRA facilities under the authorities of RCRA sections 3004(u) and 3004(v) (42 USC §§ 6924(u),(v)). Commonly known as the

''Subpart S proposal,'' the proposal discussed various technical issues associated with site cleanup including ''action levels'', cleanup standards, remedy selection, points of compliance and other cleanup requirements. The Subpart S proposal has been the primary guidance for the RCRA corrective action program since its publication.

In general, the Subpart S proposal contemplated that contaminated media would be subject to the same regulatory requirements that apply to as-generated wastes. Although EPA generally did not use the Subpart S proposal to address issues associated with contaminated media management, the Agency did introduce the concept of Corrective Action Management Units (CAMUs) and temporary units (TUs) as a means of providing some relief from the burdens that LDRs and other Subtitle C requirements can impose on cleanup activities. The CAMU concept is discussed more completely below, and in section (V)(F), of today's proposal.

Today's proposal would establish a more definitive and comprehensive set of requirements for the management of contaminated media—and provide considerably more regulatory relief—than the Subpart S proposal would have in this area. Currently EPA is reexamining the Subpart S proposal, and working to finalize and/or repropose some of those regulations in approximately 18 months. As a precursor to the Subpart S rulemaking, the Agency is issuing an Advanced Notice of Proposed Rulemaking (ANPRM). One of the purposes of the ANPRM is to describe the relationship of the Subpart S initiative to other Agency initiatives, including today's proposal. The Agency expects that if finalized, the HWIR-media rules will be an essential complement to and an integral part of the final RCRA corrective action regulations.

2. Final Rules for Corrective Action Management Units (CAMUs)

On February 16, 1993 EPA published final regulations for CAMUs and TUs (58 FR 8658). In essence, the CAMU concept provides considerable flexibility to EPA and implementing States to specify design, operating, and closure/post closure requirements for units used for land-based temporary storage, or for treatment of wastes that are generated during cleanup at an RCRA facility. The CAMU also specifies requirements for units that are used as long-term repositories for cleanup wastes. Decision criteria for the designation of CAMUs are specified in those rules. Most importantly, the placement of cleanup wastes into an approved CAMU does not trigger RCRA LDR requirements (40 CFR 264.552 (a)(1)). Thus, appropriate treatment requirements can be specified by the overseeing Agency [1] on a site- and waste-specific basis. In addition, the CAMU rule provides that consolidation or placement of cleanup wastes into a CAMU does not trigger RCRA section 3004(o) minimum technology requirements (MTRs) (40 CFR 264.552 (a)(2)).

The CAMU rule did not address, however, issues pertaining to the delay often caused by the need to obtain RCRA permits for cleanup actions. While the regulations provide relief from MTRs and LDRs, CAMUs must be approved by the same procedures used for approving other types of hazardous waste management units; i.e., through RCRA permits or permit modifications, or through orders.

The CAMU rule received broad support from many affected stakeholders. Since its adoption, EPA and the States have been using the CAMU rule to provide appropriate regulatory relief for cleanups conducted under RCRA, CERCLA, and State cleanup authorities. Some parties, however, have expressed concern that, according to the rule, LDRs do not apply to wastes managed in a CAMU. They have questioned whether the rule provides too much discretion to EPA and the States, and whether this discretion could result in unacceptably lenient treatment requirements. On May 14, 1993 these parties filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit which challenged both the legal and policy bases for the final CAMU rules. *Environmental Defense Fund* v. *EPA*, No. 93–1316 (D.C. Cir.).

As part of the dialogue that prefaced the creation of the HWIR Federal Advisory Committee (discussed more fully in section C, ''Origin of Today's Proposed Rule''), the Agency agreed to reexamine the CAMU regulations in the context of developing this proposal, which is intended to be a broader, more comprehensive response to the problems in applying traditional RCRA Subtitle C standards to the management of remediation wastes. As discussed in detail elsewhere in this preamble (see section (V)(F)), today's proposal would supersede the CAMU regulations. A more detailed discussion of the relationship between today's proposal and the CAMU regulation is presented in section (V)(F).

3. Proposed Land Disposal Restrictions for Hazardous Soils

On September 14, 1993 (58 FR 48092), EPA proposed the ''Phase II'' land disposal restriction regulations, which included provisions to establish constituent-specific treatment standards for soils contaminated with hazardous wastes. In that proposal, the Agency reiterated that combustion is not always the appropriate BDAT for soils, and proposed treatment standards tailored specifically to contaminated soils. The Agency acknowledged the limitations of the data available when the proposal was written regarding the levels that can be achieved by treating various matrices of contaminated soils with available technologies (58 FR 48092, 48125 (September 14, 1993)). Because of these uncertainties, the Agency outlined several options to establish treatment standards for contaminated soils. Two options described in the proposal's preamble would have based soil treatment standards on some multiplier of the universal treatment standards for hazardous wastes (which were included in the same proposal). Another proposed option was based on a simple 90% reduction standard. The Phase II proposal also contained provisions for codifying the RCRA ''contained-in'' policy for soils. This policy, which is discussed in detail in section (V)(A)(4)(a) of this preamble, is based on the concept that environmental media (e.g., soils, ground water) that are contaminated with listed hazardous wastes or that exhibit a hazardous characteristic are not of themselves hazardous. However, these media must be regulated under Subtitle C because they contain hazardous wastes; conversely, once they are determined to no longer contain hazardous wastes, the media are generally no longer regulated under RCRA Subtitle C.

EPA received a number of comments on the proposed soil treatment standards, many of which strongly urged the Agency to address LDR treatment standards for contaminated

[1] Throughout this notice, EPA uses the term ''overseeing agency'' to mean either EPA or the State authorized for the HWIR-media program. Most States are authorized for the RCRA base program, and so would be eligible, as appropriate, to receive authorization for the HWIR-media program if they chose to do so (for a discussion of authorization for LDRs under this proposal, see the State authorization discussion in this preamble). For those States not authorized for the RCRA base program, EPA would operate the HWIR-media program in that State, just as it operates the rest of the RCRA program in that State. Also, EPA might run a cleanup program (e.g., RCRA Corrective Action or Superfund) in a State that receives authorization for the HWIR-media program. In that case, EPA would consult with or seek approval from the State, as appropriate, in order to approve the RMP. The Agency hopes that the EPA Regions and States will develop agreements regarding how this approval will take place.

soils and codification of the contained-in policy in the context of HWIR-media regulations, rather than as part of the LDR Phase II rule. The Agency agreed with those who commented, and in a subsequent Federal Register notice (58 FR 59976, November 12, 1993) announced its intention to use the HWIR-media rule as the vehicle for promulgating these standards. That notice also extended the deadline for comments and data concerning Phase II provisions for hazardous soils to March 18, 1994. The Phase II final rule (minus the soil treatment standards) was promulgated on September 19, 1994 (59 FR 47980).

4. Deferral of the Toxicity Characteristic for Petroleum Contaminated Media and Debris From Cleanup of Releases From Underground Storage Tanks (USTs)

On February 12, 1993, EPA published a proposal to defer the applicability of the toxicity characteristic (TC) rule for petroleum contaminated media and debris that are generated during underground storage tank cleanups. This was a follow-up proposal to the Agency's original temporary deferral, which was part of the final rulemaking for the toxicity characteristic (55 FR 11798, 11862, March 29, 1990). The Agency will be assessing studies to support a final decision as to whether UST petroleum contaminated media and debris should be regulated as hazardous wastes under RCRA Subtitle C. Today's proposal does not address whether or not this material should be regulated as hazardous waste; thus, the temporary exclusion described here will remain in effect until the Agency publishes a separate final rulemaking determination. (Note that because today's proposal does not address this issue, it does not reopen the comment period for the February 12, 1993 proposal.)

5. Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media (Proposed Rule)

On December 24, 1992, EPA proposed to suspend temporarily the applicability of the toxicity characteristic (TC) to media contaminated with releases of petroleum from sources other than underground storage tanks. This proposal was developed in response to petitions from a number of States. Their contention was that exempting petroleum contaminated media from UST cleanups—while cleanup of petroleum releases from other sources (such as aboveground tanks) remained subject to Subtitle C—made little sense.

In December 1992, EPA answered the States' petitions, and announced its intention to suspend the applicability of the toxicity characteristic to all petroleum contaminated media (57 FR 61542). The suspension would have taken effect only in States that certified that they had effective authorities and programs in place that could compel cleanup and regulate the management of such petroleum contaminated media in a protective manner. Also, the suspension would only apply to media generated during State or Federally supervised cleanup actions. EPA proposed that the suspension be effective for three years, during which time the Agency would conduct more thorough studies to determine whether or not—and how—petroleum contaminated media should be regulated under RCRA.

After the proposed suspension was published, it became clear that many issues addressed in that proposal applied not only to media contaminated by petroleum releases, but also to the management of all types of contaminated media. The issues associated with judging the adequacy of State cleanup programs and whether such programs can ensure protective management of cleanup wastes outside of the Subtitle C system were also recognized as relevant to other regulatory initiatives involving State authorization under RCRA.

Soon after the publication of the proposed suspension, the Agency, in concert with the States and other stakeholders, launched a major, comprehensive effort to address the regulation of contaminated media under Subtitle C. (See the following discussion of the HWIR-media rulemaking proposal). EPA and the others recognized that these more comprehensive HWIR-media rules would have to deal essentially with the same set of issues addressed in the proposed suspension for petroleum contaminated media. Thus, finalizing the proposed suspension would have required reaching decisions on a number of issues common to both rules.

In effect, finalizing the TC suspension rule would have preempted the HWIR-media process in many respects. To preserve the process, and to avoid the redundancy of developing two regulations to address the same basic problems, EPA decided not to proceed with finalizing the TC Suspension. Instead, the Agency chose to address those issues in the broader context of the HWIR-media rulemaking process.

The Agency believes that the flexibility introduced into Subtitle C requirements in today's proposal sufficiently addresses the issues raised under the proposed ''Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media,'' and therefore believes that if the HWIR-media rule is finalized, it will not be necessary to finalize the TC suspension. The Agency requests comments on whether additional flexibility (beyond that provided for in today's proposal) is necessary for non-UST petroleum contaminated media.

6. Proposed Hazardous Waste Identification Rule (May 20, 1992)

Shortly after the publication of the proposed TC suspension, the Agency completed a separate (but related) rulemaking proposal, commonly referred to as the Hazardous Waste Identification Rule (HWIR) (57 FR 21450, May 20, 1992). This proposed rule was issued in response to the U.S. Court of Appeals, District of Columbia Circuit's vacature of the mixture and derived from rules (*Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991)), which were issued in 1980 as part of the original RCRA hazardous waste regulations. In that HWIR proposal, EPA outlined alternative regulatory approaches for establishing ''exit'' levels for hazardous wastes (i.e., concentration levels below which listed hazardous wastes would no longer be subject to Subtitle C jurisdiction). The primary focus of the HWIR proposal was on the ''exit'' of as-generated hazardous wastes from the Subtitle C system. However, a separate portion of the proposal outlined conceptual approaches for revising Subtitle C requirements as they currently apply to the management of contaminated media (57 FR 21450, 21463, May 20, 1992).

The HWIR proposal received considerable interest. A number of commenters expressed strong concerns about the proposal as a whole, and the process that was used to develop it. Some of the concerns focussed on EPA's failure to consult with the States and the public prior to issuing the very complex and significant proposal. Because of process related issues, the strong views expressed by the States, and the importance of the rulemaking, EPA decided that a more deliberate and inclusive process was needed for developing the regulations. On October 5, 1992 the Agency formally announced its intention to withdraw the May 20, 1992 proposal, and start a series of discussions with various stakeholders to develop a new, carefully considered approach to crafting both exit levels for ''as-generated'' wastes and management standards for cleanup of contaminated media.

7. Relationship to CERCLA

The rule being proposed today would be expected to have a significant impact at sites being addressed under CERCLA. Superfund sites generate large quantities of remediation waste, and compliance with RCRA requirements in the management of this waste has been a recurring concern. The substantive requirements of RCRA Subtitle C, including land disposal restrictions, apply to hazardous wastes at these sites, and permits are required for off-site actions.

Under the approach proposed today, the flexibility being provided for management of remediation waste would be available to CERCLA responses. It should be noted, however, that CERCLA responses must comply with all ''applicable'' or ''relevant and appropriate'' requirements, both Federal and State. Therefore, until a RCRA authorized State is authorized for the HWIR-media rule, the State's existing RCRA regulatory system would be applicable (or relevant and appropriate) to Superfund actions in the State.

8. Relationship to HWIR-waste Rule (Dec. 21, 1995)

See preamble section (IV)(C).

9. Relationship to RCRA Legislative Reform

On March 16, 1995 the President committed to identify high cost, low benefit provisions of the Resource Conservation and Recovery Act (RCRA) for legislative reform. After an extensive stakeholder outreach process, the Administration selected two issues. The first issue for legislative reform, an exemption for certain low risk wastes from costly regulation under RCRA's land disposal restrictions program, was signed into law—the Land Disposal Flexibility Act—by the President on March 26, 1996.

The second topic identified for legislative reform was the application of RCRA hazardous waste management requirements to cleanup wastes. The Administration currently is discussing with stakeholders and Congress the possible development of bipartisan legislation to expedite the safe and cost-effective management of cleanup wastes that are currently subject to RCRA hazardous waste management requirements. In addition to RCRA cleanup sites, the type of reform being discussed would benefit site cleanups under Superfund, Brownfields and State voluntary programs. EPA has requested comment on a range of alternatives to today's proposal that are consistent with the range of alternatives being discussed for legislative reforms.

C. Origin of Today's Proposed Rule

In order to facilitate discussions with various stakeholders, EPA established a formal advisory Committee, chartered under the Federal Advisory Committee Act (FACA). Chaired jointly by the Director of the Office of Solid Waste and the Commissioner of the Oregon Department of Environmental Quality (representing the States as ''co-regulators''), the HWIR FACA Committee included representatives from industry, environmental organizations, the States, and other affected organizations.

One of the initial decisions reached by the FACA Committee was to create separate sub-groups to address the two major components of the rule—the provisions for contaminated media, and the provisions for as-generated wastes. Since then, these two efforts have proceeded in parallel, and have evolved into separate but obviously related rulemakings. A more complete description of the proceedings of the HWIR FACA Committee and subsequent deliberations of its two sub-groups can be reviewed in the Docket for this rule, and the HWIR-waste rule (60 FR 66344–469, Dec. 21, 1995).

In July 1993 the FACA Committee developed and approved a conceptual framework for the HWIR-media rule. Commonly referred to as the ''Harmonized Approach,'' this framework embodied a number of compromises reached among the participants in the process. It was recognized by the Committee that the Harmonized Approach was only a conceptual outline for crafting a proposed HWIR-media rule, and that a number of important issues remained to be resolved. However, the participants agreed that EPA, in partnership with the States, should begin the formal rulemaking process with the objective of assessing the remaining issues, determining the viability of such a rule from a legal, technical, and policy standpoint, and if possible, developing a proposed rule that embodied the general concepts and directions outlined in that approach. Today's proposal represents the culmination of those efforts.

It should be understood that this proposal, which is patterned after the Harmonized Approach, represents the Agency's best efforts to fulfill the directive of the HWIR FACA Committee. In developing the proposal it was necessary to make decisions on a number of important issues, some of which were not specifically addressed in the Harmonized Approach, including some issues that were not identified during the FACA process. The Agency recognizes that although tentative consensus was reached by the FACA Committee on the harmonized approach, it cannot be assumed that today's proposal will meet with the approval of all members of the Committee. In fact, some stakeholders have already expressed concerns with some of the specifics of today's proposal.

It is the Agency's view that today's proposal would offer many benefits beyond the present regulatory situation. However, it is quite possible that other, different regulatory approaches could achieve the same objectives and levels of protection, and might offer other advantages in terms of simplicity, cost-effectiveness and/or ease of implementation. A discussion of possible alternative approaches to today's proposed rule is presented in sections IV and VI of this preamble.

In any case, EPA in consultation with the States, will continue to seriously examine the strengths and weaknesses of the proposal presented in today's notice, and of the alternatives discussed. The Agency specifically requests comments on the approaches taken in today's proposed rule, and the specific strengths and weaknesses of the proposed options as well as the alternatives discussed in section VI of this preamble.

Alternative regulatory approaches, and any advantages they may have in comparison to today's proposal, will be very carefully considered. The Agency is committed to issuing a final HWIR-media rule that achieves as much desirable regulatory relief as possible, that is protective of human health and the environment, and that can be easily understood and implemented.

III. EPA's Policy Objectives for the HWIR-Media Rule

In developing today's proposal, EPA, in consultation with the States, identified several key policy objectives. These are discussed below.

Special Requirements Should Be Developed That Are Appropriate for Management of Contaminated Media

As discussed above, based on their experiences overseeing and implementing environmental cleanups, EPA and the States believe that many of the current prevention-oriented regulations under RCRA are inappropriate for regulating the management of contaminated media. EPA and the States have found that these prescriptive standards can create disincentives for action, and constrain the range of options available to

environmental remediators. Thus, in order to better align the regulatory controls for the unique challenges associated with contaminated media, existing Subtitle C requirements should be modified to create a more flexible and common-sense regulatory system for management of contaminated media.

Requirements for Management of Contaminated Media Should Be Flexible and Should Reflect Actual Media Cleanup Site Conditions and the Characteristics of the Contaminated Media

EPA and the States have found that cleanup of hazardous waste sites often requires regulators to make numerous site- and media-specific cleanup decisions that can be at odds with RCRA's uniform national standards. Although some may argue that applying uniform national LDR treatment standards and other national standards is appropriate for contaminated media, EPA is persuaded that for the most part, site-specific flexibility is necessary to ensure the most effective management of these wastes. EPA further believes that EPA and/or State oversight of media management activities will ensure that this additional flexibility will not be abused.

State and Federal Cleanup Programs That Have Adequate Authorities and That Are Responsibly Administered Can and Should Be Relied Upon To Exercise Sound Professional Judgment in Implementing HWIR-Media Regulations

For some time many States have been successfully operating cleanup programs under State authorities. These States have often completed cleanups at substantial numbers of sites, and have demonstrated a capability for overseeing technically complex cleanups while ensuring adequate protection of human health and the environment. Many of these programs are patterned after existing Federal programs such as CERCLA or RCRA corrective action. EPA is confident, therefore, that many States will be able to effectively implement these new regulations, and exercise sound judgment in making site-specific management decisions.

HWIR-Media Regulations Should to the Extent Possible Remove Administrative Obstacles To Expedite Cleanups, and Provide Incentives for Voluntary Initiation of Cleanup by Responsible Parties

The obstacles posed by RCRA permit requirements for cleanups that involve on-site treatment, storage or disposal of contaminated media, and other cleanup wastes have been recognized for some time. EPA believes that today's proposal would provide considerable relief from these administrative obstacles. At the same time, adequate opportunities for public participation must be maintained. EPA believes that the new administrative procedures presented in today's proposal for remedial actions that would otherwise require traditional RCRA permits would meet the goal of streamlining the process, while maintaining opportunities for public participation.

Because this proposal would provide considerable substantive relief (through more flexible management standards), and relief from administrative obstacles, EPA believes that the rule would have the additional benefit of stimulating voluntary initiation of cleanup actions by owners and operators of contaminated properties.

Authorizing States for HWIR-Media Regulations Should Be Streamlined and Simplified To Save Time and Resources

The process for authorizing States for the RCRA Subtitle C program has been characterized by lengthy procedures, large resource expenditures, and detailed, line-by-line reviews of State authorization applications. The goal of these procedures has been to ensure before the State may receive authorization, that State programs are equivalent—in the strictest sense of the word—to the Federal program. EPA views the HWIR-media regulations as an opportunity to rethink the State authorization process, with the goal of creating a new approach that relies on less up-front review by EPA, a greater reliance on certification by States, and more credible and effective sanctions on States that do not effectively implement the regulations for which they are authorized. EPA expects that this new approach to State authorization will be applied to other parts of the RCRA program. If it is successful, the approach may become the template for the RCRA program as a whole. (This is discussed in more detail in section (V)(E).)

The Regulations Should Be Easy To Understand

The RCRA Subtitle C program has been criticized by many for being overly complex and thus difficult to comply with. This rule is not intended to fix all of the program's complexities; however, a primary objective in creating this new regulatory framework for management of contaminated media was to ensure that the new regulations are as easy to understand—and implement—as possible.

IV. Introduction and Overview of Today's Proposal and Alternatives to Today's Proposal

A. Today's Proposed Approach

Today's proposal would establish two new regulatory regimes for management of contaminated media that would otherwise be subject to regulation under the current RCRA Subtitle C regulations, if the media are managed under the oversight of EPA or an authorized State. The rule would establish a ''Bright Line''—a set of constituent-specific concentrations—to distinguish between those two regimes based on whether media are more highly contaminated, or contaminated at lower levels.

Media which were contaminated with constituent concentrations below Bright Line values would be eligible to exit from Subtitle C regulation if the State or EPA determined that the media did not contain waste that present a hazard (i.e., hazardous waste). (See RCRA § 1004(5)). Most management requirements for contaminated media that do not contain hazardous wastes would be specified by the overseeing Agency on a case-by-case basis.

Today's proposal also addresses application of the Land Disposal Restrictions (LDRs) to both hazardous and non-hazardous contaminated media. Hazardous contaminated media are environmental media that contain hazardous wastes or exhibit a hazardous characteristic and have not been determined, pursuant to § 269.4, to no longer contain hazardous wastes. Non-hazardous contaminated media are media determined, pursuant to § 269.4, not to contain hazardous waste. LDRs apply to media contaminated by hazardous wastes when the wastes were land disposed after the effective date of the applicable land disposal prohibitions. When the wastes that are contaminating the media were land disposed before the effective date of the applicable land disposal prohibitions, LDRs attach to the media when the media are removed from the land, unless the media have been determined not to contain hazardous wastes before they are removed from the land. Media subject to the LDRs must be treated to meet LDR treatment standards prior to placement, or re-placement, in a land disposal unit (except a no-migration unit). As stated above, media contaminated by hazardous wastes placed before the effective dates of the applicable land disposal prohibitions and determined to no-longer contain hazardous waste before they are removed from the land are not subject to the land disposal restrictions.

In some cases, hazardous contaminated media may be determined to no-longer contain hazardous waste, but may remain subject to the land disposal restriction treatment standards. As discussed more completely later in today's preamble, this is based on the logic that, once attached, the obligation to meet land disposal restriction treatment standards continues even if a waste is no longer considered hazardous under RCRA Subtitle C.

Under current regulations, media subject to the land disposal restriction treatment standards must meet the standards for the hazardous wastes contained (or, in some cases, formerly contained) in the media, that is, the same treatment standard the contaminating hazardous wastes would have to meet if they were newly generated. Today's proposal would modify the land disposal restriction treatment standards for media subject to the LDRs so that the treatment standards reflect the site-specific nature of cleanup activities and media treatment technologies and strategies more accurately and appropriately. Today's proposal also establishes new Media Treatment Variances to ensure that, when the generic LDR treatment standards are technically impracticable or inappropriate or, for contaminated media with all constituent concentrations below the Bright Line, when the statutory LDR standard can be met with less treatment than required by the generic LDR treatment standards, appropriate treatment will be required. When contaminated media determined by a State or EPA to no-longer contain hazardous waste is still subject to the LDRs, today's proposal establishes a policy that site-specific Media Treatment Variances would be appropriate.

Contaminated media that contain hazardous wastes would continue to be regulated as hazardous wastes, but certain Subtitle C requirements would be modified. Most importantly, the LDR treatment standards for media would be amended, to account for the highly variable characteristics of media (such as soils) that are mixed with hazardous wastes, and the technical uncertainties involved with treating such heterogeneous materials. One of the primary objectives of the proposed rule is to replace generic, national standards with more tailored and flexible requirements for contaminated media. The rule would establish a new mechanism for imposing these site-specific requirements—remediation management plans (RMPs). These plans would be the vehicle for imposing (and enforcing) the new requirements, while ensuring public participation in the decision making process. An approved RMP would be required for both wastes that contain hazardous wastes and those determined not to contain hazardous wastes. Thus, the regulations would not be self-implementing—the increased flexibility allowed under the new rules would be available to owner/operators and other responsible parties only when there is sufficient government oversight to ensure that such flexibility is not abused.

The use of RMPs should accelerate and streamline cleanup actions in several ways. First, an approved RMP would be considered a RCRA permit, eliminating the need to issue traditional, time-intensive RCRA permits for cleanup actions. Second, the procedures for reviewing and approving RMPs would be considerably less complex than those required for RCRA permits. Third, RMP's would not trigger the requirement for facility-wide (and beyond facility boundary) corrective action requirements under § 3004(u) and (v) of RCRA. Thus, the delays and other disincentives that have often been caused by the need to obtain a RCRA permit for certain cleanup activities should be significantly eased.

It should be noted that certain types of remediation wastes, such as sludges, debris, and other non-media remediation wastes, would not be subject to the more flexible treatment standards specified in the proposal and could not exit from hazardous waste regulation through a contained-in determination. Such materials would be subject to the traditional Subtitle C regulations, including LDR requirements. However, RMPs could be used (at the discretion of the overseeing Agency) to address all types of remediation wastes.

Today's proposal would also replace the current regulations for CAMUs, which were promulgated on February 16, 1993. New CAMUs could not be approved after the publication date of the final HWIR-media rule; however, existing CAMUs would be ''grandfathered'', and could continue operating for the duration of the remedial operations. For situations in which cleanup wastes are simply stored or treated in piles as part of cleanup activities, a new type of unit—a remediation pile—could be used without triggering LDRs and MTRs. A significant difference between the requirements for these remediation piles and the current CAMU requirements is that these piles would be only temporary and could not be used as a disposal option for remediation wastes. Remediation piles could only be used during the duration of the cleanup activities at the site.

Another important feature of this proposal is it's new approach to authorizing States for the rule, which would be much more streamlined than existing authorization procedures. Under the new approach, States would certify that they have an equivalent program, and EPA would only do a very brief review prior to authorization, rather than a meticulous line-by-line review of the States' regulations to determine equivalence. Once authorized, EPA would monitor the State's implementation of the program. Ultimately, the Agency could revoke a State's authorization specifically for this rule, without having to revoke the State's entire RCRA program (as is currently the case).

B. Alternative Approaches Including Unitary Approach

The Agency also solicits comments regarding alternative approaches to implementing the objectives of today's proposal. An alternative that was originally suggested by Industry stakeholders has received attention and support from many stakeholders. This alternative approach is commonly referred to as the ''Unitary Approach.[2]'' The Unitary Approach would exempt all cleanup wastes (including contaminated media and non-media remediation wastes) from Subtitle C regulation if they meet certain conditions (the rule would thus be based on a conditional exclusion theory). The conditional exclusion requires that these remediation wastes be managed under an enforceable ''Remedial Action Plan'' or RAP approved by EPA or an authorized State program. The Unitary Approach would not include a Bright Line concept. All cleanup wastes would be subject to site-specific management requirements set by the overseeing Agency (EPA or State) in the RAP. EPA also believes that many of the key elements of different options and alternatives discussed in this proposal could be combined in different ways to construct an effective HWIR-media program. The following table illustrates three different combinations of the key elements, and is intended to facilitate comparison of options. A further discussion of alternative approaches and hybrids, is provided in section VI of the preamble to today's proposal.

[2] See letter from James R. Roewer, USWAG Program Manager, Utilities Solid Waste Activities Group, to Michael Shapiro, Director, Office of Solid Waste, EPA (September 15, 1995) in the docket for today's proposal.

TABLE 1

Key elements	Proposed option	Hybrid contingent management option	Unitary approach
Legal Theory	Contained-in	Conditional Exclusion for below the Bright Line.	Conditional Exclusion.
Scope	Media only	All remediation wastes	All remediation wastes.
Bright Line	Bright Line—10^{-3} and Hazard index of 10.	Bright Line (a) (for media) same as proposal, or (b) qualitative Bright Line[1].	No Bright Line.
Hazardous vs. Non-hazardous.	All media above Bright Line are subject to Subtitle C; below is site- specific decision.	All remediation wastes above Bright Line are subject to Subtitle C; below (when managed according to RAP or RMP) are not hazardous.	All remediation wastes managed according to RAP or RMP are not hazardous.
LDRs	LDRs required for media where LDRs attaches[2].	LDRs required for wastes where LDRs attaches[2].	LDRs required for wastes where LDRs attaches.[3]
Permitting	RMP serves as RCRA permit for media that remain subject to Subtitle C.	RMP serves as RCRA permit for wastes that are above the Bright Line; for wastes below the Bright Line, RMP does not have to serve as RCRA permit.	No requirement that RAP/RMP serve as RCRA permit, since wastes are not subject to Subtitle C.

[1] See discussion of qualitative Bright Line below.
[2] See discussion of applicability of LDRs in section (V)(C).
[3] See discussion of alternative option for LDR applicability in section (VI)(A)(3).

The Agency believes that the alternative approaches provide more flexibility than today's approach, and requests comments on the Unitary Approach as an alternative to today's proposal, as well as other options that combine different key elements.

C. Relationship to HWIR-Waste Rule

EPA recently proposed two approaches for exemptions from Subtitle C regulation that focus on listed hazardous wastes that are not undergoing remediation (60 FR 66344–469, Dec. 21, 1995). Under the ''HWIR-waste'' proposal, listed wastes, wastes mixed with listed wastes and wastes derived from listed wastes would be eligible for exemption from Subtitle C where tests show that all hazardous constituents fall below one of the two sets of ''exit levels'' set out in the proposal.

EPA's goal for the generic option was to identify levels of hazardous constituents that would pose no significant threat to human health or the environment regardless of how the waste was managed after it exited Subtitle C jurisdiction. EPA derived these exit levels by making reasonable worst case assumptions about releases from a variety of solid waste management units. The exit values are designed to be protective even if there is no further regulation or oversight by any Federal or State agency. Moreover, the proposal does not require any regulatory agency to review exit claims or make decisions as to whether an exit is warranted. As noted in that proposal, in addition to listed hazardous wastes, both contaminated media and wastes that do not contain media, but are undergoing cleanup, would be eligible to exit Subtitle C at these levels under this self-implementing process. However, since the exit levels do not account for site-specific factors that may exist at cleanup sites, large quantities of remediation wastes and contaminated media might not qualify for exit.

The second set of exit levels proposed in the HWIR-waste notice is somewhat less conservative because risk reduction credit is given for the conditions of the exemption, thus, adhering to the overall risk protection goal. These levels, however, would be available only to waste handlers that comply with specified conditions for the management of the exempted wastes. (The proposed option has a condition prohibiting management in land application units.) The notice also describes and requests preliminary comments on several other options for conditional exemptions with more extensive conditions that would increase risk protection and would, presumably, yield even less conservative exit levels. One of these options described could allow regulatory agencies to calculate exemption levels for individual waste management facilities using site-specific data. Waste that exited under this option would be subject to the conditions of the exit, enforced through ordinary, periodic compliance inspections, as opposed to special site-specific oversight.

Today's HWIR-media proposal, unlike the HWIR-waste generic option, does not seek to identify constituent concentrations that would be safe regardless of the manner in which the media is managed. Rather, it tries to distinguish between (1) contaminated media that are eligible to exit because it is likely that they can be managed safely under cleanup authorities outside of Subtitle C, and (2) media that contain so much contamination that Subtitle C management is warranted. For exempted media EPA is proposing to require that a regulatory agency make any appropriate site-specific decisions about the management of remediation wastes, and impose those decisions in an enforceable document. EPA also expects that States will conduct significant oversight of these requirements during the course of their remediation activities. This scheme provides for more extensive oversight than most of the conditional exemption options in the HWIR-waste proposal. Consequently, the ''Bright Line'' concentrations in this proposal (that identify media that are eligible for exclusion from Subtitle C) are not as conservative as either the generic or the proposed conditional exemption option in the HWIR-waste proposal. EPA anticipates that larger quantities of contaminated media will be eligible for exemption under this proposal than under the HWIR-waste proposal. (For a further discussion of the technical methodologies used for developing the HWIR-waste exit levels and the HWIR-media Bright Line levels see section (V)(A)(4)(c) of today's preamble and the background documents for the two proposals in the docket.)

Finally, this proposal, unlike the HWIR-waste proposal, provides additional flexibility for materials that remain subject to Subtitle C jurisdiction. For example, EPA is proposing special

permitting and land disposal restriction standards for proposed Part 269. EPA believes this relief will increase environmental protection by reducing regulatory disincentives to cleanup.

V. Section-by-Section Analysis

A. General Provisions

1. General Scope of Today's Proposal—§ 269.1

Today's proposal would establish a new Part 269 of 40 CFR, which would prescribe special standards for State or EPA-overseen cleanups managing contaminated media.

In § 269.1, today's proposed rule articulates several important provisions that apply generally to the Part 269 regulations, which are intended to clarify what these rules are intended to do. The following is a discussion of each of those provisions.

The first provision (§ 269.1(a)) clarifies that the rules (except the provisions for RMPs, in Subpart D) would apply only to materials that would otherwise be subject to Subtitle C hazardous waste regulations. The rules would not expand the coverage of Subtitle C regulations, or otherwise cause wastes to be considered hazardous that have not been so regulated before. In other words, contaminated media would have to be hazardous by characteristic, or be contaminated with a listed hazardous waste to become subject to this rule's provisions. Other contaminated media—regardless of constituent levels—would not have to be managed as hazardous wastes, and therefore, would not fall under the scope of this rule.

In discussions with various stakeholders, EPA has become aware that the ''coverage'' issue has been the source of some confusion. The rule has been perceived by some as applying to all media that might be managed as part of cleanup activities, rather than just those media that are currently subject to regulation as hazardous wastes. This provision is intended to clarify this point.

The second provision (§ 269.1(b)) is intended to explain that today's proposal would only affect certain specific Subtitle C regulations as they apply to hazardous contaminated media (i.e., media that contain hazardous waste). The primary effect of Part 269 concerning these media would be to replace the current LDR regulations (specified in Part 268) with modified treatment requirements, and to significantly streamline permit requirements. Other regulations that apply to treatment, storage, and disposal of hazardous wastes would continue to apply to hazardous contaminated media.[3] For example, if hazardous contaminated media were generated from cleanup activities—and subsequently stored in tanks or containers for greater than 90 days—the tanks and containers would have to comply with the Subparts I or J requirements of Part 264 (or Part 265, if at an interim status facility). Other Part 264 and 265 requirements would continue to apply in similar fashion.

The third provision (§ 269.1(c)) addresses the interplay between these HWIR-media rules and other cleanup-related laws and regulations. Specifically, it clarifies that remedy selection standards, other ''how-clean-is-clean'' standards, and guidelines that are specified in cleanup statutes and/or regulations, would not be affected by these rules. EPA wishes to emphasize that the proposed HWIR-media rules would not affect which media or wastes at a site must be cleaned up, or how much contaminated media should be excavated. Such decisions are usually made according to Federal or State cleanup laws and regulations, most of which specify certain guidelines or criteria for determining how sites are to be cleaned up. Only after those decisions are made would these HWIR-media regulations come into play.

The fourth provision (§ 269.1(d)) is meant to emphasize a very important point regarding the Bright Line, which is that the Bright Line values identified in the proposal are not designed as cleanup levels. As stated elsewhere in this preamble (see (V)(A)(4)(c)), the Bright Line concept has very little to do with setting cleanup levels or making other ''how-clean-is-clean'' decisions. Cleanup levels usually take into account various site-specific and contaminant-specific factors, and are meant to ensure that risks from exposure to residual contamination are at acceptable levels. Bright Line concentrations would determine only whether the overseeing Agency has the discretion to conclude that media no longer contain hazardous waste, and therefore decide what management standards would apply to that media if generated during a cleanup. The use of Bright Line concentrations as cleanup levels would generally be inappropriate.

The fifth, and final provision, (§ 269.1(e)) specifies that these rules would not be self-implementing. As explained elsewhere in this preamble, and in the proposed rule language (§ 269.1(e)), the provisions of Part 269 can only be implemented with oversight by EPA or an authorized State, by an approved Remediation Management Plan (RMP) or analogous document.

2. Purpose/Applicability—§ 269.2

As described above, this rule would modify the existing Subtitle C requirements for the management of more highly contaminated media, and would, in effect, exempt lesser contaminated media (that are determined not to contain any hazardous waste, and are managed in accordance with an approved Remediation Management Plan (RMP)) from most RCRA Subtitle C requirements. For such less-contaminated media, EPA and the States would impose appropriate management requirements on a site- and waste-specific basis, pursuant to authorities not reliant on the presence of RCRA hazardous waste.

The Agency is proposing to promulgate these regulations in a new Part (Part 269) of Title 40 of the Code of Federal Regulations. Issuing the rules for contaminated media management in a readily identified, discrete part of the Subtitle C regulations should help to make them clearer and easier to understand for both regulators and the regulated community. Although an alternate approach was considered that would have promulgated the rules as a series of amendments and modifications to the existing Subtitle C regulations (Parts 260 to 271), EPA believes such an alternative would be more difficult to understand, and would add to the complexity of an already complex body of rules.

Section 269.2 of today's proposal is intended to establish the general scope and applicability of these rules. As such, this part of the proposal addresses a number of important issues that were the subject of considerable debate during the FACA Committee process. The following is an explanation of how this proposal addresses those specific issues.

Section 269.2 specifies that Part 269 (except Subpart D) would apply only to hazardous contaminated media, not to all cleanup wastes. Therefore, non-media remediation wastes (e.g., excavated drum waste) would be subject to the same regulatory requirements that apply to as-generated hazardous wastes (with the exception of the Subpart D provisions for Remediation Management Plans). Likewise, hazardous debris under today's proposal would be subject to the existing LDR treatment standards

[3] Note that this only applies to hazardous contaminated media; media exempt from Subtitle C because of contained-in decisions (see § 269.4) would not be subject to any Subtitle C regulations except perhaps LDRs. (See discussion of LDRs in section (V)(C) of this preamble).

for debris, as well as other Subtitle C requirements.

The question of which types of remediation wastes should be covered under the HWIR-media rule was one of the major issues left unresolved by the FACA Committee under the Harmonized Approach. Although all parties on the Committee agreed that hazardous contaminated media (as defined in § 269.3—see ensuing preamble discussion) should be subject to this modified regulatory system, some groups argued that other types of remediation wastes, such as sludges, and other remediation wastes should also be covered by the rule. Those groups argued that separating media from non-media in this context is an artificial distinction that is inconsistent with the realities of managing wastes during cleanup operations. They contended that the rationale for modifying requirements for contaminated media applies equally to these non-media wastes (e.g., the presence of an overseeing agency, and disincentives for cleanup created by Subtitle C requirements). They maintained that the coverage of the rule should reflect the differences between cleanup- and prevention-oriented waste management, rather than create new categories of remediation wastes.

Other parties involved in the FACA Committee argued strongly that the rule should be narrower in scope, and should include only the types of remediation wastes that are clearly different in nature from newly-generated wastes. They said that because non-media remediation wastes (e.g., drummed wastes and sludges), are physically and chemically similar to as-generated hazardous wastes they should be subject to the same treatment standards and other requirements that apply to as-generated wastes. The fact that such wastes are managed as a result of cleanup actions (those parties argued) does not mean that they should be subject to the more flexible rules for remediation waste proposed today.

EPA decided to limit the scope of today's proposal to contaminated media for several reasons. First, the contained-in concept used in this proposal for exempting materials from Subtitle C only applies to media (and, as discussed below, debris). Thus, a different legal concept would have to be used to exempt other types of remediation wastes from Subtitle C. Further discussion of this issue is presented in section (VI)(A) of this preamble.

Another reason for limiting the applicability of the rule to contaminated media is that the cost-benefit analysis prepared for this rule indicates that, on a national basis, contaminated media comprise approximately 80% of the total volume of material that is typically managed at Superfund (Federal and State) sites, RCRA corrective action sites, and voluntary cleanup sites. The rule would thus provide a considerable amount of regulatory relief, thereby removing the disincentive for cleanup this rule is designed to address. It can also be argued that the need for regulatory relief, particularly from LDR requirements, is more acute for contaminated media than other remediation wastes. This is because, as discussed in section (II)(A) of this preamble, they are often more complex to treat effectively, since there are often large, heterogeneous volumes of media, with numerous types of contaminants present, requiring multiple types of treatment technologies. In addition, this rule, if finalized, will constitute a major change in the way the covered materials are regulated under RCRA and will require a ''break-in'' period while regulators and the regulated community adjust to the new system. Therefore, it may be prudent to limit the rule to cover only contaminated media, at least until EPA and the States have established a track record in implementing this new regulatory system.

By limiting the applicability of this proposed rule to contaminated media, EPA is not discounting the arguments of those who believe that the rule should be more expansive in scope. It is acknowledged that the rule as drafted may create complexities for site managers and regulators in distinguishing and separating media from other remediation wastes at a site, and then applying two different regulatory regimes to their management. The Agency also recognizes that at many cleanup sites, the issue of whether to pick up and manage remediation wastes or to leave them in place, involves old wastes, not media. The Agency has also found in the Cost/Benefit assessment for today's proposed rule that an alternative which would include all remediation wastes in the scope of this rule would provide significantly more cost savings than the proposed option. As discussed in section (VI)(A) of this preamble, the Agency is seriously considering applying the rule to all remediation wastes and specifically requests comments and factual data concerning whether it is appropriate to do so. Specifically, the Agency seeks comment on the benefits of including all cleanup wastes, and what types of implementation difficulties, if any, would be created by regulating hazardous contaminated media and other hazardous remediation wastes separately and how easy those problems are to overcome.

Debris. A related issue concerning the scope of today's proposal is whether the substantive portions of the rule should cover hazardous debris.[4] Although the FACA Committee did not examine this question in detail, individual members of the committee, as well as several other stakeholders (including several States) have recently contended that the rule should include debris and should allow it to be addressed under the same modified regulatory scheme as for media. These parties argue that although under today's proposal, requirements for debris could be addressed in an RMP, separate management standards (particularly the LDR treatment standards) for debris can complicate cleanups by requiring physical separation of debris from non-debris remediation wastes, and requiring different treatment technologies, where debris and media often can be handled together without compromising environmental protection.

Because this issue arose late in the preparation of today's proposed rule, EPA has decided, with a few exceptions,[5] not to include hazardous debris in the scope of today's proposal. However, should the Agency receive persuasive comments, it will consider including hazardous debris in the final rule.

EPA requests comment on whether hazardous debris should be included in the final Part 269 rule and, if debris is included, the management standards or combinations of management standards (e.g., some combination of the existing Debris Rule standards and the standards for contaminated media proposed today)

[4] Debris is defined in 40 CFR 268.2(g) as ''solid material exceeding a 60 mm particle size that is intended for disposal and that is: a manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: any material for which a specific treatment standard is provided in Subpart D, Part 268, namely lead acid batteries, cadmium batteries, and radioactive lead solids; process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by § 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.'' Hazardous debris is defined in 40 CFR 268.2(h) as ''debris that contains a hazardous waste listed in Subpart D of Part 261 of this chapter, or that exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 of this chapter.''

[5] The exceptions are today's proposed regulations for remediation management plans and remediation piles, as discussed in the applicable sections of today's preamble.

that should be imposed. EPA requests that commenters address the distinctions, if any, which should be made between naturally occurring debris (e.g., gravel, tree roots) and man-made debris (e.g., crushed drums, sorbants). For example, should naturally occurring debris be included in the final Part 269 rule and subject to the same standards as contaminated media because it is often co-located with media? While these issues were specifically raised in the context of petroleum contaminated debris, EPA believes they are also applicable to debris more generally.

Details associated with the potential application of today's proposed requirements for contaminated media to hazardous debris are discussed later in sections (V)(A)(4)(b) and (V)(C)(10) of this preamble.

Oversight. Section 269.2(b) specifies that the regulations of Part 269 would apply only to cleanup activities that are overseen by EPA or an authorized State agency, in accordance with an approved plan (i.e., a RMP). This limitation is a key feature of the proposal.

As discussed earlier, remedial actions under RCRA, CERCLA, and other Federal and State cleanup programs are typically conducted with substantial government oversight. Often this occurs because the implementing agencies have decided to make many decisions relating to cleanup on a site-specific basis rather than promulgating generally applicable regulations. Agencies have preferred site-specific decision-making in the area of cleanup because remedial management decisions are extremely complex, and because site-specific factors play very important roles in the design and implementation of protective remedies. It is the Agency's belief that the government agency overseeing a particular remedial action is generally best suited to make decisions concerning the management of the contaminated media from that site, because they would be most familiar with the site-specific conditions that would affect how the media should be properly managed. Thus, for the majority of media (i.e., those with all constituent concentrations below the Bright Line), today's proposal would allow EPA or the State to impose site-specific standards in lieu of most of the current Subtitle C requirements.

In many States, several cleanup programs are operated by different programs or agencies of the State government. It is the intention of the Agency to authorize for this rule, State RCRA programs that have incorporated the rule and plan to rely on companion authorities that are not reliant on the presence of hazardous wastes for jurisdiction (e.g., State solid waste laws, or State Superfund laws, and RCRA corrective action authority at TSDFs), and that are capable of assuring sound media management decisions for media determined to no longer contain hazardous wastes. EPA would then allow those States to determine which companion authority(s) should be used to define media management requirements at any specific site. Likewise, management standards for media determined to no longer contain hazardous wastes may be imposed, as appropriate, under Federal cleanup programs, such as Superfund or RCRA corrective action.

Since these proposed Part 269 regulations and appropriate site-specific management standards for media determined to no longer contain hazardous wastes would be implemented and enforced on a site-by-site basis, some mechanism must be available for the overseeing Agency to document the site-specific requirements, and thus provide a means to enforce compliance with those requirements. The proposal specifies that these rules will only apply when EPA or an authorized State approves a remediation management plan for the site. The requirements that contained-in decisions and appropriate non-Subtitle C management standards must be included in RMPs would also serve the very important purpose of providing the information necessary for the Agency to monitor whether an authorized State is implementing the HWIR-media rule in a protective manner (e.g., whether the State is making protective contained-in determinations). As discussed more fully in section (V)(E) below, today's proposal would allow EPA to withdraw a State's HWIR-media authorization if the Agency determines that the State is not managing the contaminated media addressed by the rule in a protective manner.

An approved RMP may also constitute a RCRA permit in cases where such permits are required specifically for cleanup activities. Further discussion of RMPs is presented elsewhere in this preamble.

§ 269.2(c) is designed to make clear that this rule does not expand the applicability of Subtitle C requirements to any materials for which Subtitle C would otherwise not apply. Materials and activities that are not already subject to Subtitle C would not be required to begin complying with Subtitle C standards. For example, if a site owner managed hazardous contaminated media under the 90-day accumulation provision of 40 CFR 262.34, this rule would not require him to obtain a RCRA Part B permit or a RMP. Similarly, if a site owner treats hazardous contaminated media *in situ* (i.e., without triggering the RCRA Land Disposal Restrictions), this rule would not subject him to the proposed media-specific LDR standards in Part 269.

3. Definitions—§ 269.3

Section 269.3 defines several important new terms that are unique to Part 269[6]. These terms are defined here, rather than in § 260.10 (where most of RCRA's regulatory terminology is defined), for the sake of convenience, and to emphasize that these are terms that would be specific only to this portion of the hazardous waste regulations. Of course, the definitions in § 260.10 would apply to Part 269 as well. The following is a discussion of each new term.

Bright Line Constituent. Today's proposal specifies the following definition:

> Bright Line constituent means any constituent found in media that is listed in Appendix A of this Part, and which is: (1) The basis for listing of a hazardous waste (as specified in Appendix VII of 40 CFR Part 261) found in that media; or (2) a constituent which causes the media to exhibit a hazardous characteristic.

This definition would be used to establish which constituent concentrations in the media must be measured against Bright Line concentrations, which in turn would determine whether the Director has the discretion to decide that the media do not contain hazardous waste. The Agency considered several approaches for defining this term, including defining it to include any constituent that: (1) May be present in the media, (2) may be present in the media and originated from hazardous waste, or (3) may be present in the media, originated from hazardous waste, and was a constituent that either formed the basis for the waste's hazardous waste listing or caused the media to exhibit a hazardous characteristic.

The Agency rejected the first option because it could be over inclusive; i.e., there could be concentrations of constituents in the media that exceed Bright Line concentrations, but did not originate from hazardous waste (e.g.,

[6] The term ''Director'' as used in today's proposed rule means ''Director'' as defined currently in 40 CFR 270.2. The HWIR-waste proposal (60 FR 66344–469, Dec. 21, 1995) would move that definition to 260.10, in which case the 260.10 definition would be sufficient to define ''Director'' for purposes of today's proposal. For that reason, today's rule does not propose a definition for ''Director.''

naturally occurring constituents). Since under the contained-in principle, media are only regulated under Subtitle C because they contain hazardous waste, this approach could inappropriately extend the reach of the Subtitle C regulations.

EPA chose the third option over the second reasoning that the use of the same constituents that have caused the wastes in the media to be regulated as hazardous form a sound basis for deciding whether those same media should be eligible to be ''deregulated.'' The sole purpose of the Bright Line is to determine whether the media should be eligible for a contained-in determination; the conclusion that all Bright Line constituents are below the Bright Line does not necessarily determine that the media no longer contain waste. If the media contain other constituents of concern, the Director could, where appropriate, use the constituents as the basis for denying a request that the media be determined to no longer contain hazardous wastes.

At some point in the site-cleanup process it would be necessary to determine which constituents in the media are Bright Line constituents. For media that exhibit a hazardous characteristic, the Bright Line constituents should be readily identified (i.e., by chemical analysis). For media contaminated with listed hazardous wastes, Appendix VII to 40 CFR Part 261 lists the constituents that were the basis for listing the waste as hazardous.

The Agency recognizes that identifying the presence of listed wastes (and thus the Bright Line constituents) in media is not always simple. It has been the Agency's longstanding policy that in cases where the origin of the contaminants is unknown, the lead agency may assume that contaminants in media did not originate from listed hazardous wastes. (See e.g., 55 FR 8666, 8758, March 8, 1990, and 53 FR 51394, 51444, (December 21, 1988)). It is generally the responsibility of the owner/operator or responsible party to make a good faith effort to determine whether hazardous constituents in media have originated from listed hazardous wastes. If the origin of constituents in media cannot be determined, and the media do not exhibit a hazardous characteristic, then the media would not be subject to Subtitle C regulations in the first place.

Although Bright Line constituents may help to determine the regulatory status of media they would not necessarily be the only constituents subject to LDR treatment standards. A discussion of how LDR standards would be applied to hazardous waste constituents in hazardous contaminated media is presented in section (V)(C) of this preamble.

The tables in Appendix A specify concentrations for 100 constituents for which verified human health effects data were available to the Agency at the time of the proposal's publication. These constituents are also the ones most commonly found in contaminated media at Superfund sites. EPA expects that Bright Line concentrations for additional constituents will be available before publication of the final Part 269 rules. However, it is likely that for some time Appendix A will be an incomplete list. Comment is invited as to whether this list should be updated, as data become available, to include as many constituents as possible, or whether for purposes of this regulation it is acceptable to have a Bright Line list that does not specify levels for every constituent that might be found at a cleanup site.

In cases where constituents are present in media but are not among those listed with concentration values in Appendix A to Part 269—the Director would have the discretion (but not the obligation) to specify site-specific or State-wide Bright Line concentrations. The Director's discretion to decide whether media contained hazardous wastes is unconstrained with respect to these constituents.

For constituents that do not have established Bright Line concentration values, EPA believes it would generally be appropriate to use similar assumptions to those used to establish the current Bright Line concentrations. The technical background documents which describe the assumptions, equations, and models used to set the Bright Line numbers are in the docket for today's rule.

Additional discussion of the Bright Line concept is presented in section (V)(A)(4)(c) of this preamble, including information on the specific numbers in Appendix A and how they were calculated. The Agency requests comments on this definition of Bright Line constituents. In particular, the Agency seeks comments on the approach of defining Bright Line constituents as those constituents that caused the waste to be hazardous in the first place. For example, would it make more sense to define Bright Line constituents as any constituents for which LDR treatment would be required? (Constituents that would be required to be treated for LDR are discussed in section (V)(C)(3) below.) This approach may be appropriate, since the owner/operator would already be addressing these constituents for LDR purposes. The Agency requests comments on approaches for making contained-in decisions for constituents that do not have levels specified in Appendix A.

Hazardous contaminated media. Today's rule proposes the following definition of hazardous contaminated media:

> Hazardous contaminated media means media that contain hazardous wastes listed in Part 261 Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in Part 261, Subpart C of this chapter, except media which the Director has determined do not contain hazardous wastes pursuant to § 269.4 of this Part (non-hazardous contaminated media).

This definition would be used to identify media that remain subject to regulation as hazardous wastes under RCRA Subtitle C.

Media. Today's rule proposes the following definition of media:

> Media means materials found in the natural environment such as soil, ground water, surface water, and sediments; or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. This definition does not include debris (as defined in § 268.2).

This definition is intended to include a broad range of naturally occurring environmental media that may become contaminated with hazardous wastes. Debris has not been included in this definition, for reasons cited in the earlier discussion of debris, section (V)(A)(2), although, as discussed in that section, EPA solicits comments on whether it should be. However, hazardous debris or other remediation wastes may be managed in remediation piles (see discussion of proposed § 264.554), and could be addressed in a remediation management plan under today's proposal.

Media Remediation Site. Today's rule proposes the following definition of media remediation site:

> Media remediation site means an area contaminated with hazardous waste that is subject to cleanup under State or Federal authority, and areas that are in close proximity to the contaminated area at which remediation wastes are being managed or will be managed pursuant to State or Federal cleanup authorities (such as RCRA corrective action or CERCLA). A media remediation site is not a facility for the purpose of implementing corrective action under § 264.101, but may be subject to such corrective action requirements if the site is located within such a facility (as defined in § 260.10).

EPA also proposes to amend the definition of facility in § 260.10 to

exclude media remediation sites (except those located at a TSDF).

The concept of a media remediation site is new in the RCRA context, although it is similar to the ''on-site'' concept that is defined in the Superfund program. Traditionally, RCRA has focused on ''facilities'' for purposes of applying hazardous waste regulations. These are generally properties where industrial operations manage hazardous wastes that they have generated, or where commercial hazardous waste treatment, storage, and/or disposal operations are conducted. For purposes of implementing corrective actions under § 3004 (u) and (v) and 3008(h), a facility is defined (see § 260.10) as ''all contiguous property under the control of the owner or operator'' where hazardous wastes are managed.

Applying this concept of a facility to cleanup actions can be problematic in some cases, particularly where cleanup activities are being conducted on property that was never before regulated under RCRA (e.g., land that became contaminated before RCRA regulations were promulgated). Under the current regulations, if the cleanup activities at such a site require a RCRA permit, the site would become a ''facility'' for RCRA purposes, and corrective action requirements would apply to all contiguous property that is under the control of the owner or operator. This has created disincentives for cleanups at properties not heretofore regulated under RCRA. For example, obtaining a permit can be a time- and resource-intensive undertaking, and the facility-wide corrective action requirements that attach once the permit is issued can also deter cleanups. Since a media remediation site would not be considered a facility for RCRA purposes, a RMP issued for the cleanup activities at the site would not trigger any of the RCRA corrective action requirements mandated by RCRA § 3004 (u) and (v).

EPA believes that using the concept of a media remediation site in applying Part 269 regulations, instead of calling them RCRA facilities, is sensible and consistent with the RCRA statute. The HWIR FACA Committee also supported this approach. As originally conceived, RCRA facilities were generally properties whose owners and operators were engaged in ongoing hazardous waste management. Requiring corrective action for such facilities (both facility-wide and beyond the facility boundary) was seen as a quid pro quo; i.e., one of the costs of doing business for those engaged in—and in some way profiting from—the management of hazardous wastes. In a remedial context, however, there is no profit or advantage gained by owners and operators from managing hazardous wastes; it is simply incidental to performing an act that is environmentally beneficial (i.e., cleaning up a site). Viewing cleanup sites as traditional hazardous waste facilities (and thus imposing additional cleanup responsibilities) can have the effect of penalizing those who wish to clean up their properties.

EPA does not believe that Congress intended for RCRA to create obstacles like this one to cleaning up contaminated sites. Under § 3004(u) of RCRA, the corrective action requirement applies to ''a treatment, storage, or disposal facility seeking a permit.'' This clearly refers to facilities that need permits because they are in the business of hazardous waste management. In the Agency's opinion, sites that only conduct hazardous waste management incidental to cleanup activities are not the types of facilities to which Congress intended to apply the § 3004 (u) and (v) facility-wide (and beyond the facility boundary) corrective action requirements.

In some cases, a media remediation site could be part of an operating (or closing) RCRA hazardous waste management facility that is already subject the § 3004 (u) and (v) corrective action requirements; in those cases, identifying an area of the facility as a media remediation site would not have any effect on the corrective action requirements for that site or the rest of the facility. The only advantage to designating part of a RCRA-regulated facility as a media remediation site would be that more streamlined permit procedures (for RMPs—see § 269.43) could be used for that part of the facility.

Under the proposed definition, a media remediation site would be limited to the area that is contaminated and subject to cleanup, and adjacent areas that are used for managing remediation wastes as part of cleanup activities. Areas that are remote from the contaminated site would not be eligible to be media remediation sites. For example, if remediation wastes were generated from a site and subsequently transported off-site for treatment or disposal, the treatment/disposal sites could not be considered media remediation sites. These off-site units would be subject to regulation as RCRA facilities for permitting and corrective action purposes.

Of course, units used to manage non-hazardous remediation wastes (including non-hazardous contaminated media—e.g., media determined not to contain hazardous waste), would not need to comply with Subtitle C regulations, nor would such units need RCRA permits. In other words, if the Director determined that media did not contain hazardous waste, units used for subsequent management of the media (on or off site) would not be subject to permitting or other Subtitle C requirements.

EPA considered the option of allowing certain off-site areas to be considered media remediation sites, such as sites dedicated to managing only remediation wastes, and sites where only remediation wastes from a specific cleanup site were managed. These options could provide significant advantages. For example, excavating wastes from a site located in a floodplain, and staging those wastes in a more secure location away from the floodplain, prior to ultimate disposal could be a reasonable remedy. As proposed, the off-site staging area could not be considered a media remediation site—it would have to be permitted as a traditional hazardous waste storage facility. The Agency recognizes that allowing the use of RMPs at off-site staging facilities might be more streamlined than requiring RCRA permits. However, an option that would allow off-site areas to be considered media remediation sites (or to be permitted under RMPs) could be more complicated to administer. The Agency does not want to restrict off-site management of remediation wastes, but simply to ensure that these off-site locations are adequately overseen. The Agency requests comments on allowing off-site areas to be regulated as media remediation sites under Part 269, and any specific requirements or limitations that should be imposed on off-site media remediation sites.

Today's proposal would allow the Director to include areas in close proximity to contaminated land that is being cleaned up as part of a designated media remediation site. This would allow the site managers a limited amount of room for conducting cleanup operations outside the area that is actually contaminated. For example, cleaning up a lagoon full of sludges might involve constructing and operating a treatment unit at the site; in many cases, it might be impractical or impossible to locate the treatment unit within the lagoon. This provision would require some judgment on the part of regulators responsible for defining the boundaries of a media remediation site. EPA solicits comments on this provision, and on the more general question of how expansive the definition should be, and what types of operations or areas should be included or excluded.

Non-hazardous contaminated media. Today's rule proposes the following definition of non-hazardous contaminated media:

Non-hazardous contaminated media means media that are managed as part of cleanup activities and that the Director has determined do not contain hazardous wastes (according to § 269.4), but absent such a determination would have been hazardous contaminated media.

This definition is intended to encompass any media that would have been subject to RCRA Subtitle C management requirements but the Director determined that they do not contain waste that presents a hazard (i.e., hazardous waste) based on controls in a RMP. (See discussion in section (V)(A)(4)(a) of this proposal). This definition is intended to differentiate non-hazardous contaminated media from media which would never have been subject to Subtitle C in the first instance (e.g., soil that was never contaminated with hazardous waste.)

Under today's proposal, management of non-hazardous contaminated media would nevertheless be subject to control and oversight from EPA or an authorized State. As discussed in section (V)(A)(4)(a), in order for hazardous contaminated media to be designated non-hazardous contaminated media, the Director would need to specify any appropriate management controls in an approved RMP. Since the intent of this rule is not to expand the reach of RCRA Subtitle C requirements, ''never contaminated soil'' would not be subject to the requirements set forth in this part for non-hazardous contaminated media.

Inherent in this definition is the idea that, even though these media would not be regulated as hazardous wastes, they might nevertheless be ''contaminated'' enough to be of some concern to the overseeing agency's site cleanup decisions. In fact, most of the media that are generated and managed as part of cleanups would likely be eligible to be considered non-hazardous, according to the results of the Regulatory Impact Analysis prepared for this proposed rule.

Remediation Management Plan (RMP). Today's rule proposes the following definition for Remediation Management Plan:

Remediation Management Plan means the plan which describes specifically how hazardous and non-hazardous contaminated media will be managed in accordance with this Part. Such a plan may also include, as allowed under Subpart D of this Part, requirements for other remediation wastes and any other (non-Part 269) requirements applicable to hazardous contaminated media.

The requirements of today's proposal depend on a responsible overseeing agency (EPA or an authorized State) to approve and monitor compliance with many site-specific decisions regarding the management of hazardous contaminated media. The RMP would provide the documentation of the plan and relevant information to demonstrate compliance with applicable requirements. A unique aspect of the RMP is that there could be several different kinds of RMPs. Since hazardous and non-hazardous contaminated media would be managed under any number of Federal and State programs, the Agency believes that it would be unnecessarily burdensome to require a fixed form of documentation, as long as the required information is adequately included or described in the documents already being used by the programs that implement the remedial activities. In other words, this rule would allow any enforceable document containing the information required to be included in a RMP if it also goes through at least the minimum public participation requirements in proposed § 269.43.

Sediment. Today's proposal specifies the following definition for sediments:

Sediment is the mixture of assorted material that settles to the bottom of a water body. It includes the shells and coverings of mollusks and other animals, transported soil particles from surface erosion, organic matter from dead and rotting vegetation and animals, sewage, industrial wastes, other organic and inorganic materials, and chemicals.

This definition is from EPA's Office of Water's document from June 1993, entitled ''Selecting Cleanup Techniques for Contaminated Sediments,'' EPA 823–B93–001, p. xiv, which is available in the docket to today's proposal. For further discussion of how the proposal would affect management of contaminated sediments, see sections (V)(A)(4)(c) and (V)(H) of this preamble.

Soil. Today's proposal specifies the following definition of soil, for the purpose of implementing Part 269 regulations:

Soil means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes, and is made up primarily of soil.

This definition was originally proposed in the September 14, 1993 Phase II LDR proposal (58 FR 48092, 48123). It would allow regulators to distinguish between soils, debris, and other remediation wastes by judging the results of simple, in-situ mechanical removal processes to separate the materials. These processes would include pumping, dredging, or excavation by backhoe, or other devices.

This approach would eliminate requirements for chemical analysis of soil, to differentiate between waste, soil and debris (e.g., considering such things as soil particle size, elemental composition of the soil, or other properties that might distinguish soil from other remediation wastes). The Agency is not proposing that owner/operators or the Director distinguish more precisely than specified in today's proposal between waste, soil, or debris—through a chemical analysis or other tests—since these approaches would be difficult to develop, support, and administer. Specifically, a basis for chemical analysis or other tests has not been developed, and implementation of this approach would most likely not be beneficial. Instead it would simply delay the progress of remedial actions. The Agency specifically solicits comments on this proposed definition for soil, and this type of approach for classifying mixtures of soil and other materials.

4. Identification of Media Not Subject to Regulation as Hazardous Waste—§ 269.4

Section 269.4 specifies that, as long as media do not contain Bright Line Constituents that are at or above Bright Line concentrations, the Director may determine if those media contain hazardous wastes. If not, the Director may determine that the media would not be subject to most RCRA hazardous waste management requirements.[7] This does not mean, however, that management of those media would be unrestricted. Instead, the rule would require EPA or the State to impose appropriate management requirements in an approved RMP, using authorities that do not depend on the presence of hazardous wastes (i.e., general cleanup authorities as provided in Federal or State cleanup statutes).

The Agency is imposing this condition on decisions that media no longer contain hazardous wastes, because the proposed rule, as discussed below, would allow those decisions to be made where media may be more highly contaminated than media the Agency has traditionally deemed to no longer contain hazardous waste. If, for some reason, a RMP were terminated prior to completion of a remedy, those

[7] The exception is, in some cases, the requirement to comply with the land disposal treatment standards. (See discussion in (V)(C).)

media would again become subject to Subtitle C regulation. Understanding the role of the Bright Line and the contained-in principle is essential to understanding how today's proposal would work. Both the contained-in principle and the Bright Line are explained below.

a. The contained-in principle in today's proposed rule background. The contained-in principle is the basis for EPA's longstanding policy regarding the application of RCRA Subtitle C requirements to mixtures of environmental media (e.g., soils, ground water, sediments) and hazardous wastes. This concept has been discussed previously in several Agency directives and in several RCRA rulemakings. (See, e.g., 58 FR 48092, 48127 (September 14, 1993)). In today's proposed rule the Agency is expanding this concept as the basis for allowing EPA or an authorized State to exempt certain contaminated media from the stringent, prevention-oriented RCRA regulations for hazardous waste management that previously would have applied.

The contained-in concept was originally developed to define the regulatory status of environmental media that are contaminated with hazardous wastes. The mixture rule at 40 CFR 261.3(a)(2)(iv) states that ''a mixture of solid waste and one or more [listed] hazardous wastes'' constitutes a listed waste itself (emphasis added). Similarly, the derived-from rule at 40 CFR 261.3(c)(2)(i) provides that ''a solid waste generated from the treatment, storage, or disposal of a hazardous waste'' is a hazardous waste (emphasis added).

Since media are not solid wastes, these rules do not apply to mixtures of media and hazardous wastes. However, two other regulations subject contaminated media to Subtitle C requirements. Under 40 CFR 261.3(c)(1) a ''hazardous waste will remain a hazardous waste'' unless and until certain specified events occur. Under 40 CFR 261.3(d)(2) a ''waste which contains'' a listed waste remains a hazardous waste until it is delisted. Together these regulations provide for continued regulation of hazardous wastes even after they are released to the environment and mingled with media.

The U.S. Court of Appeals for the District of Columbia Circuit upheld this interpretation of §§ 261.3(c)(1) and (d)(2) in *Chemical Waste Management Inc.* v. *EPA*, 869 F.2d 1526, 1538–40 (D.C. Cir. 1989), and EPA has explained the policy and its regulatory basis in numerous preambles and letters. (See 53 FR 31138, 31142, 31148 (Aug. 17, 1988); 57 FR 21450, 21453 (May 20, 1992) (inadvertently citing 40 CFR 261(c)(2) in lieu of § 261.3(d)(2)); memorandum from Marcia E. Williams, Director, EPA Office of Solid Waste, to Patrick Tobin, EPA Region IV (Nov. 15, 1986); letter from Jonathan Z. Cannon, EPA Acting Assistant Administrator, Office of Solid Waste and Emergency Response, to Thomas Jorling, Commissioner, New York Department of Environmental Conservation (June 19, 1989); and letter from Sylvia K. Lowrance, Director, EPA Office of Solid Waste, to John Ely, Enforcement Director, Virginia Department of Waste Management (Mar. 26, 1991). Under the contained-in policy, media contaminated with listed hazardous wastes are not wastes themselves, but they contain hazardous wastes and must therefore be managed as hazardous wastes until they no longer contain the waste. This concept is based on the idea that at some point (e.g., at some concentration of hazardous constituents) the media would no longer contain the hazardous waste, or be subject to RCRA Subtitle C regulations.

Because the regulations that serve as the basis for the contained-in policy are part of the ''base'' RCRA program that was in effect prior to 1984, the Agency has taken the position that EPA or the State agency authorized to administer the ''base'' RCRA regulations may determine whether media contain listed wastes. Decisions that media no longer contain listed hazardous wastes (or ''contained-in'' decisions) have typically been made on a case-by-case basis, according to the risks posed by the contaminated media. The Agency has not issued any definitive guidance or regulations for determining appropriate contained-in levels; however, EPA Regions and States have been advised that conservative, health-based levels derived from direct exposure pathways would clearly be acceptable as ''contained-in'' levels. (See memorandum from Sylvia K. Lowrance to Jeff Zelikson, Region IX, (January 24, 1989)). It has been the common practice of EPA and many States to specify conservative, risk-based levels calculated with standard conservative exposure assumptions (usually based on unrestricted access), or site-specific risk assessments.

With regard to mixtures of media and characteristic wastes, EPA has often stated that media are regulated under RCRA Subtitle C if they exhibit a hazardous waste characteristic. (See 57 FR 21450, 21453, (May 20, 1992)). But, since media generally are not wastes, they become regulated when they have been contaminated with solid or hazardous wastes and the resultant mixture exhibits a characteristic. EPA has also taken the position that contaminated media cease to be regulated as hazardous waste when sufficient quantities of hazardous constituents are removed so that the mixture ceases to exhibit a characteristic[8] (57 FR 21450, 21453, May 20, 1992).

The contained-in concept in today's proposed rule. One of the primary objectives of today's proposal is to remove lower risk contaminated media from Subtitle C jurisdiction so that more appropriate, site-specific management requirements can be specified by the overseeing Agency. For the purpose of this rulemaking EPA has chosen to use the contained-in concept as the basis for allowing these materials to be exempted from Subtitle C requirements. In formulating the proposal, the Agency considered alternative concepts that might be provided under the RCRA statute that would produce the same or similar exemption. Those concepts are discussed in section (VI)(A)(2) of this preamble.

Today's proposal would allow two separate regulatory regimes to be applied to the management of contaminated media under EPA or State-approved cleanups. For media determined to contain hazardous wastes, modified LDR treatment standards would apply, as would other applicable Subtitle C requirements. For media determined not to contain hazardous wastes, Subtitle C requirements would generally not apply, and the State or EPA would have considerable discretion in applying appropriate management standards.

The proposed rule would limit an overseeing agency's discretion to make site-specific decisions that media no longer contain wastes by specifying ''Bright Line'' concentration levels. Media that are contaminated below Bright Line concentrations would be eligible for contained-in decisions by the overseeing Agency. However, Bright Line concentrations would not constitute an automatic exemption from Subtitle C; rather, they would represent the concentration below which the State or EPA might determine that media do not contain hazardous waste.

As described below, EPA believes it would generally be acceptable to make a decision that media do not contain hazardous waste at the Bright Line concentrations specified in today's proposal. However, the proposed rule is

[8] Recent developments under the RCRA land disposal restrictions (LDRs) may suggest a qualification to this latter point. (See discussion of LDRs in section (V)(C) of today's preamble.)

designed to provide for site-specific discretion in making such decisions. Thus, it is possible that some States might choose to specify—on a site-specific basis, more broadly as a matter of policy, or in regulations—contained-in levels that are lower (i.e., more stringent) than the Bright Line concentrations specified in today's proposal. Moreover, States can be more stringent than the Federal program, and adopt lower Bright Line concentrations.

In applying the contained-in concept, today's proposed rule does not distinguish between media that are contaminated with listed hazardous wastes, and media that exhibit a hazardous waste characteristic. In both cases, it is the concentration levels of the individual hazardous constituents in the media that determine how the media will be regulated under Part 269. The origin of the constituents (i.e., listed wastes or characteristic hazardous wastes) is irrelevant in comparing measured levels in the media with Bright Line concentrations and/or contained-in concentrations.

EPA sees no reason to apply the Bright Line concept differently to media contaminated with listed hazardous wastes and media that exhibit a hazardous characteristic. In either case the media could presumably be contaminated with the same types of hazardous constituents, at similar concentrations, that would present similar potential risks if mismanaged. Thus, applying these rules differently, depending on how the media came to be regulated as hazardous, would be unnecessary and artificial, and would further complicate how these rules would be implemented in the field.

EPA recognizes that today's rule could have the effect of excluding from Subtitle C regulation some media that until now have been considered hazardous—i.e., media that exhibit a hazardous waste characteristic, with constituent concentrations below the Bright Line and EPA or the State makes a determination that the media no longer contain hazardous waste (often based on protective management controls). However, EPA believes that there is no compelling environmental rationale for not including such media in Part 269 regulation. The risk presented even by characteristic wastes is dependent on site-specific circumstances. Therefore, because today's proposal would require the Director to impose any management controls on contaminated media that are necessary to protect human health and the environment, whether the media is contaminated with listed or characteristic waste is unimportant.

Under today's proposed rule, contained-in decisions would be documented in the site's approved Remediation Management Plan (RMP). If an approved RMP expires or is terminated, the provisions of today's proposal would no longer apply. Therefore, all contaminated media that are addressed in the RMP (i.e., media that are contaminated both above and below contained-in concentrations) would again prospectively be subject to the ''base'' Subtitle C regulations. For example, if a cleanup of contaminated soil was half completed when a RMP was terminated or expired, the half that was completed in compliance with the RMP while it was in effect, would continue to be considered to be in compliance. For example, if contaminated soil was determined not to contain hazardous waste, and was disposed of in a Subtitle D landfill according to the requirements of the RMP, that Subtitle D landfill would not be considered retroactively to have accepted hazardous wastes. The half of the cleanup that was not completed when the RMP was terminated or expired, however, would have to be completed prospectively in compliance with the non-Part 269 Subtitle C regulations.

Effect of contained-in decisions under today's rule. Once the overseeing Agency has made a decision that media with constituents at certain concentrations no longer contain hazardous wastes (i.e., ''a contained-in decision''), the media would no longer be regulated as hazardous wastes under Federal RCRA regulations (§ 261.4(g) and § 269.4(a)).[9] The Agency requests comments, however, on whether the Agency should exempt the media instead, only if it were managed in compliance with the provisions of the RMP. The Agency did not propose this approach primarily because it could be unduly harsh, since any violation, no matter how minor, would result in a reversion to Subtitle C. However, this approach could be incorporated into RMPs on a case-by-case basis, where the Director could specify in the RMP the provision(s) who's violation would result in a reversion to Subtitle C regulation. (See discussion below).

A contained-in decision for wastes at a cleanup site would not, however, eliminate the Administrator's authority to require the owner/operator (or other responsible parties at sites not regulated by RCRA) to conduct remedial actions for media that do not contain hazardous wastes. Specifically, Federal cleanup authorities under RCRA section 3004(u) at TSDFs, section 7003, and CERCLA authorities, authorize the Agency to require cleanup of a broad spectrum of hazardous constituents and/or hazardous substances, however, the presence of hazardous waste(s) in media is not a requirement for exercising those authorities. Many State cleanup authorities have similar provisions.

Decision factors for contained-in decisions. Because the Agency does not want to constrain site-specific decision-making, today's proposed rule would not mandate specific factors for making contained-in decisions, but would allow the Director to base these decisions on appropriate site-specific factors. However, EPA requests comments on whether decision factors should be codified for making contained-in decisions. EPA believes that the Bright Line concentrations will generally be acceptable for contained-in decisions; however, decision factors could help authorities determine, on a site-specific basis, what types of management controls (see discussion below), if any, would make the Bright Line concentrations appropriate concentrations at which to make contained-in decisions. Decision factors could also aid in determining other appropriate levels at which to make contained-in decisions.

Given the multiplicity of different types of sites, EPA requests comments on what decision factors, if the Agency decided to include them in the final rule, would ensure consistent decision-making, and yet keep the process efficient and flexible. Although EPA does not believe it would be appropriate to do a risk assessment at every site, particularly if the cleanup is of a relatively simple nature, the Agency does believe that the following factors (adapted from the LDR proposal for hazardous soils) contain the types of information that may be appropriate (depending on the specific circumstances at a given site) to consider in making contained-in decisions:

—Media properties;
—Waste constituent properties (including solubility, mobility, toxicity, and interactive effects of constituents present that may affect these properties);
—Exposure potential (including potential for direct human contact, and potential for exposure of sensitive environmental receptors, and the

[9] The Agency notes, however, that by explicitly providing in § 261.4 that decisions under Part 269 that media no longer contain hazardous waste are not subject to most Subtitle C regulations, EPA would not intend to affect in any way the authority of EPA and authorized States to make contained-in decisions outside of the HWIR-media context.

effect of any management controls which could lessen this potential);
—Surface and subsurface properties (including depth to groundwater, and properties of subsurface formations);
—Climatic conditions;
—Whether the media pose an unacceptable risk to human health and the environment; and
—Other site or waste-specific properties or conditions that may affect whether residual constituent concentrations will pose a threat to human health and the environment.

Most of these factors were proposed in the LDR proposal for hazardous soil (58 FR 48092, September 14, 1993) as decision factors that might be considered by the Director in making contained-in decisions. If the proposal for hazardous soil had been finalized, it would have codified the contained-in principle for hazardous soil. Today's suggested factors differ from those in the hazardous soil proposal in one significant respect. The Agency has determined that it may be appropriate, when assessing ''exposure potential,'' to consider site-specific management controls imposed by the Director that limit potential exposures of human or environmental receptors to media. The Agency made this change because EPA believes that States overseeing cleanups might determine that media that would have traditionally been considered to contain hazardous waste (e.g., media that contained listed wastes and posed an unacceptable risk under traditional exposure scenarios) no longer presented a hazard (and thus did not contain ''hazardous'' waste), based on site-specific management controls imposed by the Director.

This position is based upon EPA's understanding that RCRA provides EPA and the States the discretion to determine that a waste need not be defined as ''hazardous'' where restrictions are placed on management such that no improper management could occur that might threaten human health or the environment. (See definition of hazardous waste at RCRA section 1004(5)(B)). The HWIR-waste proposal included a full discussion of the legal basis for this position. For the sake of clarity, it is repeated below (60 FR 66344–469, Dec. 21, 1995).

EPA's original approach to determining whether a waste should be listed as hazardous focused on the inherent chemical composition of the waste, and assumed that mismanagement would occur, causing people or organisms to come into contact with the waste's constituents. (See 45 FR 33084, 33113, (May 19, 1980)). Based on more than a decade of experience with waste management, EPA believes that it is inappropriate to assume that worst-case mismanagement will occur. Moreover, EPA does not believe that worst-case assumptions are compelled by statute.

In recent hazardous waste listing decisions, EPA identified some likely ''mismanagement'' scenarios that are reasonable for almost all wastewaters or non-wastewaters, and looked hard at available data to determine if any of these are unlikely for the specific wastes being considered, or if other scenarios are likely, given available information about current waste management practices. (See the Carbamates Listing Determination (60 FR 7824, February 9, 1995) and the Dyes and Pigments Proposed Listing Determination (59 FR 66072, December 22, 1994)). Further extending this logic, EPA believes that when a mismanagement scenario is not likely, or has been adequately addressed by other programs, the Agency need not consider the risk from that scenario in deciding whether to classify the waste as hazardous.

EPA believes that the definition of ''hazardous waste'' in RCRA section 1004(5) permits this approach to hazardous waste classification. Section 1004(5)(B) defines as ''hazardous'' any waste that may present a substantial present or potential hazard to human health or the environment ''when improperly * * * managed.'' 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 gives it flexibility in order to consider the need to regulate as hazardous those wastes that are not managed in an unsafe manner (section 3001 requires that EPA decide, in determining whether to list or otherwise identify a waste as hazardous waste, whether a waste ''should'' be subject to the requirements of Subtitle C). EPA's existing regulatory standards for listing hazardous wastes reflect that flexibility by allowing specific 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, based on that mismanagement scenario.

Two decisions by the U.S. Court of Appeals for the District of Columbia Circuit provide potential support for the 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.)

The Agency believes, therefore, that EPA and the States may consider site-specific management controls when making contained-in decisions pursuant to proposed Part 269. EPA believes that this approach is especially appropriate in the Part 269 context, because of the significant level of oversight generally given to cleanup actions. Management controls that are tailored to site-specific

circumstances and imposed in enforceable documents, and State or EPA oversight of cleanup activities, would ensure that the site-specific management controls that the Director relied upon in making each contained-in decision would continue to be implemented. In addition (although EPA is not proposing to require it as a federal matter), States may want to consider making such contained-in decisions conditional; i.e., media would only be considered nonhazardous so long as they were managed in the manner considered by the Director in making the contained-in decision. Deviations (any, or specific ones) would result in a reversion to Subtitle C regulation.

EPA specifically requests comments on the following: (1) Should the Agency specify a list of criteria to consider; (2) should the Agency prepare decision factors as guidance; (3) should the Agency promulgate decision factors as part of the final rule; (4) are the above decision factors appropriate for making these decisions; (5) if so, should the criteria listed above be more or less specific regarding the conditions that would allow or preclude contained-in decisions; (6) are there other factors the Director should consider when making contained-in decisions, in addition to those listed above; and (7) should there be fewer factors to consider?

b. Issues associated with hazardous debris. When EPA promulgated land disposal treatment standards for hazardous debris, it also codified the contained-in principle for debris contaminated with listed hazardous waste. (See 57 FR 37194, 37221, (August 18, 1992)). At the time EPA codified the contained-in principle for hazardous debris, it was the Agency's practice to make contained-in decisions at ''health-based,''[10] levels, thus a decision that debris no longer contain hazardous waste would clearly also constitute a ''minimize threat'' determination for purposes of RCRA section 3004(m). Therefore, contained-in decisions under 40 CFR 260.3(f)(3) also eliminate the duty to comply with the land disposal restriction requirements of 40 CFR Part 268. EPA requests comments on whether the contained-in principle codified for hazardous debris is adequate or whether the contained-in policy should be applied to debris in the same way today's proposed rule applies it to hazardous contaminated media. For example, should contained-in decisions for debris incorporate the Bright Line concept? If a Bright Line is established for debris, should it be the same as the Bright Line in today's proposed rule for hazardous contaminated media or would some other Bright Line values or methodology be more appropriate for debris? Are there issues associated with requiring that debris be tested to determine if it has constituent concentrations greater than Bright Line concentrations? Is testing routinely too complicated for debris matrices? Should contained-in decisions for debris be based on determinations made for media co-located with the debris (i.e., if debris were located in the same area as media that was determined not to contain hazardous wastes, should the debris be presumed not to contain hazardous wastes)? Similarly, if debris is located in the same area as media that have constituent concentrations less than Bright Line concentrations, should the debris be presumed to also be below the Bright Line?

Alternatively, should the Director be able to make contained-in decisions, as they are described in today's proposed rule, without application of the Bright Line to debris (as we are proposing for sediment? (See preamble (V)(A)(4)(c)). If allowed, should these contained-in decisions replace the existing contained-in decisions available for debris or should the existing contained-in decisions be maintained with non-Bright Line contained-in decisions (as discussed in today's proposed rules addressing sediments—see preamble (V)(A)(4)(c)) available for debris managed under a RMP? Are other combinations of the existing debris contained-in decision provisions and the contained-in decision provision for media in today's proposed rule appropriate?

While today's proposed rule does not include changes to the existing contained-in principle as applied to debris contaminated with listed hazardous waste, EPA could include revisions to the standard in response to public comment. Issues associated with hazardous debris and the possibility of including debris in the final Part 269 rules are also discussed in sections (V)(C)(10) and (V)(A)(2) of today's preamble.

c. The Bright Line. One of the key features of the ''Harmonized Approach'' developed through the FACA process was the concept of a ''Bright Line.'' The Bright Line would divide contaminated media into two different categories, which would be subject to two different regulatory regimes. Although straightforward in concept, the Agency has found it challenging to establish a set of numbers to serve this purpose.

As conceived by the FACA Committee, and presented in Appendix A to today's proposal, the Bright Line is a set of constituent-specific, risk-based concentration levels. In agreeing on a Bright Line approach, the FACA Committee anticipated that a substantial proportion of contaminated media would fall below the Bright Line, and thus be eligible, at the Director's discretion, for flexible, site-specific requirements (non-Subtitle C) set by the overseeing Agency. At the same time, the FACA Committee agreed that the Bright Line should ensure that very highly contaminated media (traditionally considered ''hot spots'') be subject to uniform national protective standards (e.g., treatment). EPA believes that the Bright Line values presented in today's proposal are a reasonable attempt to balance both of these important objectives.

As originally conceived, the Bright Line was intended to represent in some manner the relative risk posed by contaminated media. Simply put, media contaminated above Bright Line concentrations should pose higher risks than media below the Bright Line under a given exposure scenario. Since the Bright Line is only an indicator of relative risk, the levels should not be interpreted as representing what is protective or ''clean.'' The actual risk of any particular contaminated medium depends on the circumstances by which human or environmental receptors may be exposed to the medium. EPA wishes to emphasize that Bright Line concentrations are not cleanup levels. The Bright Line simply is a means of identifying which regulatory regime may be appropriate for the contaminated media at a cleanup site.

The Agency believes that the management of contaminated media would be conducted in a protective manner under either of the regulatory schemes that would be established by the rule. The underlying assumption is that managing contaminated media under the HWIR-media rule would eliminate significant exposures to humans or ecological receptors. This is because the overseeing agency's presence ensures that media will be managed in a way that directly addresses the risk posed by site-specific circumstances. Thus, protection of human health and the environment can be ensured by applying either the national standards for media that contain hazardous waste, or the site-specific standards specified by the overseeing agency for media, which the overseeing agency has determined do not contain hazardous waste, based on the proposed management standards

[10] See memoranda discussed in section (V)(A)(4)(a) of today's preamble.

identified in the RMP. Thus, in establishing Bright Line concentrations, EPA finds it reasonable to consider the potential effect of different sets of Bright Line concentrations in terms of the proportional volumes of media that would fall above and below the Bright Line. EPA believes that unless a substantial amount of contaminated media are eligible for site-specific decision-making, the disincentives for clean-up will not be eliminated (therefore resulting in greater overall risk to human health and the environment).

Thus, EPA's goal was to develop Bright Line concentrations that would remove a significant amount of contaminated media from Subtitle C jurisdiction, while ensuring that ''hot spots'' would remain subject to mandatory national standards. In deciding how to determine such levels, the Agency considered several approaches that included selecting concentrations based solely on volume. This approach, however, was rejected because there was no way to account for the relative degree of risk posed by different constituents. In other words, because some constituents are more hazardous than others at the same concentration, a Bright Line based purely on volume would not account for this difference.

EPA, therefore, wanted to set Bright Line concentrations for different constituents at different levels in order to account for this variance in relative risk. In order to do this, EPA needed to consider a potential exposure scenario that would account for the difference in relative risk of these different constituents. Because risk occurs only when there is a chance of exposure, at least one set of exposure assumptions would be necessary to establish the Bright Line.

Since one of the goals of the Bright Line was to identify the most highly contaminated media, the FACA Committee recommended using 10^{-3} as a benchmark for setting the Bright Line. Therefore, the Bright Line values in Appendix A were based on a 10^{-3} risk level for carcinogenic constituents (using the assumptions described above), and a health index of 10 for non-carcinogens, (that is, $10 \times$ the concentration at which adverse health effects occur) according to certain exposure assumptions. This approach is consistent with the Superfund Principle Threats concept which uses 10^{-3} as a factor to identify the principle threats at Superfund sites.

Describing the Bright Line theory was relatively easy compared with determining Bright Line concentrations for all media which would be subject to today's Part 269 proposal. Today's rule proposes to define soil, ground water, surface water, and sediments as media. However, the potential exposure assumptions that could be used to determine Bright Line concentrations vary for different types of media. Therefore, EPA established two sets of Bright Line values, one for soils, and one for ground water and surface water.

Today's proposed rule does not include Bright Line numbers for contaminated sediments. The amount of sediment that is classified as RCRA hazardous is very low. Thus, EPA proposes that site-specific contained-in decisions be made for hazardous contaminated sediments. The Agency requests comments on whether to develop a Bright Line specifically for contaminated sediments. The Agency also requests comments on whether it would be appropriate to use the Bright Line for soil for sediments.

Bright Line concentrations for soils. In setting the Bright Line for soils, EPA chose to use exposure scenarios and assumptions that were developed for the Superfund Soil Screening Levels (SSLs), because that effort used standard risk scenarios that have been widely used and accepted by the Agency (and by many States). The SSLs were developed for a purpose different from the Bright Line;[11] however, the exposure scenarios used in that effort are good indicators of relative risk for developing Bright Line values.

The SSLs are based on three human exposure scenarios; direct contact ingestion, inhalation, and drinking contaminated ground water. Each scenario is based on a specific set of assumptions for such things as body weight, frequency of exposure, daily intake rates, and other factors. The inhalation pathway also uses certain models to calculate wind dispersion and the uptake of airborne contaminants by human receptors.

Today's proposed Bright Line numbers for soils are based on only two of those human exposure scenarios—direct contact ingestion and inhalation. The Bright Line value for each constituent is based on whichever pathway yields the more conservative (i.e., lower) concentration. EPA recognizes that protection of ground water is one of RCRA's major goals and that many of the Subtitle C design and operating standards were developed to protect ground water resources. Therefore, EPA considered the possibility of using the ground water exposure pathway in setting Bright Line concentrations for soils. However, the migration of contaminants from soils to ground water is fundamentally site-specific, and influenced by a number of site-specific factors such as depth to ground water; soil porosity; carbon content and other soil characteristics; amount of rainfall; solubility of the contaminants; and numerous other site- and constituent-specific conditions. The Agency has found less variability in fate and transport potential for inhalation and ingestion exposures in residential settings.

EPA is reluctant to use a greatly simplified ground water model that would not take any site-specific or constituent-specific factors into account. In order to address concerns posed to ground water on a more appropriate site-specific basis, EPA prefers to allow for consideration of ground water risks in making site-specific decisions regarding either the contained-in decision and/or the site-specific management requirements. Given the overseeing Agency's discretion to determine these standards on a site-specific basis, and given that EPA believes that site-specific decisions are most appropriate for ground water risk decisions, the Agency has proposed that the ground water exposure pathway should not be considered in setting the national Bright Line values for soils. Finally, EPA proposes two considerations to overlay the soil Bright Line numbers. EPA proposes to cap the Bright Line values at 10,000 ppm, equivalent to 1% of the volume of the contaminated media. EPA believes that it is reasonable to classify media as highly contaminated if 1% of the volume of media is contaminated with a particular constituent. Therefore capping the Bright Line at 10,000 ppm is consistent with the intention that the Bright Line distinguish between highly contaminated and less contaminated media. The second cap on the soil Bright Line values is the saturation limit (Csat). EPA believes it is sound science to compare the concentrations developed through the inhalation and ingestion risk scenarios to the actual concentration that could physically saturate the soil. If the Csat was lower than the concentrations from the inhalation or ingestion scenarios, EPA set the Bright Line concentration at the Csat. For further details on specific assumptions and methodologies used to

[11] Superfund Soil Screening Levels (SSLs) were developed as a screening tool to determine when further investigation is necessary at Superfund sites. Because the SSLs are intended to be conservative, and trigger investigation whenever prudent, they are set at a 10^{-6} level for carcinogens. For more information on SSLs, call David Cooper (703) 603–8763.

determine the Bright Line values for soils, see Appendix A–1.

The Agency also considered several alternatives for establishing exposure assumptions for soil Bright Line numbers. These alternatives are discussed below. Estimates of the impacts of each alternative (in terms of volumes of media exempted) are all based on a 10^{-3} risk for carcinogens, and a health index of 10 for non-carcinogens (that is 10× the concentration at which adverse health effects occur).

Alternative #1—Bright Line for soils based on inhalation, ingestion, and migration to ground water. In addition to inhalation and ingestion pathways, this alternative would use a generic model to derive soil levels that, given certain fate and transport assumptions, would result in transfer of contaminants in the soils to ground water at or below drinking water standards (i.e., maximum concentration levels, or MCL's). EPA did not choose this alternative primarily because of the site-specific variability of calculating ground water exposure scenarios (as discussed above). In addition, this approach would result in Bright Line numbers that were considerably lower than those in the proposed option. The Agency estimated that under this alternative, approximately 50 percent of contaminated media would fall below the Bright Line, compared to 70 to 75 percent under the proposed option.

Alternative #2—Bright Line for soils based on inhalation and ingestion pathways, with concentrations calculated on a site-specific basis for the soil-to-ground water pathway. This option would yield Bright Line numbers that would approximate more closely ground water risks for each site. However, it would have the disadvantage of requiring considerable data gathering and analysis simply to calculate Bright Line concentrations, and these concentrations would obviously differ from site to site. This contradicts the idea of the Bright Line as ''bright''—i.e., an easily referenced set of numbers that can be applied in a standard fashion. However, since Bright Line numbers would vary widely across the range of cleanup sites, volume estimates for this alternative are not possible to calculate.

Alternative #3—Bright Line numbers for soils based on a multipathway analysis. Under this alternative, numerous exposure pathways would be considered for each constituent, and Bright Line concentrations would be set for the most conservative pathway (i.e., the pathway that resulted in the lowest concentration level). In some respects this approach would be consistent with the multipathway approach being used in the HWIR proposed rule for as-generated wastes (60 FR 66344–469, Dec. 21, 1995). However, the Bright Line is intended for a very different purpose than the ''exit levels'' being developed for that proposed rule. For instance, the exit levels in the HWIR-Waste rule (discussed in section (II)(B) of this preamble) generally assume that exited wastes will not be subject to any management requirements, whereas this proposal assumes that these wastes will be managed protectively under State/EPA oversight. In addition, the resulting Bright Line values would be much lower than those proposed today, thus much less media would be regulated ''below the line.''

Bright Line concentrations for ground water and surface water. Today's proposed rule also establishes Bright Line values specifically for contaminated ground water. (See Appendix A–2 and discussion below). As with contaminated soils, highly-concentrated, contaminated ground water would be subject to specific national management standards, while less-contaminated ground water could be managed according to site-specific requirements imposed by the State or EPA.

To set Bright Line concentrations for ground water and surface water (Appendix A–2), EPA used standard exposure assumptions for human ingestion of contaminated water. EPA believes that it is appropriate to use the same Bright Line values for surface water and ground water. And for the same reasons discussed above for soils, the Agency believes a multi-pathway approach, or ''actual risk'' approach is not necessary for setting Bright Line concentrations for ground water and surface water.

EPA has used the same philosophical approach for the ground water/surface water Bright Line as it has used for soils, by analyzing relative risk and relying on the oversight of authorized States or EPA to ensure that hazards are addressed on a site-specific basis. In addition, EPA used a 10,000 ppm cap for the ground water/surface water Bright Line, just as for the soil Bright Line. This is explained in the soil Bright Line section of the preamble. Finally, if the concentrations from the ingestion of contaminated water were below the detection limits for that constituent in water (the EQC), EPA set the Bright Line at the EQC. More details on the specific assumptions and methodologies used to determine these concentrations are included in Appendix A–2.

Issues common to both sets of Bright Line numbers. In developing today's proposed Bright Line concentrations, some stakeholders said that EPA would need to calculate a number of additional direct and indirect pathways to evaluate the relative risks of contaminated media completely. The stakeholders also said that the Agency would need to predict risks to ecological receptors (i.e., plants and animals) as well as human health risks. EPA, however, does not believe that evaluation of additional pathways is necessary. The pathways selected already provide a sufficient basis for distinguishing relatively lower-risk contaminated media from relatively higher-risk media. The evaluation of other pathways and receptors would be important and, in some cases, necessary if the Bright Line represented ''safe'' levels of contamination. As explained above, however, the Bright Line serves no such purpose. It merely identifies which of two regulatory schemes would apply to certain contaminated media. If site-specific factors demonstrate that a decision that media no longer contain hazardous wastes, would be inappropriate, then the overseeing agency has the discretion not to make such a determination.

Some stakeholders have voiced concerns about the land use assumptions that were used to set the Bright Line. The SSLs used residential land use assumptions; therefore, residential land use assumptions form the basis for the proposed Bright Line for soils. EPA recognizes that the residential land use assumptions that underlie the ingestion and inhalation exposure pathways used for today's Bright Line values for soil may be inappropriate for managing risks at many sites that would be subject to these HWIR-media regulations. However, since the purpose of using risk assessment to develop the Bright Line is to differentiate between the relative risks of constituents, and not to establish the risks posed at specific sites, either residential or industrial assumptions would have been equally appropriate. Since the Agency's residential risk assessment methodology is more developed than the industrial methodology, the Agency chose to use residential assumptions for developing the Bright Line. The Bright Line for ground water and surface water does not include assumptions about land use. (See discussion above).

Request for comment. EPA solicits comments on the approaches used to develop today's proposed Bright Lines. The Agency also requests comment on the alternatives described above, as well

as any other possible approaches to developing the Bright Line.

In addition, EPA requests comments on whether it is necessary to have a Bright Line at all. If there were no Bright Line, all media would be eligible for contained-in decisions by the overseeing agency on a site-specific basis. Alternatively, the ''unitary approach,'' discussed in section VI of this preamble, would eliminate the Bright Line, and instead would exempt all cleanup wastes managed under a RMP from Subtitle C requirements.

Technical methodology. As discussed above, the technical methodologies used in calculating Bright Line concentrations for soil ingestion and inhalation are those that were used to develop ''soil screening levels'' for contaminated sites (59 FR 67706, December 30, 1994). In the proposed soil screening level guidance, values for the soil-to-ground water pathway would generally be calculated with data derived from site-specific factors and conditions, although generic values for this pathway would be presented in situations where site-specific data were unavailable. These technical methods and formulae are available for review in the docket for this rulemaking, and in the docket for the soil screening level proposal since they support both rules.

EPA requests comments on the methods, formulae, and technical underpinnings used for this rulemaking. Comments could include information on particular constituents that could change proposed Bright Line concentrations, information that may be used to determine Bright Line numbers for constituents that currently do not have Bright Line numbers. Commenters should keep in mind that the Agency's objective is to provide regulatory relief by encouraging contaminated media with a lower degree of risk to exit from Subtitle C regulation—provided that adequate safeguards exist to protect human health and the environment.

EPA has often found it necessary to propose sets of risk-based numbers to address contaminated media, for example; Subpart S action levels, (55 FR 30798, July 27, 1990), Superfund Soil Screening Levels (see below), and today's proposed rule. Since the Agency's understanding of risk assessment and the science surrounding risk based numbers is constantly developing, EPA has realized that almost as soon as risk-based numbers are published, they can become outdated. As a very current example, today EPA is proposing Bright Line concentrations based, in part, on the Superfund Soil Screening Levels (EPA/9355.4–14FS, EPA/540/R–94/101 PB95–963529 (December 1994)). After today's proposed Bright Line concentrations were calculated, but before this proposal was published, some of the technical inputs used to calculate the Superfund Soil Screening levels were adjusted in response to public comments (e.g., volatilization factors, cancer slope factors, etc.). EPA did not have time to recalculate the Bright Line concentration before publishing them.

In response to this problem, EPA requests comment on alternatives to keep the Bright Line concentrations up-to-date with the most current Agency risk information and policies (e.g., adjustments to the Soil Screening levels,[12] changes in reference doses or cancer slope factors in the IRIS or HEAST databases). For purposes of comment on this proposal, EPA will update the Bright Line calculations and place them in the docket for this rule.

EPA believes it might be appropriate, instead of promulgating actual Bright Line concentrations in the final rule, to promulgate the methodology that could be used to develop constituent-specific concentrations, in Appendix A to this rule, and to provide guidance on appropriate sources for needed underlying risk-based information. EPA believes it might then be appropriate for States to update their lists of Bright Line concentrations on a regular basis, such as every six months, to remain current with developments in risk information. As an alternative, EPA believes it may be appropriate for States and/or EPA to calculate new Bright Line concentrations for each new RMP at the time it is proposed for public comment. In any case, the Bright Line concentrations being used under a RMP must be stated in the RMP, and available during public comment on the RMP. The Agency requests comment on these alternatives, and any other suggestions for keeping Bright Line concentrations up-to-date.

The Agency also recognizes the problems of trying to comply with a ''moving target.'' A cleanup could be completed or underway using a certain set of Bright Line concentrations that could then change. EPA believes it might be appropriate to protect those past and on-going cleanup operations from the requirement to change course mid-way, or to revisit completed remediation waste management under a RMP which used outdated Bright Line concentrations. In the Superfund program, requirements that are revised or newly promulgated after the ROD is signed must be attained only when EPA determines that these requirements are ARARs and that they must be met to ensure that the remedy is protective (40 CFR 300.430(f)(1)(ii)(*1*)). Another alternative could be a shield such as is provided for RCRA permits in 40 CFR 270.4, which could specify that compliance with a RMP would equal compliance with RCRA. EPA requests comments on this protection issue, and how best to achieve it.

Relationship of the HWIR-media Bright Line to the HWIR-waste exit levels. As described earlier in this preamble (in section (IV)(C)) the objectives for the HWIR-waste exit levels and the HWIR-media Bright Line are different. The HWIR-waste exit levels are intended to identify levels of hazardous constituents that would pose no significant threat to human health or the environment regardless of how the waste was managed after it exited Subtitle C jurisdiction. The HWIR-media Bright Line levels are simply intended to distinguish between (1) contaminated media that are eligible to exit Subtitle C because it is likely that they can be managed safely under cleanup authorities outside of Subtitle C, and (2) media that contain so much contamination that Subtitle C management is warranted. Because of these different objectives, EPA developed the two proposals using different methodologies. For the soil Bright Line, HWIR-media used a calculation based on ingestion and inhalation of soil at 10^{-3} cancer risk, and a hazard index of 10 for non-carcinogens. For the non-wastewater HWIR-waste exit level (which is most readily comparable to the soil Bright Line), EPA used an analysis that evaluates exposures from multiple pathways to identify those pathways that may result in a 10^{-6} cancer risk and hazard index of 1 for non-carcinogens. EPA then selected the most limiting pathway, (most conservative), as the exit criteria. EPA believed that the HWIR-waste levels would be more conservative than the HWIR-media concentrations. However, upon a recent comparison of the two sets of numbers, some HWIR-waste exit levels are at higher concentrations (less conservative) than the HWIR-media Bright Line concentrations. In the comparison of those concentrations, EPA determined that for about 27% of the HWIR-media Bright Line concentrations of chemical constituents for soil, the HWIR-waste exit levels for non-wastewater were higher.

A similar result was found when EPA compared the HWIR-media

[12] The Soil Screening Guidance has addressed this problem by publishing the *methodology* as the guidance itself, and only providing the actual concentrations as examples in the appendix to the guidance.

groundwater/surface water Bright Line concentrations to the HWIR-waste wastewater exit levels. In that case, EPA used direct ingestion of groundwater resulting in a cancer risk of 10^{-3} and hazard index of 10 for non-carcinogens to calculate the HWIR-media Bright Line. For the HWIR-waste wastewater exit level, EPA again analyzed multiple pathways to identify those that would result in a cancer risk of 10^{-6} and a hazard index of 1 for non-carcinogens and then selected the most limiting pathway as the exit criteria. For approximately 20% of the HWIR-media Bright Line concentrations for groundwater/surface water the HWIR-waste concentrations for wastewater were higher.

One of the practical concerns that arises from this difference in concentrations is this: if contaminated media is below the HWIR-waste exit levels, then that media is eligible for exit under that rulemaking just like any other hazardous waste. Therefore, if the HWIR-media rule specified that media at concentrations below the HWIR-waste exit levels were still ''above the Bright Line'' and not eligible for a contained-in determination, the two rules would be inconsistent. EPA recognizes that this inconsistency must be addressed before promulgation of these two final rules, and requests comments on how to resolve this issue. A preliminary description of the primary differences in the methodologies follows.

One of the most significant differences between the HWIR-waste and the HWIR-media methodologies is that the HWIR-waste methodology was designed to calculate an acceptable concentration at which as-generated waste and treatment residuals could exit the Subtitle C system. A part of that methodology assumed that exited wastes might be managed in such a way as to contaminate soils and groundwater, and calculated the potential risk to receptors from the contaminated soil or groundwater. Therefore, the HWIR-waste analysis models fate and transport between the original waste and the contaminated media, assuming some loss of concentration due to many factors, such as: partitioning of constituents to air, soil, and water; losses of contaminant mass through biodegradation; bioaccumulation through the food chain; and volatilization, hydrolysis, and dispersion of contaminants during transport. The HWIR-media methodology begins at the point where soils and groundwater are already contaminated. Therefore, the HWIR-media Bright Line did not incorporate fate and transport considerations to calculate the Bright Line concentrations, but assumed the receptor was in direct contact with the contaminated media.

Specific comparison of soil Bright Line to non-wastewater exit levels. If contaminated soil were managed under the HWIR-waste proposal, the soil would be subject to the exit criteria for non-wastewaters. That is why EPA compared the soil Bright Line to the non-wastewaters exit level. For this analysis, the HWIR-media Bright Line for soil based on ingestion or inhalation was compared with the exit criterion for non-wastewater identified as the most limiting pathway (e.g., soil ingestion, fish ingestion) in the HWIR-waste proposal. Thus, the analysis was not necessarily a comparison of exit criteria and Bright Lines for similar exposure pathways.

The analysis indicated that for 27 of the HWIR-media Bright Line constituent concentrations for soil, the proposed Bright Line concentration was lower than the exit criterion for HWIR-wastes for non-wastewater. Of these constituents, six of the lower proposed Bright Line concentrations are lower because the HWIR-media number was intentionally ''capped'' at 10,000 parts per million. EPA decided to propose a 10,000 ppm cap, equivalent to 1% of the volume of the contaminated media, (as discussed above) because EPA believes that it is reasonable to classify media as highly contaminated if 1% of the volume of media is contaminated with a particular constituent. Therefore capping the Bright Line at 10,000 ppm is consistent with the intention that the Bright Line distinguish between highly contaminated and less contaminated media. The HWIR-waste proposal did not propose to cap the exit levels because it was not intended to differentiate wastes based on higher vs. lower concentration, but instead to differentiate based on risk factors.

For 12 of the 27 constituents, HWIR-media Bright Lines are established at soil saturation limits (Csat) that are less than the corresponding HWIR-waste exit level. EPA believes it is sound science for a rule establishing soil concentrations to compare the concentrations developed through the inhalation and ingestion risk scenarios to the actual concentration that could physically saturate the soil. If the Csat was lower than the concentrations from the inhalation or ingestion scenarios, EPA set the Bright Line concentration at the Csat. The HWIR-waste proposal (since it is proposed for as generated wastes, not soils) did not propose to cap the exit levels at the soil saturation limit.

For the other nine of the 27 constituents, differences in the results can be attributed to several factors related to the underlying assumptions of the methodologies used to calculate the criteria.[13] These include the fate and transport differences discussed above, and:

—Receptors. Although many of the exposure assumptions (e.g., exposure duration, exposure frequency, ingestion rate) are common to the analyses, there are still significant differences in the location of the receptors that will affect the exit criteria. The HWIR-media Bright Lines are based on an exposure scenario in which a resident lives directly on the contaminated media and ingests contaminated soil or inhales particulate and volatile emissions. The HWIR-waste exit levels consider several exposure scenarios; however, none are directly comparable to the HWIR-media exposure scenario. These exposure scenarios include an off-site resident, an adult off-site resident, a child off-site resident, an adult and child on-site 10 years after site closure, and an on-site worker.

—Sources. The HWIR-media Bright Lines for soil ingestion and inhalation exposure pathways are based solely on contaminated soils and assume that the soil is an infinite source. The HWIR-waste non-groundwater non-wastewater exposure pathways consider three sources: land application units, waste piles, and ash monofills. Waste piles and ash monofills are assumed to be infinite sources; however, the land application units are assumed to be finite sources. This assumption may result in higher (less conservative) exit criteria under HWIR-waste.

A comparison of the toxicity benchmarks indicates that the HWIR-media Bright Lines and the HWIR-waste exit levels generally start with the same toxicity benchmark (all but three chemicals for oral ingestion and all but four chemicals for inhalation use the same toxicity benchmarks). Thus, the apparent discrepancies in the criteria can be attributed to the significant differences in the fate and transport modeling of the chemicals in the HWIR-process waste analysis, the receptors evaluated, and assumptions related to the sources (as described above).

[13] If the HWIR-media proposed Bright Line concentrations were updated to reflect the updated Soil Screening levels, as discussed above, two of these nine remaining constituents would have higher HWIR-media Bright Line concentrations than HWIR-waste exit levels.

Specific comparison of Groundwater/Surface Water Bright Line to wastewater exit levels. If contaminated groundwater were managed under the HWIR-waste proposal, the groundwater would be subject to the exit criteria for wastewaters. That is why EPA compared the groundwater/surface water Bright Line to the wastewaters exit level. For this analysis, the HWIR-media Bright Line for groundwater/surface water based on ingestion of groundwater was compared with two options for the exit criterion for wastewater for the HWIR-waste proposal, one based on toxicity benchmarks and one based on toxicity benchmarks and MCLs.

The analysis indicated that 38 constituents had higher proposed HWIR-waste exit criteria than proposed HWIR-media Bright Line concentrations.[14] For one of these 38 constituent, only the MCL option for the HWIR-waste exit level was higher. For four of the 38 constituents, only the toxicity benchmark only option for the HWIR-waste exit level was higher. None of these 38 constituents were affected by the HWIR-media 10,000 ppm cap, and there is not a saturation limit cap on the HWIR-media groundwater/surface water Bright Line.

Similar to the comparison of the HWIR-media soil Bright Line to the HWIR-waste non-wastewater exit levels, the HWIR-media groundwater/surface water Bright Line and the HWIR-waste wastewater exit levels use different methodologies, and therefore produce different results. Again, a key difference between the two sets of concentrations is the use of fate and transport modeling. The HWIR-waste proposal assumes some loss through fate and transport, whereas the HWIR-media methodology assumes direct ingestion of the contaminated groundwater (more details on the two methodologies can be found in the dockets for the two proposed rules).

Request for comments. Because of the above comparisons, EPA has determined that for some constituents, because the HWIR-media methodology was *more* conservative than the HWIR-waste methodology, that conservatism outweighed the fact that the HWIR-media risk target (10^{-3} for limited pathways) was *less* conservative than the HWIR-waste risk target (10^{-6} for multiple pathways). Therefore some of the HWIR-waste exit levels, which were intended to be more conservative overall than the HWIR-media Bright Line, are set at higher concentrations. As described above, EPA recognizes that these discrepancies must be resolved before promulgation of the two proposed rules. For further detail on the methodologies used to develop the HWIR-media Bright Line, Soil Screening Levels and the HWIR-waste exit levels, see the docket for the two proposed HWIR rules. EPA requests comments on how to resolve these issues.

B. Other Requirements Applicable to Management of Hazardous Contaminated Media

1. Applicability of Other Requirements—§ 269.10

The purpose of today's proposed rule would be to modify the identification, permitting, management, treatment, and disposal requirements for contaminated media. It is not intended to replace the entire scope of Subtitle C requirements as they relate to media. For that reason, many existing Subtitle C requirements would continue to apply to remedial actions conducted in accordance with this Part. Specifically, 40 CFR Parts 262–267 and 270 would continue to apply when complying with this Part, except as specifically replaced by the provisions of this Part. In addition, when treating media subject to LDRs according to the treatment standards in § 269.30, the following provisions of Part 268 would continue to apply' §§ 268.2–268.7 (definitions, dilution prohibition, surface impoundment treatment variance, case-by-case extensions, no migration petitions, and waste analysis and recordkeeping), § 268.44 (treatment variances), and § 268.50 (prohibition on storage). Again, the Agency does not intend to recreate all of the Subtitle C requirements, but in this case only replace certain requirements themselves as they relate to hazardous contaminated media.

2. Intentional Contamination of Media Prohibited—§ 269.11

EPA recognizes that promulgation of standards for hazardous contaminated media that are less onerous than the requirements for hazardous waste may create incentives for mixing waste with soil or other media to render the waste subject to these provisions. The Agency expressly proposes to prohibit this behavior (§ 269.11).

EPA recognizes, however, that sometimes it is necessary to have some mixing of contaminated media for technical purposes to facilitate cleanup. That mixing is not the prohibited mixing referred to here. This prohibition specifically includes the intent to avoid regulation. If the intent of the mixing is to better comply with the regulations that would apply to the wastes prior to mixing, then it would not be prohibited under this clause. The Agency requests comments on whether further safeguards, in addition to this proposed provision and the civil and criminal enforcement authorities of RCRA, are needed to ensure that no attempts are made to mix wastes with media to take advantage of the reduced requirements of the proposed HWIR-media rule.

3. Interstate Movement of Contaminated Media—§ 269.12

EPA recognizes that media that would be exempted under today's rule, but that previously would have been managed as hazardous wastes, would be transported to and through States that were not the overseeing agency for the remedial action that generated those media. Therefore, the Agency designed the interstate movement requirements of proposed § 269.12 to ensure that receiving (consignment) States—or States through which media would travel—could approve the designation that the media is not hazardous before they accepted the media for transport or disposal.

The default in these requirements is that the media must be managed as Subtitle C waste in the receiving or transporting State if the receiving or transporting State has not been notified of the designation as non-hazardous, or if the receiving or transporting State does not agree with the determination. Receiving and transporting States would also have to be authorized for this Part in order to approve these decisions in their States. If a receiving or transporting State agrees to the redesignation, then the media may be managed as non-hazardous.

EPA requests comments on these interstate movement requirements, specifically on any implementation concerns with this approach, and any suggestions to ease implementation. Several people have expressed concern about notifying the States through which the media would be transported, but not ultimately disposed. The Agency believes that it may be appropriate to limit notification requirements to the States ultimately receiving the media. EPA also feels that it would be necessary to limit the designation of media as non-hazardous only to States that are authorized for this Part. The Agency believes that this would be necessary because the authority to make these contained-in decisions is an integral element for authorization for this Part. EPA believes

[14] If the HWIR-media proposed Bright Line concentrations were updated to reflect current updated risk information, as discussed above, two of these 38 constituents would have higher HWIR-media Bright Line concentrations than HWIR-waste exit levels.

that it may be appropriate to allow States not authorized for this Part to simply approve another authorized States' decision that the media are not hazardous. The Agency requests comments on these issues.

C. Treatment Requirements

1. Overview of the Land Disposal Restrictions

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit land disposal of hazardous wastes.[15] Once a hazardous waste is prohibited from land disposal, the statute provides only two options: comply with a specified treatment standard prior to land disposal, or dispose of the waste in a unit that has been found to satisfy the statutory no migration test (referred to as a ''no migration'' unit) (RCRA section 3004(m)). Storage of waste prohibited from land disposal is also prohibited, unless the storage is solely for the purpose of accumulating the quantities of hazardous waste that are necessary to facilitate proper recovery, treatment, or disposal (RCRA section 3004(j)). For purposes of the land disposal restrictions, land disposal includes any placement of hazardous waste into a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave (hereafter referred to as ''placement'') (RCRA section 3004(k)).

Not all management of hazardous waste constitutes placement for purposes of the LDRs. EPA has interpreted ''placement'' to include putting hazardous waste into a land-based, moving hazardous waste from one land-based unit to another, and removing hazardous waste from the land, managing it in a separate unit, and re-placing it in the same (or a different) land-based. Placement does not occur when waste is consolidated within a land-based unit, when it is treated *in situ,* or when it is left in place (e.g., capped). (See 55 FR 8666, 8758–8760, (March 8, 1990) and ''Determining When Land Disposal Restrictions (LDRs) Are Applicable to CERCLA Response Actions,'' EPA, OSWER Directive 9347.3–O5FS, (July 1989)).

Congress directed EPA to establish treatment standards for all hazardous wastes restricted from land disposal at the same time as the land disposal prohibitions take effect. According to the statute, treatment standards established by EPA must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short- and long-term threats to human health and the environment are minimized (RCRA section 3004(m)(1)). In *Hazardous Waste Treatment Council* v. *EPA,* 886 F.2d 355 (D.C. Dir. 1989), Cert. Denied 111 S.Ct 139 (1990), the court held that section 3004(m) allows both technology- and risk-based treatment standards, provided that technology-based standards are not established ''beyond the point at which there is not a 'threat' to human health or the environment.'' *id.* at 362 (i.e., beyond the point at which threats to human health and the environment are minimized) (59 FR 47980, 47986, September 19, 1994). Hazardous wastes that have been treated to meet the applicable treatment standard may be land disposed in land disposal facilities that meet the requirements of RCRA Subtitle C (RCRA section 3004(m)(2)).

Congress established a schedule for promulgation of land disposal restrictions and treatment standards for all hazardous wastes listed and identified as of November 8, 1984 (the effective date of the HSWA amendments) so that treatment standards would be in effect, and land disposal of all hazardous waste that did not comply with the standards would be prohibited, by May 8, 1990 (RCRA section 3004(g)). For some classes of hazardous wastes, Congress established separate schedules: for certain hazardous wastes identified by the State of California (''California List''), Congress directed EPA to establish treatment standards and prohibit land disposal by July 8, 1987; for hazardous wastes containing solvents and dioxins, Congress directed the Agency to establish treatment standards and prohibit land disposal by November 8, 1986. (RCRA sections 3004(d) and (e)). For wastes listed or identified as hazardous after the HSWA amendments (referred to as ''newly identified wastes''), EPA must establish treatment standards and land disposal prohibitions within six months of the effective date of the listing or identification (RCRA section 3004(g)(4)). Under current regulations, environmental media containing hazardous waste are prohibited from land disposal unless they are treated to meet the treatment standards promulgated for the original hazardous waste in question (i.e., the same treatment standard the contaminating hazardous waste would have to meet if it were newly generated). (See 58 FR 48092, 48123, (September 14, 1993)).

The land disposal restrictions generally attach to hazardous wastes, or environmental media containing hazardous wastes, when they are first generated. Once these restrictions attach, the standards promulgated pursuant to section 3004(m) must be met before the wastes (or environmental media containing the wastes) can be placed into any land disposal unit other than a no migration unit. In cases involving characteristic wastes, the D.C. Circuit held that even elimination of the property that caused EPA to identify wastes as hazardous in the first instance (e.g., treating characteristic wastes so they no longer exhibit a hazardous characteristic) does not automatically eliminate the duty to achieve compliance with the land disposal treatment standards. (*Chemical Waste Management* v. *U.S. EPA,* 976 F.2d 2,22 (D.C. Dir. 1992), *cert. denied,* 113 S.Ct 1961 (1993).) The Agency has examined the logic of the *Chemical Waste* decision and concluded that the same logic could arguably be applied in the remediation context; i.e., a determination that environmental media once subject to LDR standards no longer contain hazardous wastes may not automatically eliminate LDR requirements. While the *Chemical Waste* court did not specifically address the remediation context, the Agency believes it may be prudent to follow the logic the court applied to characteristic wastes, and has developed today's proposal accordingly.

It is important to note that the land disposal restrictions apply only to hazardous (or, in some cases, formerly hazardous) wastes and only to placement of hazardous wastes after the effective date of the applicable land disposal prohibition—generally May 8, 1990 for wastes listed or identified at the time of the 1984 amendments, or six months after the effective date of the listing or identification for newly identified wastes.[16] In other words, the duty to comply with LDRs has already attached to hazardous wastes land disposed (''placed'') after the applicable effective dates, but not to hazardous wastes disposed prior to the applicable effective dates. Accordingly, hazardous

[15] The LDR requirements are not cleanup requirements; LDR treatment standards do not trigger removal, exhumation, or other management of contaminated environmental media; however, other applicable requirements, such as State or Federal cleanup requirements, could trigger such actions which, in turn, could trigger LDR requirements.

[16] A detailed listing of when the land disposal prohibitions took effect for individual hazardous wastes can be found in 40 CFR Part 268, Appendix VII.

wastes disposed prior to the effective date of the applicable prohibition only become subject to the LDRs if they are removed from the land and placed into a land disposal unit after the effective date of the applicable prohibition. (See 53 FR 31138, 31148, (August 17, 1988) and *Chemical Waste Management* v. *US EPA*, 86 9 F.2d 1526, 1536 (D.C. Cir. 1989)), ''treatment or disposal of [hazardous waste] will be subject to the [LDR] regulation only if that treatment or disposal occurs after the promulgation of applicable treatment standards.'') Similarly, environmental media contaminated by hazardous wastes placed before the effective dates of the applicable land disposal restrictions does not become subject to the LDRs unless they are removed from the land and placed into a land disposal unit after the effective dates of the applicable restrictions.

The land disposal restrictions do not attach to environmental media contaminated by hazardous wastes when the wastes were placed before the effective dates of the applicable land disposal prohibitions. If these media are determined not to contain hazardous wastes before they are removed from the land, then they can be managed as non-hazardous contaminated media and they're not subject to land disposal restrictions. For example, soil contaminated by acetone land disposed (''placed'') in 1986 (prior to the effective date of the land disposal prohibition for acetone) and, while still in the land, determined not to contain hazardous waste, is not subject to the land disposal restrictions.[17] This is consistent with the Agency's approach in the HWIR-waste rule, where it indicates that LDRs do not attach to wastes that are not hazardous at the time they are first generated (60 FR 66344, December 21, 1995).

Since application of the land disposal restrictions is limited, in order to determine if a given environmental medium must comply with LDRs one must know the origin of the material contaminating the medium (i.e., hazardous waste or not hazardous waste), the date(s) the material was placed (i.e., before or after the effective date of the applicable land disposal prohibition), and whether or not the medium still contains hazardous waste (i.e., contained-in decision or not).

Facility owner/operators should make a good faith effort to determine whether media were contaminated by hazardous wastes and ascertain the dates of placement. The Agency believes that by using available site- and waste-specific information such as manifests, vouchers, bills of lading, sales and inventory records, storage records, sampling and analysis reports, accident reports, site investigation reports, spill reports, inspection reports and logs, and enforcement orders and permits, facility owner/operators would typically be able to make these determinations. However, as discussed earlier in the preamble of today's proposal, if information is not available or inconclusive, facility owner/operators may generally assume that the material contaminating the media were not hazardous wastes. Similarly, if environmental media were determined to be contaminated by hazardous waste, but if information on the dates of placement is unavailable or inconclusive, facility owner/operators may, in most cases assume the wastes were placed before the effective date.

The Agency believes that, in general, it is reasonable to assume that environmental media do not contain hazardous wastes placed after the effective dates of the applicable land disposal prohibitions when information on the dates of placement is unavailable or inconclusive, in part, because current regulations, in effect since the early 1980's, require generators of hazardous waste to keep detailed records of the amounts of hazardous waste they generate. These records document whether the waste meets land disposal treatment standards and list the dates and locations of the waste's ultimate disposition. With these records, the Agency should be able to determine if environmental media were contaminated by hazardous wastes and if they would be subject to the land disposal restrictions.

In addition, EPA believes that the majority of environmental media contaminated by hazardous wastes were contaminated prior to the effective dates of the applicable land disposal restrictions. Generally, the contamination of environmental media by hazardous waste after the effective date of the applicable land disposal restriction would involve a violation of the LDRs, subject to substantial fines and penalties, including criminal sanctions. The common exception would be one-time spills of hazardous waste or hazardous materials. In these cases, the Agency believes that, typically, independent reporting and record keeping requirements (e.g., CERCLA sections 102 and 103 reporting requirements or state spill reporting requirements) coupled with ordinary ''good housekeeping'' procedures, result in records that will allow the Agency to determine the nature of the spilled material, and the date (or a close approximation of the date) of the spill. The Agency requests comments on this approach and on any other assumptions, records, or standards of evaluation that would ensure that facility owner/operators would identify any contaminated media subject to land disposal restrictions properly and completely.

Information on contained-in decisions should be immediately available since, generally, these determinations are made by a regulatory agency on a site-specific basis and careful records are kept.

2. Treatment Requirements—§ 269.30

a. Approach to treatment requirements and recommendations of the FACA Committee. RCRA section 3004(m) requires that treatment standards for wastes restricted from land disposal, ''* * * specify those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' A recurring debate through EPA's development of the land disposal restriction program has been whether treatment standards should be technology-based (i.e., based on performance of a treatment technology) or risk-based (i.e., based on assessment of risks to human health and the environment that are posed by the wastes). The Agency believes that both approaches are allowed. It has long been recognized that Congress did not directly address the questions of how to set treatment standards in the language of section 3004(m).[18] In addition, Congress did not specifically address whether the LDR treatment standards for newly generated wastes and remediation wastes must be identical; the structure of RCRA's LDR provisions suggests that Congress believed that remediation waste may merit special consideration. (See, RCRA sections 3004(d)(3) and 3004(e)(3), which

[17] Similarly, soil contaminated by acetone placed in a solid waste management unit in 1986, but leaked into the soil at some point after 1986, is not subject to the land disposal restrictions provided that, while the soil is still in the land, the Director determines it does not contain hazardous wastes. LDRs would not attach because, in this case, it is the initial placement of hazardous waste that determines whether there is a duty to comply with LDRs.

[18] See, e.g., 51 FR 40572, 40578 (November 7, 1986); *Hazardous Waste Treatment Council v. US EPA*, 886 F.2d 355, 361–3 D.C. Cir. 1989); 55 FR 6640, 6641 (February 26, 1990). The legislative history of section 3004(m) is likewise inconclusive. See discussion of the legislative history at 55 FR 6640, 6641–6642 (February 26, 1990)''[a]t a minimum, the [legislative history shows] that Congress did not provide clear guidance on the meaning of 'minimize threats'.''

provided a separate schedule for establishing LDR prohibitions and treatment standards for most remediation wastes).

EPA's preference would be to establish generic nationwide risk-based treatment standards that represent minimized threats to human health and the environment in the short- and long-term. However, the difficulties involved in establishing risk-based standards for contaminated media on a generic nationwide basis are formidable [19], due, in large part, to the wide variety of site-specific physical and chemical compositions encountered during cleanups in the field. In the absence of the information necessary to develop generic, risk-based standards for contaminated media, the Agency is proposing generic standards using a technology-based approach and, for lower-risk media subject to the LDRs, provisions for site-specific, risk-based minimize threat determinations. (See discussion of Media Treatment Variances, below).

Technology-based standards achieve the objective of minimizing threats by eliminating as much of the uncertainty associated with disposal of hazardous waste as possible. For this reason, technology-based standards were upheld as legally permissible so long as they are not established ''beyond the point at which there is not a ''threat'' to human health or the environment.'' (See, *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 355, 361–64 (D.C. Cir. 1989),*cert. denied* 111 S.Ct. 139 (1990), page 362; see also (55 FR 6640, 6642, February 26, 1990)).

Today's proposed regulations would modify the land disposal restriction treatment standards for contaminated media so that they reflect appropriate treatment technologies and strategies for environmental media, and the site-specific nature of cleanup activities more accurately. When non-hazardous contaminated media is still subject to LDRs (e.g., because hazardous wastes contaminating the media were land disposed (''placed'') after the effective date of the applicable LDR prohibition, or because the media were determined to still contain hazardous wastes when removed from the land), today's proposal would establish, as a policy matter, a presumption for site-specific LDR treatment variances. This approach is consistent with the recommendations of the FACA Committee, which agreed that the land disposal treatment standards for ''as-generated'' wastes are not generally appropriate for contaminated environmental media, and that higher-risk media should be subject to generic national standards while requirements for lower-risk media should be determined on a site-specific basis in the context of agency-overseen cleanups.

b. Proposed treatment standards for contaminated media (1) Applicability. Hazardous contaminated media are environmental media that contain hazardous waste or that exhibit a hazardous characteristic and have not been determined, pursuant to § 269.4, to no longer contain hazardous wastes. Non-hazardous contaminated media are environmental media that have been determined, pursuant to § 269.4, not to contain hazardous wastes. Media contaminated by hazardous wastes placed after the effective date of the applicable land disposal prohibition must be treated to meet LDR treatment standards before it is placed into a land disposal unit. In this case, the land disposal restrictions attach because hazardous waste was originally land disposed—placed—after the effective date of the applicable land disposal prohibition and the standards of section 3004(m) were never met. Likewise, hazardous contaminated media removed from the land after the effective date of the applicable land disposal restriction and placed into a land disposal unit, must be treated to meet LDR treatment standards. The land disposal restrictions attach in this case because, although the hazardous waste was not restricted from land disposal when first disposed, it has subsequently been prohibited from land disposal and, therefore, if removed from the land after the effective date of the applicable prohibition, cannot be placed into a land disposal unit until it meets the standards of RCRA section 3004(m). As discussed earlier in today's preamble, once the land disposal restrictions attach, the standards of section 3004(m) must be met before the wastes (or environmental media) may be placed into any land disposal unit other than a no migration unit, elimination of the property that cause the waste to be hazardous (e.g., deciding, pursuant to § 269.4, that a given environmental medium no longer contains hazardous waste) does not automatically mean the wastes have complied with RCRA section 3004(m). [20]

(2) Today's proposal. In today's proposed rule, EPA would, (1) establish generic, technology-based treatment standards for higher-risk contaminated media subject to the LDRs (i.e., hazardous contaminated media) and, (2) for lower-risk contaminated media subject to the LDRs (i.e., non-hazardous contaminated media), establish, as a policy matter, a presumption for site-specific LDR treatment variances. The treatment standards proposed today would only apply when media subject to the LDRs are managed under a RMP. For hazardous contaminated media other than soils (e.g., groundwater and sediments), the proposed rule would require treatment to meet the LDR treatment standards applicable to the hazardous wastes contained in the media. (See § 269.30(f)). For example, ground water contaminated with a commercial chemical product such as acetone (hazardous waste number U002) would have to be treated to the standards specified in Part 268 for acetone.

For hazardous contaminated soils, the proposed rule would establish alternative soil-specific LDR standards. Proposed § 269.30(e) would require that, generally, soils be treated so that the concentrations of constituents subject to treatment are reduced by 90 percent with treatment capped at 10 times the Universal Treatment Standard. If treatment of a given constituent to meet the 90 percent reduction standard would result in reducing constituent concentrations to less than 10 times the UTS, treatment beyond 10 times the UTS would not be required. For non-metal contaminants, total concentrations of constituents subject to treatment would have to be reduced by at least 90 percent from their initial concentrations (or 10 times the Universal Treatment Standard, whichever is higher). For metal contaminants, the 90 percent standard would apply either to the total concentrations of metals (for treatment technologies that remove metal contaminants), or to the concentrations of the metals in leachate as measured using the TCLP (for solidification-type treatment technologies). In addition to

[19] The Agency has proposed a rule that would define hazardous constituent concentrations below which certain wastes will no longer be listed or identified as ''hazardous'' under RCRA Subtitle C. (60 FR 66344–469 (December 21, 1995)). In some instances, these concentrations may also serve as risk-based LDR treatment standards. The Agency can set risk-based LDR treatment standards for certain as-generated hazardous wastes (and not for hazardous contaminated environmental media) because the Agency has significantly more information on as-generated wastes streams and as-generated waste streams are typically more homogeneous that contaminated environmental media waste streams.

[20] Of course, if the environmental media is determined not to contain hazardous wastes before it is removed from the land, the land disposal restrictions and duty to comply with RCRA section 3004(m) do no attach, because no placement of hazardous waste will occur after the effective date of the applicable land disposal prohibition. In addition, if contaminated environmental media are determined not to contain solid or hazardous waste (i.e., it's just media) it would not be subject to any RCRA Subtitle C standard, including LDRs.

treating for constituents subject to treatment, for soil that is hazardous because it exhibits the characteristics of ignitability, corrosivity, or reactivity, the Agency proposes to require treatment until the soil no longer exhibits the characteristic.

(3) Justification for soil-specific LDRs. EPA believes that it is appropriate to set soil-specific LDR standards because the soil matrix often poses distinct treatment issues. Specifically, the Part 268 Universal Treatment Standards that would otherwise apply to soil subject to the LDRs are based, in large part, on incineration for organics and high temperature metal recovery (HTMR) for metals. Although incineration and HTMR are highly effective technologies, their selection was based on treatment of concentrated, as-generated hazardous wastes, and they are not generally appropriate for the large volumes of low and moderately contaminated soil typically encountered during site remediation. Thus, the Agency believes that technology-based standards for contaminated soil should not rely exclusively on incineration or HTMR and that, in many cases, innovative (i.e., non-combustion) technologies will be more appropriate (See 55 FR 8666, 8760–8761, (March 8, 1990) and 58 FR 48092, 48125, (September 14, 1993)). While the Agency believes that soil is, in most cases, most appropriately treated using non-combustion technologies, data gathered for the Phase II Soil proposal do not demonstrate conclusively that the Universal Treatment Standards can be met using technologies other than combustion; therefore, EPA is proposing the alternative soil treatment standards discussed today at levels somewhat above UTS levels.

(4) Application of soil-specific LDRs to other media. EPA considered applying the alternative 90% or 10 times the UTS treatment standard to hazardous contaminated media other than soils, but decided not to because there is little information available to the Agency to indicate that the LDR treatment standards that currently apply to these other media are inappropriate, or otherwise pose the same type of technical challenges as they do for soils. In individual cases where the existing UTS standards is inappropriate, the Director would be able to use the proposed Media Treatment Variance procedures outlined below to set alternative LDR treatment standards for these other media.

(5) Request for comments. EPA requests comments and data on the LDR treatment standards that would be established by today's proposed regulations. The Agency is especially interested in comments which document that the current LDR treatment standards are appropriate or inappropriate for hazardous contaminated media other than soils (e.g., groundwater, sediments), or are otherwise compatible or incompatible with the remediation context. The Agency is also interested in comments which document whether the proposed LDR treatment standards for contaminated soils are achievable using technologies appropriate at remediation sites.

c. Detailed analysis of proposed treatment standards for hazardous contaminated soils. EPA first proposed LDR treatment standards specific to hazardous contaminated soil in the LDR Phase II Rule (58 FR 48092, September 14, 1993). In the Phase II Rule, EPA requested comment on three options for soil treatment standards: Option 1 was 90% treatment provided treatment achieved concentrations at least equal to or less than one order of magnitude above the Universal Treatment Standard (90% and 10 times UTS); Option 2 was treatment to one order of magnitude above the Universal Treatment Standard (10 times UTS); and Option 3 was 90% treatment with no ceiling value (90%). Commenters on the Phase II proposal strongly supported the 10 times UTS treatment standard,[21] indicating that they thought it would be easy to implement, provide for appropriate levels of protection, and be achievable using a range of treatment technologies. Available data supports the achievability of the 10 times UTS standard, 91% of the data pairs in EPA's Soil Treatability Database were treated to 10 times UTS using non-combustion technologies such as biological treatment, thermal desorption, and dechlorination. Commenters also supported various combinations of the 90% reduction and 10 times UTS standards, including the 90% or 10 times UTS approach proposed today.

Ultimately, EPA has chosen to propose the approach it believes will provide the most flexibility to overseeing agencies and facility owner/operators. Providing for flexibility in the management requirements for contaminated media is one of EPA's goals for the HWIR-media rulemaking. While EPA agrees with some of the comments on the Phase II proposal and believes that many facility owner/operators will be able to achieve the 10 times UTS treatment standard using non-combustion soil treatment technologies, the Agency does not have information to show that 10 times UTS will be necessary to fulfill the requirements of RCRA section 3004(m) at all sites. In addition, the data pairs in EPA's Soil Treatment Database are primarily from bench and pilot schedule studies and may not reflect the ''potentially problematic soil matrices and varying contaminant levels'' likely to be encountered in the field (58 FR 48092, 48124, September 14, 1993). Finally, the FACA committee agreed on a 90% treatment standard for contaminated media with constituent concentrations above Bright Line concentrations. Therefore, the Agency believes it is appropriate to also allow for 90% reduction. As discussed below, the Agency believes compliance with either standard fulfills the requirements of RCRA section 3004(m). EPA intends to use the treatability data it receives pursuant to the requirements in proposed § 269.41(c)(9) and § 269.42(b) to fill in gaps in the data on which the proposed standards are based, and intends to amend the standards if appropriate.

EPA acknowledges that because the 90% reduction standard does not guarantee any particular final constituent concentrations, it may increase the chance, in individual cases, that soil treatment standards will not be appropriate to the site or might not meet the statutory standard. To address this concern, the Agency has built a ''safety net'' into the proposed soil treatment standards in today's regulations, by allowing the Director to specify more stringent soil treatment standards that are based on site-specific factors when he/she finds that the 90% or 10 times the UTS treatment standard does not ''minimize threats'' (e.g., where initial concentrations of hazardous constituents in the media are abnormally high). (See § 269.32.)

In developing the LDR treatment standards proposed today for hazardous contaminated soils and the standards discussed in the Phase II proposal, the Agency did not use its normal approach to setting technology-based LDR standards. In setting LDR treatment standards, the Agency generally examines available treatment data and sets a standard based on the ''best'' of the demonstrated available technologies (''BDAT''). The Agency typically finds a technology to be ''demonstrated'' when the data show that it can operate at the required levels, and ''available'' when, among other things, it is commercially available and provides ''substantial''

[21] Of the 34 comments received, 14 supported 10 times the UTS; 6 supported 90% and 10 times the UTS; 4 supported 90%; 6 supported other combinations of 90% and 10 times the UTS, including the combination proposed today; and 4 supported other options.

treatment. The Agency's selection of the ''best'' of these technologies is generally based on a statistical evaluation of the treatability data. (See 51 FR 40572, 40588–40593 (Nov. 7, 1986).) Instead of this standard approach, the Agency selected options that could be achieved by available technologies and that would result in the ''substantia[l]'' reductions mandated by RCRA section 3004(m) to develop the standards proposed today.

The Agency believes that RCRA allows this alternative approach to implementing section 3004(m). Specifically, RCRA § 3004(m) does not require the use of ''BDAT'' to implement a technology-based approach. In fact, as the D.C. Circuit has specifically recognized, section 3004(m) need not be read ''as mandating the use of the best demonstrated available technologies (BDAT) in all situations.'' *Chemical Waste Management, Inc.* v. *US EPA,* 976 F.2d 2, 15 (D.C. Cir. 1992). Instead, any substantial treatment method that ''minimizes'' threats according to the statutory objectives is permissible. Id.[22] In other instances the Agency chose a BDAT approach because it believed that applying BDAT standards best served the Congressional objectives when the LDR requirements for as-generated wastes were enacted (55 FR 6640–6643, February 26, 1990).

The policy considerations that argue for BDAT as the basis for technology-based standards for as-generated wastes do not, however, support a BDAT approach in the remediation context. EPA has long maintained that setting BDAT standards for newly generated wastes best fulfilled the Congressional goal of reducing the amount of wastes ultimately disposed on the land (55 FR 6640, 6642, February 26, 1990); RCRA section 1003(6). While this may be true for newly generated waste not yet disposed, such standards do not further this goal in the remediation context. As discussed in section (II)(A) of this preamble, current standards can create disincentives to excavation, and more protective management of wastes already disposed of on the land, because excavation of contaminated media for the purposes of treatment may trigger LDRs. Site decision makers are often faced with the choice of either capping or treating the wastes in place (to avoid LDRs), or excavating and triggering the costly BDAT treatment standards. This situation creates an incentive to leave wastes in place, a result obviously not contemplated by Congress in enacting LDRs. For a fuller discussion of this issue, see 54 FR 41566–41569, (Oct. 10, 1989). EPA has justified BDAT standards based in part on the fact that imposing them would create an incentive to generate less of the affected waste in the first instance. (See *Steel Manufacturers Association* v. *EPA,* 27 F.3d 642, 649 (D.C. Cir. 1994) (upholding the LDR standard, in part, because it minimized the amount of waste that would be generated)). In the remediation context the waste is already in existence, therefore, such ''waste minimization'' is not an issue. Typically, the threats to human health and the environment that the land disposal restrictions were intended to address are better controlled through excavation and management of remedial wastes and such action should therefore be encouraged, not discouraged.

Accordingly, EPA believes that it is appropriate to set LDR standards for soil subject to the LDRs based on something less than the ''best'' demonstrated available technologies, so long as those standards encourage the development of more permanent remedies and result in the ''substantia[l]'' reductions contemplated by section 3004(m). The Agency believes that the 90% or 10 times the UTS standard proposed today will, by providing flexibility to cleanup decision makers, encourage the development of more permanent remedies. The Agency also believes that the 90% or 10 times the UTS standard represents a level of treatment that will, in general, ''substantially'' diminish the toxicity of the wastes or substantially reduce the likelihood of migration of hazardous constituents from the wastes so that short- and long-term threats to human health and the environment are minimized. Among other things, the Agency looks to the percentage of constituents removed, destroyed, or immobilized when deciding whether treatment is ''substantial'' (51 FR 40572, 40589, November 7, 1986). On this basis, the Agency believes that the 90% component is clearly substantial. Since EPA has previously determined that the UTS standards result in ''substantial'' treatment, the Agency believes that a standard one order of magnitude higher should be considered substantial when addressing matrices that can be significantly more difficult to treat.

d. Application of proposed treatment standards to media which no longer contain hazardous waste. In some cases, contaminated media with constituent concentrations below the Bright Line will be determined to no longer contain hazardous waste, but may remain subject to the land disposal treatment requirements. As discussed earlier in today's preamble, EPA's analysis in this proposal is based on the logic that once the land disposal restrictions attach to hazardous wastes (or environmental media that contain hazardous wastes) the standards of section 3004(m) must be met before the wastes can be land disposed in any unit other than a no migration unit. Once attached, the obligation to meet land disposal restriction treatment standards continues even if a waste is no longer considered hazardous under RCRA Subtitle C (e.g., by eliminating a hazardous characteristic, or, in the case of an environmental medium, by making a contained-in decision[23]).

In these cases, EPA believes that it will generally be appropriate to use the additional opportunities for Media Treatment Variances proposed in § 269.31 to establish site-specific LDR treatment requirements based on risk. While the Agency is proposing generic technology-based treatment standards for higher-risk environmental media (i.e., hazardous contaminated media); EPA continues to believe that LDR treatment standards for lower-risk contaminated media (i.e., media determined not to contain hazardous wastes) are best addressed on a site-specific basis. This belief was supported by the FACA Committee, which said that lower-risk media should be exempt from the land disposal restrictions, and addressed on a site-specific basis in the context of agency-overseen cleanups.

Media Treatment Variances are discussed in more detail in section (V)(C)(7) of today's preamble. Most of these variances are also available for higher-risk media, the difference is a

[22] The legislative history of section 3004(m) supports the reading that the legislative preference expressed for ''BDAT'' could be achieved using something less than only the ''best'' technologies:

The requisite levels of [sic] methods of treatment established by the Agency should be the best that has [sic] been demonstrated to be achievable. This does not require a BAT-type process as under the Clean Air or Clean Water Acts which contemplates technology-forcing standards. *The intent here is to require utilization of available technology in lieu of continued land disposal without prior treatment. It is not intended that every waste receive repetitive or ultimate levels of [sic] methods of treatment* * * *

130 Cong. Rec. S. 9178 (daily ed. July 25, 1984) (statement of Sen. Chaffee) [emphasis added].

[23] Of course, as discussed earlier in today's preamble, if soils were contaminated by hazardous waste prior to the effective date of the applicable land disposal prohibition and a contained-in decision was made prior to removal of the contaminated material from the land, the land disposal restrictions and the duty to treat to LDR treatment standards would not attach in the first instance. Since the Agency believes most environmental media contaminated by hazardous waste were contaminated prior to the effective date of the applicable land disposal restrictions, the Agency believes instances where contaminated environmental media is determined to no longer contain hazardous waste but remains subject to the LDR requirements will be few.

matter of assumptions. The Agency believes that lower-risk media that remain subject to the LDRs (i.e., media determined to no longer contain hazardous waste) should be addressed on a site-specific basis in the context of an Agency overseen cleanup and, because they present less risk, should, as a policy matter, be afforded additional flexibility. Therefore, treatment variances are presumed to be appropriate and are encouraged for these media. It is presumed that hazardous contaminated media will be treated to meet generic, nationwide treatment standards, although a variance may be appropriate in individual circumstances based on site-specific conditions.

e. More stringent treatment standards—Proposed § 269.32. As discussed above, because of the great diversity among cleanup sites—in terms of the contaminated media's properties; the exposure potential; size; topography; climate, and many other factors—EPA believes that it is appropriate to provide for situations where meeting the proposed treatment standards for hazardous contaminated media may be insufficient to meet RCRA section 3004(m)'s requirements that ''* * * threats to human health and the environment are minimized.'' For example, a site might be located in a particularly sensitive environmental setting (e.g., over a shallow aquifer used for drinking water), where large volumes of contaminated soil containing high concentrations of highly-mobile, toxic constituents will be excavated, treated, and disposed on-site. In order to minimize the potential for releases from the on-site landfill over the long-term, it could be appropriate to require some type of treatment that is more stringent than the standards proposed in § 269.30. While EPA believes these situations would be rare, it is sensible to explicitly give overseeing Agencies the authority to impose more stringent LDR treatment requirements when they believe them necessary in order to meet the intent of RCRA section 3004(m). Because these decisions would be made on the record during the RMP approval process, they would be subject to notice and comment. Any final Agency decision to impose more stringent standards would be subject to challenge during the RMP review and approval process.

f. Cross-media transfer. Paragraph (h) of proposed § 269.30 specifies that the technologies employed in meeting any treatment standard for contaminated media must be designed and operated in a manner that would control the transfer of contaminants to other media. This general standard is intended to eliminate from consideration any technology, such as uncontrolled air stripping, that would remove contamination from one medium by simply contaminating another. For a discussion of the Agency's tentative position concerning at what point cross-media transfers of constituents from land-based units could result in an invalidation of that unit as a treatment unit, see 60 FR 43654, 43656, (August 22, 1995). In addition, in conjunction with this rulemaking effort, EPA is developing guidance on controlling cross-media transfer of contaminants for a wide range of soil treatment technologies. The Agency plans to issue this guidance prior to or in conjunction with the final HWIR-media rulemaking. Further information on this guidance may be obtained from Subijoy Dutta in the Office of Solid Waste at (703) 308–8608.

3. Constituents Subject to Treatment

EPA is proposing that hazardous contaminated media be treated for each UTS constituent that originated from the contaminating hazardous waste, and that is subject to the treatment standard for such hazardous waste as it was generated (hereafter ''constituents subject to treatment'') (§ 269.30(g)). For contaminated media other than soil (e.g., groundwater, sediments), treatment would be required for each constituent subject to treatment with concentrations above the UTS. For contaminated soil, treatment would be required for each constituent subject to treatment with concentrations greater than 10 times the UTS.

EPA believes it is appropriate to link LDR treatment requirements to the contaminating hazardous waste because, under the contained-in principle, environmental media only become subject to hazardous waste management requirements because they contain hazardous waste. The duty to treat, therefore, should only attach to those constituents for which treatment would have been required if the wastes were not contained in environmental media.

EPA is proposing to apply the definition of constituents subject to treatment to environmental media contaminated by both listed and characteristic wastes. Under the proposed rule, if environmental media were contaminated only by listed hazardous wastes (or mixtures of listed hazardous wastes and solid wastes) treatment would be required solely for Part 268 ''regulated hazardous constituents'' in these wastes (identified in the table entitled ''Treatment Standards for Hazardous Wastes'' at 40 CFR 268.40). If environmental media exhibit a characteristic, treatment would be required for the characteristic constituent (in the case of TC wastes) or the characteristic property (in the case of ignitable, reactive, or corrosive wastes), and for all constituents listed in § 268.48 ''Table UTS—Universal Treatment Standards'' present in the media. As stated above, this approach, in essence, incorporates the rule for characteristic wastes that requires treatment of all ''underlying hazardous constituents''; underlying hazardous constituents are those constituents for which the Agency has promulgated Universal Treatment Standards (except for zinc and vanadium) that can reasonably be expected to be present in the wastes, and that are present in concentrations exceeding the UTS levels (or, for contaminated soil, ten times the UTS level). (See 40 CFR 268.2(i); 40 CFR 268.40(e); 60 FR 11702, (March 2, 1995); and discussion of underlying hazardous constituents at (59 FR 47980, 48004, (September 19, 1994)).

The Agency requests comments on the scope of the constituents that would be subject to treatment under today's proposed approach. For example, should background concentrations of naturally occurring hazardous constituents be explicitly evaluated when identifying constituents that are subject to treatment? Would it be more appropriate, as was suggested in the Phase II proposal (58 FR 48092, 48124, September 14, 1993), for the Agency to make all constituents present (even in media containing listed wastes) above UTS levels (or for contaminated soil, 10 times UTS levels) subject to treatment? Are there other ways to address the scope of constituents subject to treatment?

The Agency notes that ''Bright Line constituents'' and ''constituents subject to treatment'' are two different sets of constituents. Under today's proposal, the Bright Line does not define the applicability of LDR treatment requirements or the constituents subject to treatment in media subject to the LDRs. Contaminated environmental media that contains one or more hazardous constituents at concentrations greater than Bright Line concentrations would be ineligible for a contained-in decision and would become subject to the requirements for hazardous contaminated media, including LDR treatment requirements. Once subject to LDR treatment requirements, contaminated media would have to be treated to the generic, technology-based treatment standards for all constituents subject to treatment, including those below the Bright Line.

EPA requests comments on this approach. For example, should EPA allow site-specific minimized threat Media Treatment Variances (discussed below) for constituents subject to treatment that have initial concentrations below Bright Line concentrations and require compliance with the generic treatment standards only for constituents subject to treatment that have initial concentrations above Bright Line concentrations? How would this affect overseeing agencies that choose to set contained-in levels at concentrations more stringent than the Bright Line?

4. Nonanalyzable Constituents

Some contaminated environmental media may contain constituents that do not have analytical methods. For media containing multiple organic constituents, some of which are analyzable and some of which are nonanalyzable, the Agency believes that treating the analyzable constituents to meet treatment standards should provide adequate treatment of any nonanalyzable constituents. As a general principle, the destruction of an analyzable organic surrogate constituent is an effective indicator for destruction of nonanalyzable organic constituents. The Agency is therefore not proposing treatment standards for nonanalyzable organic constituents found in hazardous contaminated media. The Agency requests comment on this approach as well as data on the degree to which non-analyzable organic constituents are treated when environmental media are treated for other organic contaminants. If, based on public comments, EPA should choose to regulate these constituents, the Agency could require treatment by specific technologies known to achieve adequate treatment of the constituent.

In cases where contaminated environmental media are contaminated solely with nonanalyzable constituents, (i.e, media contaminated only by nonanalyzable U or P wastes), EPA proposes requiring treatment by the methods specified in § 268.42 for those U or P wastes. For a list of U and P wastes, see 40 CFR 261.33. The Agency solicits comments on whether other technologies should be allowed for treatment of such media.

5. Review of Treatment Results—§ 269.33

Once treatment under an approved RMP has been completed, the proposal would require the overseeing agency to review the treatment results and determine whether the treatment standard was achieved. If the treatment standard were not achieved, EPA proposes that the facility owner/operator would be required to: submit a new RMP that includes plans and procedures designed to re-treat the material, or submit an application for a Media Treatment Variance (if a variance is appropriate). The Director, at his/her discretion, could require that the owner/operator continue to treat the materials until the treatment standard is met, or grant a Media Treatment Variance.

6. Management of Treatment Residuals—§ 269.34

Depending upon the type of treatment system used, residuals from the treatment of media under Part 269 could either be media (hazardous contaminated or otherwise) or wastes (hazardous or otherwise) that have been separated from the media being treated. Under the proposed rule, waste residuals would be managed according to applicable RCRA Subtitle C or Subtitle D requirements. Media residuals would remain subject to Part 269. This is consistent with the Agency's approach to residuals from treating hazardous debris. (See 57 FR 37194, 37240, (August 18, 1992)). If media residuals from treatment of contaminated media meet the treatment standards, they can be disposed of in a Subtitle C land disposal facility. If those media have met their treatment standards and also no longer contain hazardous wastes, they are no longer subject to Subtitle C requirements and can be used, re-used, or returned to the land absent additional Subtitle C control. Under proposed § 269.33, media residuals that do not meet the treatment standards would be re-treated or, if appropriate, granted a Media Treatment Variance.

The Agency requests comments on this approach and on whether regulatory standards for management of non-media treatment residuals are necessary under this Part. For example, should residuals from treating media using stabilization technologies (i.e., stabilized media) be considered waste residuals and subject to the applicable subtitle C or D standard? Should the Agency address, through regulations or guidance, the methods used to determine whether treatment residuals are media or non-media? For example, should the Agency use the approach it promulgated for treatment residuals from treatment of hazardous debris and require that media and non-media treatment residuals be separated using simple physical or mechanical means?

Some treatment methods may distinctly separate hazardous wastes from contaminated media (e.g., carbon adsorption for groundwater). In these cases, each residual can be measured to certify compliance with the applicable land disposal restriction treatment standards. For other treatment technologies that may not as distinctly separate media from non-media residuals, it may be more difficult to determine which LDR treatment standards should be applied. For example, some treatment methods (e.g., combustion technologies) may result in destruction of the media treated, leaving only non-media residuals. In these cases, should the residuals be subject to the treatment standards for contaminating hazardous wastes (e.g., the Universal Treatment Standard) or the treatment standards for media (e.g., the 90% or 10 times the UTS alternative soil treatment standard proposed today).

7. Media Treatment Variances—§ 269.31

This section provides a mechanism which the Director can use to establish alternative treatment standards for contaminated media subject to the land disposal restrictions. The Agency is proposing to allow variances from generic treatment standards in three situations: when the generic standard is technically impracticable, when the generic standard is inappropriate, or when the Director can demonstrate, based on site-specific circumstances, that lower levels of treatment ''minimize threats'' in accordance with the standard of RCRA section 3004(m). Each situation is discussed in more detail below.

EPA encourages use of these procedures to establish site-specific LDR treatment standards for media that have been determined to no longer contain hazardous wastes but remain subject to LDRs. In addition, although EPA believes the generic, nationwide technology-based treatment standards for hazardous contaminated media should be appropriate and achievable for the majority of media managed at cleanup sites, the Agency acknowledges that because of the wide range of soils and contaminants that may be encountered in the field, there may be situations where such standards would be inappropriate.

Paragraphs (a) and (b) of § 269.31 would list the situations under which the Agency believes a Media Treatment Variance would be appropriate. Paragraph (c) of § 269.31 would provide the overseeing agency with the authority to request any information from the owner/operator that may be necessary to determine whether a treatment variance should be approved, and paragraph (d) provides that an alternative treatment standard approved according to this

section may be expressed numerically, or as a specified technology.

In order to ensure that the Media Treatment Variance provisions are not used simply to seek approval of an inferior technology or a poorly operated treatment system, § 269.31(e) would specify that any technology used to meet an alternative standard would have to be operated in a manner that optimizes efficiency, and result in substantial reductions in the toxicity or mobility of the media's contaminants. For the reasons discussed above, any such technology would be required to control the cross-media transfer of constituents.

The Media Treatment Variances in today's proposed rule are analogous to the existing site-specific treatment variances in Part 268. (See § 268.44(h)). EPA considered using § 268.44(h) for contaminated media, but decided to propose media-specific variance provisions for three reasons. First, for clarity, EPA has made a conscious effort to develop the HWIR-media rules to operate as a complete system and minimize cross-references to other portions of the regulations. Second, EPA believes that including Media Treatment Variances will make it easier and less disruptive for states to adopt and implement the final HWIR-media rules. Third, EPA believes that it is valuable to propose regulations clarifying the circumstances under which media treatment variances are appropriate, especially in the case of the variance for a site-specific minimize threat determination. The Agency requests comments on the need for the specific Media Treatment Variances proposed today and the relationship of the proposed Media Treatment Variances to the existing site-specific variance procedures in § 268.44(h).

a. The generic technology-based treatment standard is technically impractical (§ 269.31(a)(1)). In some cases, an owner/operator may be able to demonstrate to the overseeing agency that achieving the generic LDR standard is technically impracticable. While EPA believes it will typically be possible to achieve the general standards using common remedial technologies (e.g., biological treatment, soil washing, chemical oxidation/precipitation, activated carbon, air stripping), the Agency recognizes that, in some cases, these technologies may not be able to meet the 90% or 10 times the UTS standard. For example, comparison of leachate concentrations from some metal-bearing wastes before and after stabilization or solidification may not indicate a 90% reduction (and may not be at concentrations below 10 times the UTS).

b. The generic technology-based treatment standard is inappropriate (§ 269.31(a)(2)). Many site-specific circumstances could cause the generic treatment standard to be inappropriate. In some cases, the media to be treated may differ significantly from the material upon which the generic treatment standard was based. For example, the Universal Treatment Standards for water were based on treatment of industrial wastewater. In some situations facility owner/operators could be treating groundwater that poses unique treatability issues, and may merit an alternative treatment standard (e.g., groundwater that is highly saline or has high concentrations of other naturally occurring contaminants such as iron). In another example, treatment of soils contaminated by heavy chain polynuclear aromatics (PNAs) with non-combustion strategies may not be sufficient to meet the 10 times the UTS standard.

In other cases, the generic treatment standard will be inappropriate because use of an alternative treatment standard would result in a net environmental benefit. For example, use of innovative treatment technology might result in substantial reductions in constituent concentrations in the near-term, while use of a more traditional treatment technology might eventually achieve the generic treatment standard but take twice as much time. For a discussion of EPA's position that a treatment standard may be deemed inappropriate when imposing it ''could result in a net environmental detriment.'' (See 59 FR 44684, 44687, (August 30, 1994)).

c. Threats can be minimized with less treatment than the generic technology-based standard would require (§ 269.31(b)). As discussed earlier, EPA prefers to base land disposal restriction treatment requirements on risk. While information is not available to establish generic risk-based treatment standards for contaminated environmental media, EPA believes that adequate information may be available to establish site-specific, risk-based treatment standards. Using this variance, the Director would be able to make a site-specific, risk-based determination of § 3004(m) treatment requirements. In other words, the regulations would allow the Director to determine on a site-specific basis, ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized'' (RCRA section 3004(m)).

EPA is proposing this site-specific approach to ensure appropriate levels of treatment, and to provide some relief from the generic LDR treatment standards where an examination of actual site circumstances demonstrates that the requirements of section 3004(m) may be met with lesser treatment than that required by the generic, technology-based standards proposed today. The Agency has long recognized that section 3004(m) could be implemented on a risk basis, and that the risk approach often would require less treatment than the BDAT approach (51 FR 1602, 1611, (January 14, 1986); 55 FR 6640, 6642, (February 26, 1990); and *Hazardous Waste Treatment Council* v. *US EPA*, 886 F.2d 355, 361 (D.C. Cir. 1989) (upholding the Agency's view that although permissible, risk-based treatment standards are not compelled by section 3004(m)).

The Agency believes that a great number and variety of site-specific factors would influence minimize threat determinations; therefore, it is not proposing generic decision criteria. In general, however, EPA believes that the decision factors for contained-in decisions discussed earlier would be appropriate. This is similar to the approach in the LDR Phase II proposal, in which the Agency expressed the view that when a regulatory authority determined that media no longer contain hazardous waste, the regulatory authority could also make a site-specific determination that threats had been ''minimized'' (58 FR 48092, 48128, September 14, 1993).

The Agency further believes the site-specific minimize threat variance would be particularly appropriate in situations when the Director would be able to determine that constituent concentrations greater than the proposed soil treatment standards minimize threats at a site because not providing such relief would result in a less protective remedy. Often, when excavation of environmental media would trigger the duty to comply with LDRs, the LDR treatment standards serve as a disincentive to excavation and treatment in the remediation context. In proposing the NCP, EPA discussed the effect that LDRs can have on CERCLA decision making:

> For wastes potentially subject to the LDRs, essentially only two options will generally be available—treatment to BDAT standards, or containment (including containment of wastes treated *in situ*). The range of treatment technologies between these two extremes that may be practical and cost-effective, and yield

highly protective environmental results, would not be available to decision makers. In some cases, given only these two remedial choices, decision makers may be pressured to select containment remedies that offer less permanence than treatment options that might otherwise be selected if the LDRs were not applicable (54 FR 41566, 41568, (October 10, 1989)).

EPA has experienced the same effect in the RCRA closure program. (See 54 FR 41566, 41568, (October 10, 1989)). ''EPA's experience with the RCRA closure program has shown that owner/operators, faced with the choice of using BDAT treatment, or no treatment or *in situ* treatment, have a strong incentive to choose the less costly option * * *, which may actually result in less effective long-term performance for many closed units'').

While Congress did not address how to determine when threats are minimized in the remediation context, it obviously did not intend LDRs to act as a barrier to aggressive cleanup when enacting RCRA section 3004(m). Therefore, the Agency believes that in cases presenting the dilemma outlined above, and where imposing a lesser standard would encourage more protective management of the media, it would be reasonable for the Director to decide that, because overall risks at the site would be significantly reduced, imposition of lesser LDR treatment requirements would minimize threats at that site; therefore, as a general rule, cleanup to health-based standards through implementation of an approved remedy in the context of an agency-overseen cleanup can be presumed to minimize threats even when the remedy involves placement (or re-placement) of contaminated media which does not meet the generic, technology-based LDR treatment standards. The Agency notes that most Federal and State remedy selection criteria and cleanup procedures include independent requirements or preferences for treatment to ensure that remedies are protective over the long-term, although such would not necessarily be to the generic, technology-based LDR treatment standards.

Consistent with the recommendations of the FACA Committee, which agreed that higher-risk contaminated media should be subject to generic, nationwide standards, while lower-risk contaminated media should be addressed on a site-specific basis in the context of agency overseen cleanups, the Agency is proposing to limit the availability of the site-specific minimized threats variance to hazardous (or formerly hazardous) contaminated environmental media with all constituent concentrations below the Bright Line. For media that does not have a Bright Line (i.e., sediments) program implementors should consider the Bright Line risk levels and principles when determining if a site-specific minimize threat variance is appropriate. Despite this limitation, the Agency believes that the site-specific, minimize threat determination will provide significant and appropriate relief since Agency experience has shown that the dilemma of choosing between capping and/or treating media in place or excavating and triggering inflexible LDR treatment standards is much more likely to present itself with less contaminated media (such as media in which all constituents are below the Bright Line) (54 FR 41566, 41567, October 10, 1989). This is because an *in situ* option is much more likely to be acceptable under a remedial authority where wastes are not highly concentrated.

EPA recognizes that there may be concerns regarding the ability of the overseeing agency to grant a treatment variance based on a site-specific determination that threats are minimized. However, it should be noted that these decisions would go through the same notice and comment procedures as other substantive standards included in RMPs. Any concerns with risk-based treatment standards identified in a particular RMP could be raised during the comment period, and the overseeing agency would be required to address them when finalizing the RMP.

EPA seeks comments on its approach to site-specific, minimize threat variances. For example, should EPA propose more specific standards for making minimize threat determinations? Should the Agency allow site-specific minimize threat variances for any constituent subject to treatment that has initial concentrations that are less than Bright Line concentrations even though other constituents in the same medium might have concentrations that are greater than Bright Line concentrations? Should EPA allow site-specific, minimize threat variances when constituent concentrations drop below Bright Line concentrations even if the generic, technology-based LDR treatment standards (i.e., 90% or 10 times the UTS) have not yet been achieved? Should EPA allow site-specific, minimize threat variances for constituents with initial concentrations that are greater than the Bright Line?

EPA requests that commenters who support specific standards for minimize threat determinations suggest standards for EPA consideration, and address the application of these standards in the remediation context. Commenters who support minimize threat determinations for contaminated media with constituent concentrations above the Bright Line should address the relationship of these determinations to contained-in decisions (which, under today's proposed rule are not allowed for contaminated media with constituent concentrations above the Bright Line).

The Agency also requests comments on whether it should attempt to provide explicit opportunities for site-specific minimize threat determinations outside of the HWIR-media context (e.g., add appropriate provisions for non-HWIR-media contaminated media to the current treatment variance rules at § 268.44(h))? If so, should these determinations be limited to media with constituent concentrations below the Bright Line?

8. Request for Comment on Other Options

Two of the Agency's stated policy objectives for the HWIR-media rule are to develop requirements that are appropriate for contaminated media and to remove administrative obstacles to expeditious cleanups where possible. EPA has struggled with these objectives in the context of LDR requirements. The applicability of land disposal treatment requirements depends, in part, on whether contaminated environmental media are determined to contain hazardous waste. Under today's proposed rule, contaminated environmental media that contain hazardous waste, are placed after the effective date of the applicable land disposal prohibition, and have concentrations of hazardous constituents above the Bright Line will always be subject to the LDRs because contained-in decisions are not allowed for contaminated environmental media with constituent concentrations above the Bright Line. For such contaminated environmental media with constituent concentrations below the Bright Line, overseeing agencies would have the discretion to make contained-in decisions, as discussed in section (V)(A)(4)(a), above. Accordingly, in some cases, the LDRs might apply to contaminated environmental media with all constituent concentrations below the Bright Line (e.g., where the duty to comply with LDRs attached to the contaminating waste prior to the initial act of disposal), while in other cases they might not.

While the Agency believes that today's proposed LDR requirements are consistent with the goals and objectives

of the HWIR-media rulemaking and would provide significant and appropriate relief from the LDR treatment requirements for as-generated wastes, it requests comments and suggestions that identify other options for developing appropriate land disposal restriction standards for contaminated media.

The Agency is especially interested in comments that address environmental media with all constituent concentrations below the Bright Line. For example, the HWIR FACA Committee expressed the view that it would be appropriate, as a policy matter, to exempt contaminated media with constituent concentrations below the Bright Line from LDR treatment requirements when these media were subject to agency-overseen cleanups. Comments are therefore invited on how the Agency could attain this result consistent with the requirements of section 3004(m). For example, would it be appropriate for EPA to define contaminated soil and/or other contaminated environmental media (e.g., groundwater, sediments) as a separate LDR ''treatability group?'' Changes in treatability groups generally result when the properties of a waste that affect treatment performance have changed enough that the waste is no longer considered similar to those in its initial group. Each change in a waste's treatability group constitutes a new point of generation; if the waste is no longer considered ''hazardous'' at the time of the change (e.g., through a contained-in decision), LDRs would not attach even though the initial waste might have been subject to LDRs prior to the change in treatability group (55 FR 22520, 22660–22662, June 1, 1990). The Agency notes that the treatability group approach could be Bright Line dependent (i.e., available only for contaminated media with all constituent concentrations below the Bright Line) or Bright Line independent (i.e., available for all contaminated media regardless of constituent concentrations).

9. LDR Treatment Requirements for Non-HWIR-media Soils

In some cases, hazardous contaminated soils would not be subject to the alternative LDR treatment requirements in today's proposal. This will be the case in states that choose not to adopt the HWIR-media rules and may also occur at sites where cleanup occurs without direct agency approval (e.g., voluntary cleanup sites). The Phase II proposal would have modified the LDR treatment standards for all hazardous soils regardless of the presence of agency-oversight; however, under today's proposal, the alternative LDR soil treatment standards would only be available when applied by an overseeing agency through issuance of a RMP.

Today's proposal would limit application of the alternative soil treatment standards proposed today because they were developed, in part, using the assumption that they would only be applied with agency-oversight and, therefore, could be easily adjusted, either upward or down, to account for site-specific conditions. Nonetheless, the Agency requests comment on whether it would be appropriate to extend the 90%/10×UTS treatment standard proposed today to all hazardous contaminated soils, instead of limiting them to soils managed under an approved RMP. This would allow their use in States that do not seek authorization for this rule, or by facility owner/operators who wish to proceed with remedies ahead of formal agency approval of a RMP.

Alternatively, should the Agency adopt soil treatment standards that are adjusted to account for the lack of State or Agency oversight over how they are administered? For example, should the Agency promulgate a 10 times the UTS only standard for non-HWIR-media hazardous soils? This would account for the fact that the ''safety-net'' provided by proposed § 269.32, which would allow the Director to impose more stringent treatment standards Director on a case-by-case basis, would not be applicable in the non-HWIR-media situation. Would some other combination of a greater percent reduction and lesser UTS multiplier be more appropriate?

10. Issues Associated With Hazardous Debris

Earlier in the preamble for today's proposal, EPA requested comment on whether the substantive requirements of today's proposed rules should be applied to hazardous debris as defined in 40 CFR 268.2(h). Hazardous debris are currently subject to a specific set of LDR treatment standards, promulgated in the LDR Debris rule (57 FR 37194, 37221, August 18, 1992).[24] In individual cases where the generic, national LDR treatment standards are not appropriate or un-achievable for certain hazardous debris, EPA and authorized states may grant site-specific treatment variances using the procedures in 40 CFR 268.44(h).

The LDR treatment standards for hazardous debris promulgated in the LDR Debris Rule are generally expressed as generic, specified technologies, rather than constituent concentrations. While EPA believes that the technologies specified for debris treatment are generally compatible with most types of remedial activities, the Agency recognizes that applying different regulatory schemes at the same site (one for media and one for debris) may unnecessarily complicate cleanups and raise cleanup costs without a discernable environmental benefit.[25] In addition, the debris treatment technologies can be problematic in some instances, especially when the standard of 0.6 cm surface removal is applied to brick, cloth, concrete, paper, pavement, rock or wood debris treated with high pressure steam or water sprays.

EPA requests comments on whether the current LDR treatment standards for hazardous debris remain appropriate or whether hazardous debris should, instead, be subject to treatment standards similar to the standards in today's proposed rule for contaminated media, or whether some combination of the standards would be most appropriate. For example, EPA could allow the Director to impose either the generic debris treatment technologies codified in the Hazardous Debris Rule or, if appropriate, specify site-specific LDR treatment standards (either as constituent concentrations or specified technologies) using the proposed site-specific, minimize threat Media Treatment Variance. Since under today's proposal, site-specific minimize threat Media Treatment Variances are only available for contaminated media with constituent concentrations less than Bright Line concentrations, EPA requests that commenters who support site-specific, minimize threat variances for debris address application of the Bright Line to debris. More generally, EPA requests comments on whether the variances provided for in 40 CFR 268.44(h) are sufficient to provide for appropriate management of hazardous debris or whether the Media Treatment Variances proposed today would be more appropriate.

While today's proposed rule does not include changes to the existing LDR treatment standards and requirements for hazardous debris, EPA could include new LDR treatment standards or requirements in response to public comment. Issues associated with hazardous debris and the possibility of

[24] EPA is not now reopening the comment period on the LDR Debris Rule.

[25] BP Exploration Alaska Inc estimated that managing hazardous debris in compliance with the existing 40 CFR 268.45 regulations, rather than including hazardous debris in on-going cleanups on similarly contaminated media, would cost $3,200–$6,000 a ton since Debris Rule treatment technologies are rarely used in remote Alaska areas.

including debris in the final Part 269 regulations are also discussed in sections (V)(A)(2) and (V)(A)(4)(b) of today's preamble.

D. Remediation Management Plans (RMPs)

1. General Requirements—§ 269.40

Today's proposed rule provides for considerable site-specific decision making as to how contaminated media should be managed as part of remedial actions. This is particularly so in the case of media that are determined not to contain hazardous waste (on the condition that there is compliance with a RMP that would address any hazards), and thus would not be subject to any of the national, generic Subtitle C management standards. Today's proposal would provide a new administrative mechanism—RMPs—as the means for documenting, providing for public review and comment, and enforcing these site-specific requirements.

Under the proposal, a RMP would be required (1) whenever hazardous contaminated media are managed according to Part 269, and (2) whenever a contained-in determination is made for non-hazardous contaminated media (i.e., contaminated media are determined by the Director to not contain hazardous wastes), and (3) whenever non-hazardous contaminated media are managed in accordance with site-specific management requirements prescribed by the overseeing Agency. Thus, any management of contaminated media that would need a permit according to § 270.1—if Part 269 did not apply—would require a RMP.

It should be understood that RMPs could also be used (if deemed appropriate by the Director) as the procedural/administrative vehicle for imposing management requirements, in addition to those required under Part 269, for any hazardous cleanup wastes under Part 264, and as requirements for management of non-hazardous cleanup wastes. The following are examples of the types of management requirements that could be imposed under a RMP, and the circumstances under which those requirements could apply. When applicable, a RMP must include requirements for management of:

1. Hazardous contaminated media at the media cleanup site, imposed pursuant to Part 269;

2. Hazardous contaminated media at the media cleanup site, imposed pursuant to applicable unit-specific provisions of Part 264 (e.g., standards for tanks, landfills, etc.);

3. Hazardous contaminated media at a permitted, off-site hazardous waste management facility, imposed pursuant to the Part 269 LDR treatment standards;

4. Other types of hazardous cleanup wastes (e.g., debris, sludges) that are managed in compliance with applicable provisions of this chapter;

5. Non-hazardous contaminated media (i.e., media that have been determined by the Director to not contain hazardous wastes, in accordance with § 269.4), that are managed either at a media cleanup site or elsewhere, in accordance with site-specific or other management requirements imposed pursuant to any applicable State or Federal management requirements, which do not require the presence of hazardous waste; and/or

6. Other types of non-hazardous cleanup wastes that are generated from a media cleanup site and managed either at the site or elsewhere, in accordance with management requirements imposed pursuant to applicable State or Federal regulations.

As explained above, RMPs would always be required whenever Part 269 requirements are implemented, except when the cleanup is conducted under circumstances where a permit is not required, such as in CERCLA responses. In the case of CERCLA on-site removal or remedial actions, RMPs would not be required. Generally, however, a Record of Decision (ROD), or other CERCLA decision document, would specify the requirements for compliance with Part 269, if the remedy involved management of contaminated media.

As mentioned already, the provisions of this rule would not waive or replace otherwise applicable provisions of Subtitle C. For example, if the cleanup will be taking place at an operating RCRA Treatment Storage or Disposal Facility (TSDF),[26] that TSDF would still need a traditional RCRA permit for its ongoing operations. If that facility wanted to conduct cleanup according to Part 269, the RCRA permit for the site could serve as the RMP, or the facility could have both a RMP and a RCRA permit. In addition, if hazardous waste management units are to be employed during the remedial activities, such units would have to be operated in compliance with the appropriate standards of 40 CFR Part 264 (except Subparts B and C, for general facility standards and preparedness and prevention) for design; operation; closure and post-closure; handling procedures; transportation, and inspection of units or equipment.

The Agency is proposing this approach because the requirements of Subparts A and D–DD are appropriate to ensure safe, protective operation of such units for hazardous contaminated media, just as they are appropriate for new wastes. EPA is proposing not to require compliance with parts B and C because those sections were designed for long-term operating hazardous waste facilities, and not one-time cleanup actions. However, EPA recognizes that other 40 CFR Part 264 standards may not be appropriate under certain site-specific circumstances. EPA solicits comments on what other, if any, provisions of 40 CFR Part 264 should not be applicable to management of hazardous contaminated media at media cleanup sites.

The proposed requirements concerning RMPs (Subpart D) are the only provisions of Part 269 that could be applied to management of all types of hazardous cleanup wastes. EPA considered restricting RMPs to address only management of media. Under such an option, however, other types of cleanup wastes, such as debris and sludges, would require a permit—a second authorizing document under the RCRA permit requirements of Part 270. The Agency does not propose to limit RMPs in this way, because RMPs are intended to expedite permitting and accelerate cleanups for a wide variety of sites, and because they can adequately address public participation concerns. As explained in section II of this proposed rule, the requirement to obtain RCRA permits for cleanups has often frustrated desirable cleanup activities. Thus, limiting RMPs to management of contaminated media would severely limit the relief that this rule is intended to provide.

In addition, RMPs would be required only if cleanup wastes are managed in such a way that requires a RCRA permit, or to document contained-in decisions (that media do not contain hazardous waste), and the management requirements for the non-hazardous contaminated media. In many cases, hazardous cleanup wastes could be managed in such a way that does not trigger the requirement for a RCRA permit. An example would be a site where contaminated media are simply excavated and transported off-site to a permitted facility for treatment or

[26] i.e., hazardous waste management activities apart from the cleanup activities would require a RCRA permit. Although the part of the site where the remediation was taking place could be considered a ''media remediation site,'' the entire facility could not be considered a ''clean up only'' site, and therefore would be subject to applicable RCRA requirements, including permitting, and RCRA §§ 3004(u) and (v) facility, and beyond the facility boundary, corrective action. (See definition of media remediation site in 40 CFR 269.3, and preamble section (V)(A)(3)).

disposal. Another example would be treatment or storage in units that are exempt from permitting requirements, such as wastewater treatment units, or less than 90-day treatment or storage in tanks or containers. In summary, if absent proposed Part 269, a cleanup action did not require a RCRA permit under § 270.1, and a RMP is not needed to document a contained-in decision, it would not need a RMP.

Under proposed § 269.40(e), a RMP could be a ''stand alone'' document, or as might often be the case, a part of a more comprehensive document prepared by the overseeing agency. An example of a comprehensive document would be an enforcement order that explains the overall remedy for a contaminated site. The order would specify the requirements for management of hazardous cleanup wastes, and other remedial requirements such as cleanup standards and source control requirements. The order's media management requirements would not necessarily have to be presented as a separate plan, so long as those requirements were clearly specified to enable public review and comment. On the other hand, an overseeing agency might prefer to issue a RMP for a cleanup site, and use the RMP as the vehicle for specifying other remedial requirements, in addition to those for waste management.

Proposed § 269.40(c) provides that RMPs may constitute RCRA permits for the purpose of satisfying permitting requirements under RCRA section 3005(c). RMPs are designed to streamline the implementation of remedial actions that need RCRA permits by requiring less extensive review and comment procedures than are required for RCRA permits. In addition, facility-wide corrective action requirements would not generally apply to RMPs. (See preamble discussion of media cleanup sites elsewhere in this proposed rule).

Proposed § 269.40 (f) and (g) specify that approval of a RMP would not convey any property rights, or any exclusive privilege of any sort, and that approval of a RMP does not authorize any injury to persons or property, or any invasion of other private rights, or any infringement of State or local laws or regulations. These statements were taken from RCRA permitting requirements. (See § 270.4 (b) and (c)). EPA believes that these statements should apply in the same manner to RMPs as they do to RCRA permits.

EPA believes it may also be appropriate to specify that compliance with a RMP during its term would constitute compliance, for purposes of enforcement, with Subtitle C of RCRA. This would be consistent with 40 CFR 270.4(a) for RCRA permits. The Agency requests comments on this issue.

2. Content of RMPs—§ 269.41

The purpose of a RMP is to document the requirements for the contaminated media that are being managed at the media cleanup site, and to justify these requirements. This documentation is necessary because it (1) defines the enforceable provisions that apply to contaminated media management activities; (2) provides information to the Director that is sufficient to determine that these actions will be conducted according to applicable provisions; and (3) provides sufficient information and opportunity for public comment through the public participation procedures in § 269.43(e).

Although RMPs may be required for the management of media that result from investigations and treatability studies, the Agency believes that the process and content requirements for such RMPs should be as streamlined as possible. In those cases, under the proposed rule it would only be necessary to include relevant information to determine that media management activities would be in compliance with the requirements of this Part, and other applicable requirements. This would ease the administrative burden on investigations and treatability studies, and therefore facilitate getting these activities underway at cleanup sites. EPA requests comments on whether this streamlining is appropriate, and whether more should be done to reduce the administrative burdens associated with investigations and treatability studies in regard to today's proposal.

Since several different types of cleanup wastes may be managed under approved RMPs, the RMP must define what types of materials are being managed according to their requirements. For media that will be managed by the requirements of this Part, the proposed rule provides that information must demonstrate that the materials are indeed media, as defined in proposed § 269.3. For hazardous contaminated media and other hazardous cleanup wastes that must be managed according to the substantive requirements under Subtitle C, information would be required to demonstrate what type of cleanup wastes would be managed in order to identify the applicable, substantive Subtitle C regulations. This information would be necessary to indicate that the planned remedial activities involving those materials would be in compliance with those substantive requirements. For non-hazardous contaminated media which would be managed according to applicable State/Federal requirements, the RMP would have to include enough information to allow the Director to determine that the media did not contain hazardous waste. Also, the RMP would have to show that the media would be managed in compliance with any applicable State/Federal requirements.

It is important to demonstrate that the contaminated media being managed would meet the definition in the proposed § 269.3, and that planned treatment of those media would meet the treatment requirements of this Part, if applicable. The RMP would have to provide any information on the media (or waste) characteristics, and the constituent concentrations that would affect how the materials should be treated and/or managed. Particularly, the RMP would have to provide information on initial concentrations of contaminants in the media so that the overseeing agency could determine when any applicable required treatment reductions are met. Also, some contaminants are treated more or less successfully with different types of technologies. Accordingly, this information could affect how those contaminants should be treated.

Different management requirements could be more appropriate for different sites, depending on the volumes of hazardous contaminated media to be managed at the site. Therefore, EPA proposes that RMPs would be required to include information on the volumes of wastes and media to be managed.

The RMP should also specify the types of treatment and management that will be used to treat the contaminated media under the RMP. With this information the Director could determine if other Subtitle C requirements would be applicable to that treatment, such as the 40 CFR Part 264 standards. The Director also could determine if the treatment would be conducted in a way that would be protective of human health and the environment.

As discussed in the section ''Treatment Requirements for Hazardous Contaminated Media'' of today's proposed rule, EPA is concerned about the potential for remedial technologies to cause cross-media transfer of contaminants. For example, contaminants could be volatilized for removal from the soil, but releasing them to the air could then contaminate the air. Obviously, this would not accomplish the Agency's goal of actual cleanup of contaminants. Instead the

Agency proposes to control the potential of cross-media transfer by requiring that the RMP would include information on how the treatment system would be designed and operated so that the transfer of pollutants to other environmental media would be minimized.

As discussed earlier, EPA is currently developing a set of guidance documents called Best Management Practices for Soils Treatment Technologies. These documents will provide guidance for controlling cross-media contamination from different categories of remedial technologies. This guidance will be made available for comment before it is finalized.

In EPA's experience, accurate waste analysis is critical in selecting effective remedial waste management requirements. Thus, the proposed rule states that RMPs would include information on planned or completed sampling, and analysis procedures necessary to many aspects of the remedial actions, including: characterization, ensuring effective treatment, and demonstrating compliance with the treatment standard. In addition, the RMP would include quality assurance, and quality control procedures to validate the results of the sampling and analysis.

The Agency is currently developing guidance on how to sample, test, and analyze contaminated media. This guidance would be used to characterize the contaminated media being managed in a way that EPA would generally consider adequate for compliance with this Part. This draft guidance is available for comment in the docket for today's proposal.

EPA has found it necessary to collect treatability data for contaminated media so that it can set treatment standards with reasonable faith that those standards can be met with available technologies, and provide information on which technologies have accomplished what results on what kinds of contaminated media to potential users. Today's proposed rule would provide tremendous flexibility in LDR treatment standards because, among other things, of a lack of data regarding what treatment levels can actually be met in practice. One of the rule's goals is to provide data to ensure appropriate, future treatment requirements. In order to collect this much-needed data, the proposed rule would require that upon conclusion of implementation of remedial technologies (both full-scale as well as treatability studies), conducted under approved RMPs, data be submitted to EPA in the manner specified in Appendix B to this Part. (See §§ 269.41(c)(9) and 269.42(b)). The Agency will make these data available to the public once they have been compiled into EPA's NRMRL treatability database. EPA proposes that data from treatability studies be submitted as soon as the treatability study (or studies) has been completed. Full-scale operating data would be submitted every three years, or after the cleanup has been completed, whichever is first.

Treatability data. The National Risk Management Research Laboratory treatability database is available through the Alternative Treatment Technology Information Center (ATTIC) system or on disk at no charge from EPA. The ATTIC system provides access to several independent databases as well as a mechanism for retrieving full-text documents of key literature. The ATTIC system can be accessed with a personal computer and modem 24 hours a day, and no user fees are charged.

To access the ATTIC system, set your PC communications software as follows:

Name: ATTIC
Number: (703) 908–2138
Baud Supported: Up to 14,400
Parity: N
Data Bits: 8
Stop Bits: 1
Terminal Emulations: ANSI, VT100
Duplex: Full

For further information on the ATTIC system, please call the ATTIC Hotline at: (703) 908–2137, or contact the ATTIC Program Manager: Daniel Sullivan, U.S. EPA (MS 106), 2890 Woodbridge Avenue, Edison, NJ 08837–3679, phone: (908) 321–6677, fax: (908) 906–6990.

The Agency requests comments on whether this procedure and format will meet the goals of providing access to the public and regulated community about achievable treatment at cleanup sites, and whether it will provide adequate information to the Agency for the development of future rulemakings.

For many reasons, the Director could decide that further information in the RMP is needed to determine compliance with this Part. If the Director does request further information (according to § 269.41(c)(10)), the owner/operator shall revise the proposed RMP to include that information.

Fostering innovative technologies. The Agency believes that environmental regulations and policies should promote, rather than inhibit, the innovation and adaptation of new technologies. By adopting such a strategy, environmental policy can promote both the economy and the environment by creating new industries, jobs, and a new capability to make environmental progress. We therefore are seeking comments on how this regulation can further innovative technology as well.

In order to clarify what the Agency means by innovative technology in this case, the following is a definition from the White House ''Bridge to a Sustainable Future'' document from April 1995. ''[A] technology that reduces human and ecological risks, enhances cost effectiveness, improves efficiency, and creates products and processes that are environmentally beneficial or benign. The word ''technology'' is intended to include hardware, software, systems, and services. Categories of environmental technologies include those that avoid environmental harm, control existing problems, remedied or restore past damage, and monitor the state of the environment.''

One example of how this proposed rule attempts to foster innovative technologies is by creating a new media treatment variance. In cases where innovative technologies will be protective of human health and the environment, given site-specific conditions, a media treatment variance could set an alternative treatment standard using an innovative technology.

The Agency requests comments on what specific regulatory or policy changes should be added to the rule to: (1) Increase incentives for innovative technologies; and (2) identify and reduce any existing barriers to innovative technologies. Specifically, the Agency requests comments on how RCRA requirements can be changed, in a manner acceptable to all concerned parties, to allow for rapid technology development.

EPA solicits comments on the desirability of, and possible approaches for, tailoring regulatory requirements for technologies when the risk of a major system failure is impossible, remote, or without significant risk from unit operations commonly called ''soft landing technologies.'' For such technologies, particularly those that are in-situ, a high level of regulatory control does not appear necessary. Certain ex-situ technologies such as soil washing also seem to present a minimal risk. EPA requests comments and suggestions specifically on how regulatory requirements could be tailored to ''soft landing'' technologies. For example, should RMPs for soft landing technologies have a more streamlined approval process than other RMPs; or should they be exempt from permitting requirements entirely; or should their requirements be tailored differently?

3. Treatability Studies—§ 269.42

EPA recognizes that treatability studies are likely to be an important component of evaluation, selection, and application of LDR treatment technologies, especially for innovative technologies. Thus, it may be highly desirable or even necessary to generate site-specific, pilot-scale treatability information to support preparation of Remediation Management Plans (RMPs).

In § 269.42 of today's proposed rule, EPA proposes that treatability studies would be conducted subject to the discretion of the Director, and in accordance with appropriate provisions of 40 CFR 269.41 and 269.43. (See discussion above). If a treatability study were going to be conducted under a RMP, the RMP would include information describing how the study would be conducted, including relevant design and operating parameters, information on waste characteristics, and sampling and analytical procedures.

If applicable, the currently available Treatability Sample Exclusion Rule could be used for treatability studies; however, the rule might not cover all situations where relief for treatability studies is needed. EPA solicits comments on whether it would be preferable to revise the Treatability Sample Exclusion Rule (40 CFR 261.4(e)–(f)) to allow site-specific decisions regarding quantities and time frames for treatability studies that have been conducted in support of activities covered by HWIR-media, or other cleanup projects.

The Agency recently revised the Treatability Sample Exclusion Rule to allow up to 10,000 kg of contaminated media to be used in treatability studies without permits or manifests. In promulgating the revision, EPA was aware, based on comments received on the proposal, that the quantity limits were not always sufficient to allow treatability studies of appropriate scale, particularly for in-situ treatments. Because treatability studies in support of HWIR-media activities have the objective of improved remedial decision-making and cleanups, and would take place under regulatory oversight, EPA sees merit in facilitating appropriate scale studies, and requests comments on whether to allow the Director to determine, on a site-specific basis, to exempt waste under treatability studies when necessary in order to obtain effective treatability study results. The Director would be required to ensure, as always, that exempting the wastes would not pose a threat to human health and the environment. The Agency requests comments on any other approaches to effective treatability studies, and other issues related to this area.

4. Approval of RMPs—§ 269.43

This section of the proposed rule sets out procedures for review and approval of RMPs. If, however, the overseeing Agency were using an alternative document as discussed above, and if the Agency had review and approval requirements for the document (that provide equivalent or greater opportunities for public review and comment), then those alternative procedures could be used. Examples of these procedures would be the RCRA permit, or the permit modification procedures in Part 270. If necessary, the Director could also require further review and comment procedures.

The proposed rule would require both the owner and operator to sign the draft RMP before submitting it to the Director for review and approval. The owner and the operator's signatures would certify their agreement to implement the provisions of the RMP if the RMP is approved as submitted. In the context of cleanups, EPA has found that, on occasion, either the owner or operator is unwilling to sign a permit application. For example, a property owner may be unwilling to sign, because of fear of liability, where a lessee is conducting a cleanup. EPA solicits comments on whether signatures of both the owner and operator are needed in every case.

The Director could require modification or additional information that might be necessary for demonstrating compliance with the requirements of this Part. For example, to allow EPA and the States flexibility in using existing enforceable documents and procedures to comply with the requirements for RMPs, the Agency is not proposing national requirements in areas such as record keeping and reporting. EPA believes that the Director should specify any additional requirements that he/she determines necessary, (but that do not have national requirements specified in Part 269) in the RMP. The Agency requests comments on whether EPA should specify national requirements for record keeping and reporting, or any other requirements for RMPs.

Once the Director determines that the draft RMP adequately demonstrates compliance with the requirements of this Part, he/she could add provisions to the proposed RMP that specify conditions under which the media must be managed, in accordance with this Part and other applicable provisions of Subtitle C. The Director could also add contained-in concentrations for media that would be managed under the RMP. If media that originally contain hazardous wastes were to be treated to a point at or below which they no longer would contain the wastes, then these levels would be necessary to define when the media no longer contain hazardous wastes.

If the Director had established applicable State-wide contained-in concentration levels, or if all media at the site were to be managed as hazardous contaminated media, then such contained-in levels could simply be referenced in the RMP.

The Director must also document site-specific minimize threat determinations or other treatment variances in the RMP if such a determination were made for the site in question. This would provide the public the opportunity to review and comment on both contained-in and minimize threat decisions.

EPA considers public review and comment procedures to be an extremely important part of the review and approval process for remedial activities. The Agency intends for the procedures provided in this proposed rule to balance the need for public involvement with the need for fast and efficient approval of remedial activities.

In essence, EPA is proposing to require the use of the minimum public participation requirements set out in RCRA section 7004(b). Thus, the first step in the proposed public review and comment procedures is for the Director to publish in a major local newspaper of general circulation, and broadcast over a local radio station his/her intention to approve the RMP. This notice would provide the public with the opportunity to submit written or oral comments, and would be required to specify the length of time that the public has to comment. The proposed rule specifies that the comment period shall be no shorter than 45 days. At this time, the Director would also be required to transmit a written notice of his/her intent to approve the RMP to each unit of local government having jurisdiction over the area in which the site was located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

The next step is an informal hearing. The Director could determine on his/her own initiative that a hearing is appropriate, or receive a request for a hearing. In either case the Director would be required to schedule a hearing to discuss issues relating to approval of the RMP. The hearing would provide the interested public an opportunity to present written or oral statements. The Director would be required, whenever

possible, to schedule the hearing at a location that is convenient to the site's nearest population center. The Director would be required to give notice again in the newspaper and on the radio of the hearing's date, time, and subject matter.

After the comment period, and after the hearing (if one is held) the Director would be required to consider and respond to all significant written and oral comments (received by the deadline) on the proposed RMP. If the Director determines that it is appropriate, he/she may modify the RMP to accommodate the comments received.

At that point, the Director would be required to determine if the RMP were adequate, and if it met the requirements of this Part. If so, he/she would be required to notify the owner/operator and all other commenters in writing that the RMP had been approved. Once the RMP had been approved, it would be an enforceable document, and a final Agency action (not subject to administrative appeals in § 124.19 of this part).

EPA requests comments on whether these public participation requirements are appropriate for RMPs. The Agency also requests comments on public participation requirements in the State Authorization section of this proposal. The Agency is proposing this approach to public participation for RMPs because RMPs can serve as RCRA permits if necessary; hence, the Agency is proposing to follow the statutory requirements for public participation for RCRA permits. The Agency also requests comments on whether there should be different levels of public participation if the media contain hazardous wastes, or if the Director determines that the media do not contain hazardous wastes. The Agency requests comments on whether there should be some flexibility in the public participation requirements based on the different types of activities that could be performed according to RMPs. See further discussion of this issue below in the State Authorization section (V)(E)(6)(b) of the preamble regarding essential elements for an HWIR-media program.

Proposed § 269.43(f) specifies that RMPs that require combustion of cleanup wastes at a media cleanup site would have to be approved according to the more rigorous procedures that are required for RCRA permits under Part 270. Technologies involving higher levels of energy input generally achieve higher levels of contaminant removal/destruction, and may do so with greater consistency over a range of conditions. Nevertheless, higher energy systems potentially may have undesirable side-effects. As in the case of combustion, regulatory attention, including preliminary demonstrations of performance through trial burns, etc., has been found necessary to address these concerns.

5. Modification of RMPs—§ 269.44

Plans for remedial actions sometimes need to be modified. Often, modifications are necessary as new information becomes available, or when unforeseen circumstances arise. In order to retain the most flexibility for overseeing Agencies that have their own requirements for modification of remedial plans, this rule proposes that the RMP specify procedures for any necessary modifications. The Agency believes that if the modifications include a major change in the management of hazardous contaminated media at the site, the modification procedures should provide opportunities for public review and comment.

6. Expiration, Termination, and Revocation of RMPs—§ 269.45

In a similar manner as modifications to RMPs, EPA intends for the Director to specify in the RMP the procedures under which the RMP will expire, terminate, or be revoked. RMPs which constitute permits for land disposal facilities must be reviewed every five years to comply with the statutory requirements under RCRA section 3005(c)(3), and all RMPs which constitute RCRA permits must be renewed at least every 10 years, if they will remain in effect longer than that, in order to comply with the statutory requirements under RCRA section 3005(c)(3).

E. Streamlined Authorization Procedures for Program Revisions (Part 271)

1. Statutory and Regulatory Authorities

Section 3006(b) of RCRA, 42 U.S.C. 6929(b), instructs EPA, after notice and opportunity to comment, to authorize State programs, unless the Agency finds that the State program is not equivalent to the Federal program, nor consistent with the Federal program, nor adequate in providing for enforcement. General standards and requirements for State authorization are set forth in 40 CFR Part 271. Following authorization, EPA retains the enforcement authorities of RCRA sections 3008, 7003 and 3013, although the authorized State has primary enforcement responsibility. Pursuant to RCRA section 3009, 42 U.S.C. 6929, States may choose to implement hazardous waste management requirements that are either more stringent or broader in scope than the Federal requirements. State requirements that are more stringent may be included in a State's authorized program; requirements that are broader in scope are not part of the authorized State program.[27] (See 40 CFR 271.1(i)).

2. Background and Approach to Streamlined Authorization

EPA has been reviewing State authorization applications and authorizing State hazardous waste programs since the early 1980's. Currently 49 States and territories have received final authorization as defined in 40 CFR 270.2 for the base RCRA program.[28] To varying degrees these same States and territories are also authorized to implement provisions promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA). Many States have more than a decade of experience promulgating rules for and implementing authorized hazardous waste programs.

Once authorized, States are required to adopt and become authorized for new and revised Federal requirements that are more stringent than the authorized State program. (See 40 CFR 271.21). Since EPA regularly revises the RCRA regulations in response to statutory provisions, court ordered deadlines, evolving science, and changing Agency priorities, States continually submit program revisions to EPA for review and approval.

Under the current authorization structure, all revisions to authorized State hazardous waste programs, including minor changes, are potentially subject to the same standards of application and receive the same level of EPA scrutiny. Preparation, review, and processing of these program revisions represent a significant resource commitment on the part of EPA and the States. Occasionally, States and EPA Regions can experience delays in authorization of State program revisions during which EPA and a State are jointly implementing many portions of the RCRA program. For example, in many States EPA is still implementing

[27] More stringent State requirements are typically those which impose additional requirements on wastes or facilities that are already addressed by the Federal program. Broader in scope requirements are typically those that would address wastes or facilities not covered by the Federal program. The authorization status of a State's requirements does not in any way affect the ability of a State to enforce such requirements as a matter of State law.

[28] In this context, the ''base'' RCRA program refers to authorization for all or part of the regulations promulgated by EPA prior to January 26, 1983.

regulations promulgated pursuant to the 1984 HSWA amendments. Any delay in authorization of State program revisions concerns EPA and State regulators, and can confuse the public and the regulated community who often must interact with both agencies for even routine inquiries (e.g., the status of a pending permit application or the compliance of a given hazardous waste management facility).

EPA is continuously improving the administrative processes associated with authorization of State program revisions. Over the past years, improvements have been made through joint training of State and Federal authorization staff, increased emphasis on early EPA involvement in initial preparation of authorization applications, and delegation of the authority to grant authorization for program revisions to EPA Regional offices. EPA believes that the quality of State program revision applications has improved and therefore, EPA review and approval of these submittals has accelerated.

Over the past two years, many EPA rulemaking workgroups (including the HWIR FACA Committee) began to discuss and/or develop streamlined authorization procedures specific to their rulemakings. Based on these discussions, EPA became concerned that some of the recently gained efficiencies in authorization processes could be lost if every new Federal rule contained its own specialized authorization procedures. EPA believes that promulgating specific authorization procedures for each new rule could force State and Regional authorization personnel to continually revise their application formats and review procedures. EPA is especially concerned since many States do not apply for authorization of new Federal regulations one rule at a time, but ''cluster'' their authorization applications. Establishing slightly different authorization procedures for each new Federal rule might preclude clustering of program revisions, and actually slow authorization by forcing States and EPA Regions to prepare and process separate program revision applications for each new rule.

To address this situation, and to further improve the authorization process, EPA developed two generic sets of streamlined procedures for the authorization of program revisions. The first set of streamlined procedures was proposed in the Phase IV proposal (60 FR 43654, August 22, 1995);[29] the second set is being proposed today. EPA believes that these procedures would formalize some efficiencies in the authorization of State program revisions piloted by some States and EPA Regions.

In addition, EPA believes that, by using these new generic procedures, States and EPA Regions would continue to be able to cluster their authorization applications, and conduct successful reviews, by including all Category 1 rules in one authorization package, and all Category 2 rules in another authorization package. (See preamble (V)(E)(3) for discussion of Categories 1 and 2). States and EPA Regions could even choose to coordinate the submittal dates for these authorization packages. For example, the Category 2 application could be submitted prior to the Category 1 application. This would allow the EPA Region to include an authorization decision for both applications in one Federal Register notice.

Through use of two sets of authorization procedures, EPA hopes to tailor the level of effort for preparation, review, and approval of revision applications to the significance of the program revision. Both new sets of procedures would significantly streamline authorization of program revisions. However, both would also provide for EPA review of State program revisions and maintain opportunities for public review and comment on EPA's proposed authorization decisions.

In developing streamlined authorization procedures, EPA used three guiding principles. First, States are EPA's partners in environmental protection. Although EPA must maintain minimum national standards for hazardous waste management, the Agency recognizes that many States have sophisticated, and highly-developed programs for hazardous waste management and cleanup designed to meet their individual circumstances and priorities. Second, State programs do not have to be exactly the same as the Federal program to be equivalent. EPA review of State programs must focus on whether State programs would achieve the same results. (See S. Rept. 98–248 p. 62). Third, EPA should continue to promote the most efficient use of State and Federal authorization resources and take advantage of opportunities to streamline and otherwise encourage State authorization.

3. Streamlined Procedures—§ 271.21

a. Phase IV proposal—Category 1. In the recent Phase IV Land Disposal Restrictions (LDR) proposal (60 FR 43654, August 22, 1995), EPA proposed a streamlined set of authorization procedures that would apply to certain routine changes to the LDR program, such as the application of treatment standards to newly identified wastes. The streamlined authorization procedures proposed with Phase IV have come to be known as Category 1 procedures for authorization of program revisions, or simply ''Category 1.''

In the Phase IV proposal, EPA explained that the proposed streamlined authorization procedures would also be used for certain other revisions to the LDR program and could be considered for future, non-LDR, rules. EPA proposed the generic streamlined authorization procedures for Category 1 in the Phase IV proposal because many of the changes to the LDR program proposed in the Phase IV proposal exemplify the types of program revisions EPA believes should be addressed by Category 1. In general, EPA believes Category 1 authorization procedures would be appropriate for rules or parts of rules that do not change the basic structure of the authorized State program, or expand the State program into significant new areas or jurisdictions. For example, the application of LDR treatment standards to newly identified wastes and revisions to existing LDR treatment standards discussed in the Phase IV proposal would be additions of new wastes to an existing program, changes to numeric criteria, or improvements in existing procedures. These would have minimal effect on the basic scope or implementation of authorized State LDR programs.

Since Category 1 authorization procedures are designed for rules or parts of rules that do not significantly change the way a State might implement its authorized program, EPA believes it is essential that the State first be authorized for the appropriate prerequisite program component. For example, the Phase IV proposal would allow use of Category 1 authorization procedures only in States already authorized for the LDR Third Third regulations (55 FR 22520, June 1, 1990) since the LDR Third Third rule essentially completed the framework of the LDR program. Interested individuals are encouraged to refer to the LDR Phase IV proposal at (60 FR 43654, August 22, 1995), for more information on Category 1 authorization requirements and procedures. Note that in today's proposed rule, EPA would reserve 40 CFR 271.21(h) for finalization of the generic Category 1 streamlined authorization procedures proposed in 40 CFR 271.28 of the LDR Phase IV proposal.

[29] EPA is not now reopening the comment period on the Phase IV proposal.

b. Today's proposal—Category 2. In this proposed rule, EPA addresses authorization of program revisions that have significant impacts on State hazardous waste programs. EPA is proposing generic Category 2 authorization procedures today because we believe the HWIR-media rule exemplifies the type of program revisions which could be addressed using the Category 2 procedures. In general, EPA believes that Category 2 authorization procedures would be appropriate for rules or portions of rules that address areas not previously covered by the authorized State program, or that substantially change the nature of the program.

For example, implementation of the HWIR-media regulations proposed today would involve policy decisions for management of hazardous contaminated media. These policy decisions would likely affect the way States implement hazardous waste requirements at cleanup sites, and State HWIR-media programs would probably be significantly different from the States' previously authorized programs. As with the Category 1 procedures discussed above, EPA believes it could be appropriate to require States to be authorized for certain rules prior to receiving authorization for certain Category 2 rules. For instance, a prerequisite for authorization of today's HWIR-media regulations would be final authorization as defined by 40 CFR 270.2 for the ''base'' RCRA program (the base RCRA program is defined in footnote #28 in (V)(E)(2) of today's proposed rule).

The Category 2 authorization procedures proposed today consist of the following components: (i) Requirements for Category 2 revision applications; (ii) criteria to be used by EPA to determine if Category 2 revision applications are complete; and (iii) procedures for EPA review and approval of Category 2 revision application. Each of these components is discussed in detail below.

When developing the authorization procedures discussed today, EPA sought to balance its desire to recognize successful State performance and experience with the need to ensure adequate implementation of minimum Federal requirements. EPA requests comments on (1) whether the authorization procedures proposed today sufficiently recognize the sophistication of State programs, while maintaining an appropriate level of EPA review; (2) whether these provisions are appropriate for authorization of the HWIR-media regulations (alternative approaches to HWIR-media authorization and HWIR-media eligibility are discussed in section (V)(E)(6)(a) of today's proposed rule); (3) other types of regulations that these procedures could address; and (4) whether the development of generic sets of authorization procedures will preclude or inhibit clustering of program revision applications, thereby potentially slowing their authorization. EPA also requests comments from State, tribal, and territorial governments on the degree to which the authorization approach proposed today will streamline and create efficiencies in the preparation, review, and approval of revision applications.

i. Requirements for Category 2 revision applications (§ 271.21(i)(1)). EPA is proposing that Category 2 revision applications include: (1) a certification by the State attorney general (or the attorney for State agencies that have independent legal counsel) that the laws and regulations of the State provide authority to implement a program equivalent to the Federal program; (2) a certification by the State program director that the State has the capability to implement an equivalent program and commits to implementing an equivalent program; (3) an update to the State/EPA Memorandum of Agreement (MOA) and/or State Program Description (PD) if necessary; and (4) copies of all applicable State laws and regulations showing that such laws and regulations are fully effective. EPA also proposes to allow States, at their discretion, to submit any additional information that they believe will support their revision application.

State certifications (§ 271.21(i)(1)(i)). The State certifications should specifically address the Category 2 rule for which a State is seeking authorization, and include reference to State authorities and requirements that provide for a State program equivalent to the Federal program.

The State attorney general's certification should include specific citations to the State laws and regulations that the State would rely on to implement an equivalent program. If appropriate, the attorney general's certification should include citations to judicial decisions that demonstrate that the State's laws and regulations provide for an equivalent program. All State laws and regulations cited in the State attorney general's certification must be fully effective at the time the certification is signed. Copies of all cited laws, regulations, and judicial decisions must be attached to the State's certification.

In cases where authorization of a Category 2 rule is contingent on the State already being authorized for certain rules, EPA is proposing that the State attorney general's certification include certification that the State is authorized for the prerequisite requirements. Although information on a State's authorization status is, of course, available to EPA, the Agency believes that requiring that the State AG certification address prerequisite requirements would ensure that the State adequately considers these requirements when preparing the authorization application. In addition, States should note that existing regulations at 40 CFR 271.21(a) and (c) require an authorized State to keep EPA fully informed of any proposed changes to its basic statutory or regulatory authorities, its forms, procedures, or priorities, and to notify EPA whenever they propose to transfer all or part of the authorized program from the approved State agency to another State agency. Failure by an authorized State to keep EPA fully informed of changes to State statutes and regulations may affect authorization of that State's program revision applications.

The State program director's certification should specifically address the State's intent and capability to implement an equivalent program. The State program director is the ''director'' as defined at 40 CFR 270.2. If EPA has established essential elements for the rule in question, the State program director's certification must address each essential element individually. Essential elements are discussed in detail below. It may be helpful for the State to reference State policies, procedures, or other documents that support the State program director's certification. When referenced, these documents should be fully effective at the time of the certification, and copies must be attached.

Essential elements (§ 271.21(i)(1)(ii). EPA could choose to promulgate essential program elements for any Category 2 rule. Essential elements summarize critical program components and/or implementation requirements. They would be intended to focus State and EPA resources on a review of critical program components to determine whether the State program will achieve the same results as the Federal program, rather than on line-by-line comparisons of State and Federal regulations. Essential elements could include regulatory provisions, and enforcement or capability considerations. EPA emphasizes that the purpose of essential elements is not to promote detailed or exhaustive re-

evaluations of authorized State programs. Instead, essential elements should be used by State and EPA Regions to ensure that all impacts of certain Category 2 program revisions have been identified and adequately considered. As discussed in section (V)(E)(3)(b)(iii) of the preamble below, EPA would give great deference to States in their certifications of programmatic intent and capability.

EPA would establish essential elements as specifically as possible; however, because of the varying degrees to which States are authorized for the RCRA program and HSWA amendments, some essential elements could overlap with authorized requirements in some States. For example, one of the essential elements proposed today for the HWIR-media rule is ''authority to address all media that contain hazardous wastes listed in Part 261 Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in Part 261, Subpart C of this chapter.'' Some States that have already been authorized for various portions of the RCRA program, including the corrective action program, and the land disposal restrictions for hazardous debris. These States have already promulgated—and are using—appropriate rules for addressing media.

If EPA promulgates essential elements for a particular rule, EPA proposes that the Director's certification would address each essential element individually. When State program components corresponding to an essential element have already been reviewed by EPA when authorizing a previous program revision, the Agency would not re-evaluate the State program component. In these cases, EPA would evaluate the essential element portion of the Director's certification only to verify that the State did, in fact, consider the essential element when deciding how it would implement the program revision at issue.

EPA is not proposing that essential elements replace the authorization checklists currently used by States and EPA to document authorized State authorities. However, to ensure that work is not duplicated, future authorization checklists would incorporate any promulgated essential elements. EPA is proposing essential elements for the HWIR-media rule; these elements are discussed in section (V)(E)(6)(b) of the preamble to today's proposed rule.

Update to the State/EPA Memorandum of Agreement and/or State Program Description (§ 271.21(i)(1)(iii)). EPA is proposing that the Category 2 revision application would include either updates to the State/EPA Memorandum of Agreement and Program Description or certification by the Director that such updates are not necessary. EPA believes that these updates or certifications must be required because Category 2 rules could affect the way a State implements its authorized program.

Consequently, implementation of the proposed program revision could raise issues not addressed by the existing MOA or PD. For example, a State hazardous waste agency may choose to rely on another State agency (e.g., a State water control board) to implement some Category 2 rules. In these cases the State/EPA MOA and Program Description should be updated to reflect the various roles and responsibilities of the two State agencies, and to designate a lead agency for communications with EPA. (See 40 CFR 271.6). If an update to the State/EPA MOA is needed, it should be finalized and signed by the State and EPA before final authorization of the program revision.

EPA does not believe authorization of Category 2 program revisions would routinely necessitate updates to State/EPA Memorandums of Agreement or Program Descriptions. In cases where the MOA already addresses issues such as routine State program monitoring, sharing of information, and procedures for State enforcement, Category 2 revisions could simply add additional requirements to those already implemented by the State agency, and updates would not typically be necessary. Similarly, when the State Program Description already addresses the setting of State priorities, organizational structures, and implementation strategies, and a Category 2 program revision only adds to RCRA requirements already implemented by the State agency, updates would not typically be necessary. In other cases, Category 2 program revisions—even those that would simply add to the RCRA requirements already implemented by a State—could have significant resource implications that should be addressed in an update to the State Program Description.

ii. Completeness check (§§ 271.21(i)(2) and 271.21(k)). When EPA receives a Category 2 revision application, the Agency would conduct a completeness check to determine if the application contains all of the required components. To be considered complete, Category 2 revision applications must include the State attorney general and Director certifications, any necessary updates to the State/EPA MOA and PD, and copies of all cited laws and regulations, as discussed above.

The criteria for completeness checks of Category 2 revision applications would be essentially the same as those proposed in the Phase IV proposal for completeness checks of Category 1 revision applications. Like Category 1 revision applications, Category 2 revision applications would be considered incomplete if: (1) Copies of the laws and regulations cited by the State in their certifications were not included; (2) the statutes and regulations cited by the State were not in effect; (3) the State was not yet authorized for any prerequisite regulations; or (4) the State certifications contain significant errors or omissions.

EPA proposes to allow 30 days for the completeness check. When the Agency determines that a Category 2 revision application is incomplete, it will notify the State in writing. This written notification will specifically identify the application's deficiencies, and provide the State an opportunity to revise and re-submit its application. In cases where a State application was deemed incomplete because of minor errors or omissions, and the State and EPA are in agreement on correction of such errors, the Agency could choose to proceed with the review and approval process discussed below, emphasizing that final authorization of the State program would be contingent on agreed upon corrections to errors in the State application.

iii. Review and approval (§ 271.21(i)(3)). Following determination that a Category 2 program revision application is complete, EPA would review the application as necessary to confirm that the State revisions are equivalent to applicable Federal rules. During this review, EPA could, for example, examine an update to the State/EPA Memorandum of Agreement, if one were submitted, to see if it addressed implementation roles. Similarly, EPA could review the State Director's certification of essential elements to learn more about how the State intended to implement the program revision.

EPA proposes to allow a maximum period of 60 days, beginning when the Agency determines that a program revision application is complete, to consider the application, and to prepare a Federal Register notice requesting public comment on EPA's tentative authorization decision. Although EPA and the State may agree to a shorter or longer review period, EPA believes that it would be possible to confirm the revision's equivalence and prepare the

necessary Federal Register notice within 60 days.

Through the initial authorization of the State program, EPA would have become familiar with the program, and with the laws and regulations of the State. In addition, through the existing procedures for EPA monitoring and oversight of authorized State programs, EPA would be familiar with a State's program priorities, implementation strategies, policies, and procedures. Therefore, authorization of program revisions should be a straightforward process, where EPA's role would be to confirm that the State has adequately considered implementation of the program revision at issue, and has appropriately certified that the State laws and regulations provide for a program equivalent to the Federal program. EPA emphasizes that the review of program revision applications that are provided for in proposed 40 CFR 271.21(i)(3) should be used only to address the particular program revision at issue. Concerns EPA might have with parts of the State program that are already authorized should be addressed during EPA's monitoring and oversight of the State program.

EPA believes that the exact level of review necessary to confirm that a State's revisions provide for a program equivalent to the Federal program would vary from State to State, and from rule to rule. For example, in cases where EPA is very familiar with the State program (e.g., in the case of HWIR-media, in a State authorized for corrective action), the review necessary for EPA to confirm equivalence would not be extensive. In other cases, a State may be proposing to implement a program revision using a non-hazardous waste authority, or a combination of authorities, and the level of review necessary for EPA to confirm equivalency could be more intensive. EPA has developed the Category 2 authorization procedures to allow States and EPA Regions the flexibility to establish the level of review necessary for a determination of equivalence, rather than presupposing that any given level of review would be appropriate in all States for all Category 2 program revisions.

EPA proposes to use the procedures for an immediate final rule (see 40 CFR 271.21(b)(3)) to request comments on its tentative decision to approve or disapprove a Category 2 program revision. Immediate final rules, which are published in the Federal Register, provide a 30-day public comment period, and go into effect 60 days after publication unless significant adverse comment is received. An example of significant adverse comment would be comments demonstrating that the cited State authorities do not provide for an equivalent program. EPA believes that immediate final rules would typically be the most efficient way to publish and seek comments on its proposed program revision authorization decisions; however, the Agency and a State could agree to use a proposed/final Federal Register notice (as provided for under 40 CFR 271.21(b)(4)), if they believed such notice would be more appropriate to their circumstances.

EPA's goal is to authorize State program revisions in a timely way. EPA is committed to working with State agencies to address any deficiencies or areas of confusion in State applications, and to support States as they develop their programs. EPA emphasizes that, when processing program revision applications, it would give great deference to the State in: (1) interpretation of State laws and regulations and the judgement that such laws and regulations provide for an equivalent State program; and (2) certifications of State intent and capability. As always, EPA encourages States to work closely with the Agency when developing revision applications. The Agency has found that this ''up front'' investment is often the most effective way to streamline authorization.

c. Clarification of the meaning of the term ''Equivalent'' (§ 271.21(j)). EPA is taking this opportunity to clarify that the term ''equivalent'' means that the proposed State program is no less stringent than the Federal program. EPA hopes that this clarification allows States and Regions to efficiently focus authorization applications and review on the ability of the proposed State programs to meet the minimum national standards, rather than on line-by-line comparisons of State and Federal regulations. One of EPA's guiding principles in developing streamlined authorization procedures for program revisions was that State programs do not have to be exactly the same as the Federal program to be equivalent, and that EPA should focus its authorization review on environmental results.

EPA is considering applying the definition of ''equivalent'' discussed above to all authorization decisions, including authorization of Category 1 program revisions, authorization of program revisions using the existing regulations, and final authorization as defined in 40 CFR 271.3. If EPA decided to apply the definition of equivalent to all authorization decisions, the definition would be finalized in 40 CFR 270.2. EPA requests comments on whether or not the definition of ''equivalent'' discussed above should be applied to all authorization decisions and, if commenters believe that the clarification should be applied to all authorization decisions, whether or not the definition should be finalized in 40 CFR 271.21(j) or 40 CFR 270.2.

d. Table of Authorization Categories (§ 271.21 Table 1). EPA is proposing to record rules or parts of rules eligible for Category 2 authorization procedures and any prerequisite requirements in Table 1 of 40 CFR 271.21. EPA believes that tabulating the different Category 2 rules and their prerequisite requirements is the most effective and efficient way to present and maintain this information. If the procedures for Category 1 proposed in the LDR Phase IV proposal are finalized, the information proposed in § 271.28(a) of that proposed rule, and any future Category 1 rules and prerequisite requirements, would be also presented in table form.

e. Relationship of Category 1 and 2 procedures to existing authorization procedures for program revision, and request for comments on the need for a third Category. EPA believes that all revisions to authorized State hazardous waste programs required in the future could be appropriately addressed using either the Category 1 authorization procedures proposed in the LDR Phase IV proposal, or the Category 2 authorization procedures proposed today. EPA believes that the Category 1 and Category 2 procedures would be appropriate for all program revisions since each retains a level of EPA review appropriate to the program revision at issue, and incorporates an opportunity for the public to comment on EPA's proposed authorization decisions. Under this scenario, the existing program revision procedures in 40 CFR 271.21(b)(1) would apply only to authorization of rules or parts of rules promulgated prior to finalization of the Category 1 and 2 authorization procedures discussed today.

Alternatively, EPA could retain the existing program revision procedures as Category 3, and use them to authorize major revisions to State hazardous waste programs (e.g., States authorized for the first time for land disposal restrictions). EPA requests comments on the need for a third authorization category and the types of revisions that might require that level of review. In addition, EPA is considering not changing the current program revision rules, and instead applying the streamlined authorization procedures discussed today and in the Phase IV proposal as guidance to authorization of existing rules. EPA requests comment on the degree to

which Category 1 and 2 authorization procedures should be used as guidance when implementing the current procedures for authorization of program revisions.

4. Authorization for Revised Technical Standards for Hazardous Waste Combustion Facilities

Recently, EPA proposed Revised Technical Standards for Hazardous Waste Combustion Facilities published in the Federal Register on April 19, 1996 at (61 FR 17358). In this document, EPA requested comment on whether the streamlined authorization procedures that were proposed on August 22, 1995, (see 60 FR 43654, 43686) should apply to States seeking authorization for this rule. Note that in today's proposed rule, those procedures are classified as Category 1.

In requesting comment on the use of Category 1 procedures in the April 19, 1996 combustion standards proposal, EPA made a distinction among those States that would be approved to implement the final rule pursuant to 40 CFR Part 63, Subpart E (in the Clean Air Act (CAA) regulations), those States simply incorporating this rule into their RCRA regulations, and those States that would be seeking to implement the rule for the first time under RCRA authority. EPA continues to believe that the Category 1 procedures would be appropriate for those States that would be incorporating the combustion standards rule from an already approved State air program into the State RCRA program. However, EPA stated in the combustion proposal its belief that for all other States, the slightly more extensive authorization procedures developed as part of today's HWIR-media proposal would be most appropriate. This preference is based on the complexity and significance of the combustion standards rule, which substantially revises the performance standards for hazardous waste combustion facilities. EPA believes that the Category 2 procedures provide the benefits of streamlined authorization, while allowing a slightly longer period for EPA review.

Because the Category 2 authorization procedure had not been proposed before the combustion standards rule was developed, EPA was unable to request comments on whether the proposed Category 2 procedures should apply to the authorization of those States that did not incorporate by reference an approved State CAA program for the combustion standards rule. Thus, EPA is now taking the opportunity in today's notice to request this comment. EPA will consider comments made regarding today's notice when developing the final combustion standards rule.

5. Request for Comment on Application of Category 1 Procedures to Portions of HWIR-waste Proposal

In the recent proposal to establish self-implementing exit levels for listed hazardous wastes, waste mixtures, and derived-from wastes (the HWIR-waste rule), EPA announced that it was considering the possibility of using streamlined authorization procedures for some portions of the exit rule. (See 60 FR 66344, 66411–12, (December 21, 1995)). EPA has completed its initial evaluation of this issue, and is proposing today to apply the Category 1 procedures set forth in the LDR Phase IV rulemaking to major portions of the exit proposal.

Specifically, EPA is proposing to allow States to use Category 1 procedures for all portions of proposed 40 CFR 261.36 (the exit levels, requirements for qualifying for an exemption based on these levels, and the conditions for maintaining an exemption). However, EPA is proposing to restrict this option to States that have already obtained authorization for the pre-1984 base program, including the 1980 Extraction Procedure Toxicity Characteristic. (Authorization for the 1990 Toxicity Characteristic that replaced the EP rule would also be acceptable). The two toxicity characteristic rules closely resemble the exit proposal. All three rules require waste handlers to determine whether their wastes contain specified hazardous constituents in concentrations exceeding specified threshold levels. All three schemes also are self-implementing, requiring the waste handler to keep records but requiring no prior approval by Federal or State authorities. Thus, States that have been authorized for the base program have experience in drafting rules similar to the proposed exit rule. They also have significant experience in enforcing a self-implementing waste determination scheme that covers both organic and metallic waste constituents. Although the proposed exit scheme for listed waste involves many more constituents than either the EP or TC rule, EPA does not believe that increasing the number of constituents that waste handlers must evaluate would warrant, by itself, a detailed review of the State program.

Neither the base program nor the 1990 Toxicity Characteristic include any conditions for maintaining an exit. The conditions proposed in § 261.36, however, would be requirements for retesting, notification, and record keeping similar to requirements in the base program and the TC. Moreover, they would be easy to understand, and relatively easy to detect, if violated. Accordingly, EPA believes that the Category 1 procedures would be appropriate for these conditions. EPA requests comments on its proposal to allow use of Category 1 procedures for all portions of § 261.36. The proposed Category 1 procedures are described in detail in the preamble to LDR Phase IV proposal at (60 FR 43654, 43687–88, August 22, 1995). Proposed regulatory text is set out at (60 FR 43654, 43698–99, August 22, 1995).

EPA is also proposing to allow States that have obtained authorization for the Third Third LDR rule to use Category 1 procedures for the alternative ''minimize threat'' treatment standards in proposed revisions to § 261.40 and proposed new § 268.49. States that are already authorized for the basic framework 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 minimize threat levels would merely be different numerical alternatives to some of the existing BDAT standards. No change to any other portion of the LDR program would be required.

The December 1995 HWIR-waste proposal also contains an option for alternative, less restrictive exit levels based on constraining the type of management that the wastes will receive. Under this option, wastes with higher constituent concentrations would be exempted from Subtitle C control if they were not placed in land treatment units. EPA believes that this option may present significant new issues not previously addressed in the base program or any subsequent program revision. Consequently, EPA is not proposing to apply Category 1 procedures to this portion of the waste exit proposal. Rather, EPA is proposing to allow States that wish to adopt this option to use the Category 2 procedures proposed in today's proposed rule. EPA requests comments on this proposal, and the alternative of allowing States to use Category 1 procedures for this ''management condition'' option.

6. HWIR-media Specific Authorization Considerations—§ 271.28

During the development of today's proposed rule, EPA considered a number of authorization alternatives before deciding to propose the Category 2 authorization procedures discussed above. One approach would have based eligibility for final HWIR-media authorization on whether a State was

authorized to implement the corrective action regulations under RCRA section 3004(u). Under this approach, all HWIR-media authorization applications would have been prepared, reviewed, and approved using streamlined procedures,[30] but States that were not authorized for corrective action would have been granted HWIR-media authorization for a two-year provisional period. During this period, States would have been required to demonstrate their ability to implement an equivalent program.

After careful consideration, EPA tentatively determined that lack of corrective action authorization should not prejudice a State's ability to receive prompt authorization for the HWIR-media program. Many States that are not authorized for corrective action nonetheless have highly-developed, sophisticated cleanup programs that they are using to address RCRA facilities, sometimes through work-sharing agreements with EPA Regions. EPA believes that it would be inefficient to require States to undergo a two-year provisional demonstration period, if EPA is already familiar with the State's program, and confident in the State's ability to make appropriate cleanup decisions. In addition, EPA was concerned that a provisional period approach would be cumbersome and confusing, because it would rely on two different procedures, and because it involved, for States authorized under this approach, a significant resource commitment. Instead, EPA decided to propose a single authorization approach using the streamlined Category 2 process discussed above—not only for States authorized for corrective action, but for all States that have received final authorization for the ''base'' RCRA program. (See footnote #28, (V)(E)(2) of this preamble for a definition of the base RCRA program). This would allow almost all States to be eligible to use the streamlined Category 2 authorization procedures to their applications for HWIR-media authorization. An alternative approach to HWIR-media eligibility, where States proposing to use authorized hazardous waste authorities to implement an HWIR-media program would be authorized using the Category 1 authorization procedures, and all other States would be authorized using the Category 2 authorization procedures, is discussed in section (V)(E)(6)(a) of this preamble for today's proposed rule.

Although EPA did not decide to propose that State authorization for HWIR-media be based, in part, on a State's corrective action authorization status, the Category 2 procedures proposed today would incorporate many of the streamlined procedures contemplated by the HWIR FACA Committee. EPA solicits comments on whether the alternative discussed above (predicating authorization for HWIR-media on corrective action authorization, and requiring non-corrective action authorized States to undergo a two-year provisional period) would be more appropriate to HWIR-authorization and therefore should be finalized in lieu of the approach proposed today. The Agency also requests comment on other alternatives that would differentiate between States which are authorized for RCRA corrective action, and those which are not.

a. Eligibility for HWIR-media authorization. EPA proposes that authorization to administer an approved HWIR-media program would be made available only to those States that have received final authorization as defined in 40 CFR 270.2 to implement the base RCRA program (the base RCRA program is defined in footnote #28 in section (V)(E)(2) of today's preamble). Before granting a State final authorization, EPA would determine that the State in question had legal and administrative structures in place to implement an equivalent program, that the State program was consistent with the Federal program and other authorized State programs, and that the State had adequate enforcement authorities.

EPA believes that final authorization would be an essential prerequisite to HWIR-media authorization because States that have received final authorization are allowed to decide that solid wastes met the definition of hazardous wastes. This authority includes the authority to make contained-in decisions that are a central element of the HWIR-media program. EPA believes that experience making hazardous waste decisions would be essential to a State's ability to make contained-in decisions for media with concentrations of hazardous constituents that are below the Bright Line. In addition, States that have received final authorization would have demonstrated capability in permitting, ground water protection, oversight, and enforcement of hazardous waste management requirements.

States seeking authorization to implement the new HWIR-media LDR treatment standards and treatment variances must first have received final or interim authorization for the LDR program through the Third Third LDR rule (55 FR 22520, June 1, 1990). As discussed in the Phase IV proposal, EPA believes that the LDR Third Third rule established the general framework and infrastructure of the LDR program. Since the new LDR treatment standards and treatment variances rely on the existing infrastructure of the LDR program, EPA believes that it would be necessary for States to be authorized for the LDR Third Third rule before they could be authorized to implement those portions of the HWIR-media program. EPA requests comments on whether the Third Third LDR rule would be the appropriate prerequisite requirement for authorization of the changes to the LDR program proposed today. If commenters believe that the Third Third LDR rule is not appropriate, EPA requests suggestions for an alternative prerequisite (e.g., the LDR Solvents and Dioxins Rule, (51 FR 40572, November 7, 1986)).

States that have not received final authorization or LDR authorization could seek HWIR-media authorization concurrently with, or subsequent to, those authorizations. Unauthorized States could work with EPA under cooperative agreements to implement the HWIR-media program, if interested.

Alternative proposal for HWIR-media eligibility. Alternatively, EPA could allow States that are planning to use authorized hazardous waste authorities to implement the HWIR-media program to use the generic procedures for Category 1 for HWIR-media authorization, and reserve the generic Category 2 procedures for States proposing to implement the HWIR-media with non-authorized authorities (e.g., State Superfund-like authorities). This approach would allow streamlined authorization procedures to apply to almost all States by retaining the prerequisite of final RCRA base program authorization (rather than corrective action authorization), and would provide States proposing to use authorities familiar to EPA with the most streamlined procedures available.

EPA requests comments on this alternative to HWIR-media authorization eligibility, and whether or not this approach should be finalized in lieu of the eligibility approach discussed above. EPA also requests general comments on the feasibility of determining authorization categories based on the type of authority a State proposes to use, rather than on the impact or significance of the program revision at issue.

[30] Although considered prior to development of the streamlined Category 1 and 2 authorization procedures discussed today, the streamlined procedures considered for HWIR-media authorization most closely resembled those proposed as Category 1 in the LDR Phase IV proposal.

Authorization of tribes. EPA is currently developing a proposal to clarify the eligibility of tribes to receive authorization to administer their own hazardous waste programs. The proposal would discuss in detail existing RCRA authorities that EPA believes allow tribes to seek full or partial hazardous waste program authorization. If this proposal is finalized, any tribe that wishes to obtain final base RCRA program authorization would likewise be eligible for HWIR-media authorization. Tribes that choose to receive only partial authorization would not be eligible to obtain HWIR-media authorization, since the scope of such a partial program would be limited. EPA believes that in order to adequately implement the HWIR-media program, a tribe (like a State) should receive final authorization to implement the base RCRA program.

b. HWIR-media essential elements (§ 271.28(a)). EPA may choose to establish essential elements for any Category 2 rule. As discussed above (see preamble section (V)(E)(3)(b)(i)), the purpose of essential elements is to focus State and EPA resources on critical program components.

EPA believes that essential elements would be especially important when authorizing States to implement the HWIR-media program because it anticipates that many States would seek authorization for HWIR-media using existing, non-RCRA, State authorities. For example, some States could choose to rely on State Superfund-like authorities that could address a broader universe of sites and/or wastes than the RCRA corrective action or HWIR-media programs, and provide considerable flexibility and discretion to State agencies in specification of cleanup requirements. Alternatively, some States could choose to rely, in part, on a program that is less comprehensive than the Federal HWIR-media program. For example, a State could choose to rely on its pesticide management authorities to implement the HWIR-media program for media that were contaminated with pesticides. EPA believes that the HWIR-media essential elements would help State and Federal staff efficiently determine if these non-RCRA State authorities provide for equivalent State programs. EPA believes that the States' reliance on broad or flexible authority should not make approval of HWIR-media revision applications more difficult, as long as the State clearly provided for implementation of the HWIR-media program essential elements.

EPA has identified the following essential elements for the HWIR-media program:

(i) Authority to address all media that contain hazardous wastes listed in Part 261, Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in Part 261, Subpart C of this chapter.

(ii) Authority to address the hazards associated with media that are managed as part of remedial activities and that the Director has determined do not contain hazardous wastes (according to Part 269), but would otherwise be subject to Subtitle C regulation. States that choose to make contained-in decisions only when concentrations of hazardous constituents in any given media are protective of human health and the environment, absent any additional management standards (i.e., eatable, drinkable concentrations), may receive HWIR-media authorization without certifying their ability to impose management standards on media that no longer contain hazardous waste.

(iii) Authority to include, in the definition of media, materials found in the natural environment such as soil, ground water, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids that are inseparable by simple mechanical removal processes and made up primarily of media.

(iv) Authority to exclude debris (as defined in § 268.2) and non-media remediation wastes from the requirements of Part 269 (except those for Remediation Management Plans).

(v) Authority to use the contained-in principle (or equivalent principles) to remove contaminated media from the definition of hazardous wastes only if they contain hazardous constituents at concentrations at or below those specified in Appendix A.

(vi) Authority to require compliance with LDR requirements listed in § 269.30 through § 269.34.

(vii) Authority to issue, modify and terminate (as appropriate) permits, orders, or other enforceable documents to impose management standards for media as described in essential elements 1–6 and 8 and 9.

(viii) Requirements for public involvement in management decisions for hazardous and non-hazardous media as described in § 269.43(e).

(ix) Authority to require that data from treatability studies and full scale treatment of media that contain hazardous waste be submitted to EPA for inclusion in the NRMRL treatability database.

The essential elements of HWIR-media programs are proposed in 40 CFR 271.28(a).

The preceding essential elements were developed for the proposed options included in today's proposed rule. If EPA chooses to finalize the alternatives discussed in this proposal, rather than the proposed options, then the essential elements will be revised to represent the final version of today's rule more accurately.

The Agency requests comments on the essential elements proposed for HWIR-media authorization. The Agency also requests comments on whether essential elements in general should be promulgated as rules, or suggested as guidance only.

Specifically, the Agency requests comment on the essential element (viii) for public participation. Many cleanups, particularly if they were short term, or involved wastes that would not remain on site, could warrant less public participation. For example, if a State agency were cleaning up spilled petroleum in soil, which exhibited the hazardous TC characteristic for benzene, and the remedy called for digging it up immediately for off-site treatment or disposal, should the Agency wait to clean up the site until it was in compliance with the public participation requirements described above? Should the final rule allow for different degrees of public participation depending on the nature of the activities being performed? Should EPA allow decisions to be made on a site-specific or case-specific basis about the level of public participation necessary?

c. *Monitoring of State HWIR-media programs and program withdrawal (§ 271.28(b)).* The Agency is not proposing requirements for monitoring of State HWIR-media programs; however, a discussion of how EPA expects this monitoring should take place is included below. The procedures for partial program withdrawal discussed below were developed by the HWIR-media workgroup to complement the streamlined authorization procedures anticipated for HWIR-media.

A number of changes have occurred since these procedures were developed. First, EPA has chosen to propose generic, streamlined authorization procedures rather than establish authorization procedures specific to the HWIR-media rule. (See the above discussion of Category 1 and 2 program revision authorization procedures in section (V)(E)(3)). Second, the authorization procedures for the HWIR-media rule, while significantly streamlined from the existing procedures for authorization of program

revisions, include a level of EPA review not anticipated by the workgroup when monitoring and partial program withdrawal procedures were developed.

EPA has also addressed the oversight and monitoring of authorized State programs more generally through a number of Agency workgroups and initiatives. EPA requests comments on the degree to which the monitoring procedures discussed below should be considered for application beyond the HWIR-media rule. In addition, EPA requests comments on whether partial program withdrawal would be feasible, and whether such a provision would be necessary.

i. Monitoring of State HWIR-media programs. EPA believes that some monitoring of State programs is necessary to ensure that the considerable flexibility provided by today's proposed rule would be implemented in a way that is protective of human health and the environment. This was a particular concern to stakeholders during the development of today's proposed rule because it allows a more streamlined authorization for program revisions. For this reason, stakeholders were concerned that State programs might not receive sufficient up-front review prior to authorization to ensure that the program would be conducted protectively.

EPA currently conducts routine monitoring of State programs in order to identify conflicting EPA and State priorities, or areas where the State program seems to be significantly at variance with Federal rules or guidance. The purpose of routine monitoring is not to direct the priorities or site-specific implementation decisions of any given State program, but to identify problematic trends in the program. Typically, the procedures for routine State program monitoring are specified in the State/EPA Memorandum of Agreement, the annual or biannual State/EPA Grant Workplan, or other written State/EPA agreements. Often, routine State program monitoring will include mid- and end-of-year State/EPA meetings, periodic oversight inspections, and review of State files or enforcement cases.

EPA believes that most concerns regarding a State's implementation of its authorized HWIR-media program could be resolved through routine State program monitoring activities. If concerns regarding a State's HWIR-media program implementation cannot be resolved during routine monitoring, EPA would identify those concerns and propose options for resolution. Depending on the degree of EPA's concerns, the Agency would increase its monitoring of the State program accordingly. When serious concerns are identified, and when a State's failure to address these concerns adequately would cause significant risk to human health or the environment, EPA would warn the State, in writing, that the State's HWIR-media authorization could be withdrawn.

Decisions to increase the monitoring of State programs could be made by EPA based on the Agency's own information, or based on information submitted by independent third parties who allege poor or inadequate performance by the State HWIR-media program. (See proposed 40 CFR 271.28(d)). EPA would consider such allegations when making decisions about the level of program monitoring necessary in an HWIR-media authorized State. Third party allegations are also discussed in the section of this preamble that addresses withdrawal of authorized State HWIR-media programs.

ii. Program withdrawal (§ 271.28(b)). In the event that EPA and the State could not resolve their differences during program monitoring, EPA could choose to withdraw the State's HWIR-media program authorization. Program withdrawal would be for the HWIR-media portion of the State's authorization program only.

EPA would not withdraw HWIR-media authorization without first providing the State an opportunity to address EPA's concerns using the monitoring discussed above. In addition, EPA would not withdraw HWIR-media authorization without first giving the State clear, written warning that program withdrawal was imminent.

EPA proposes that, in addition to program withdrawal initiated for cause by EPA, any person could petition EPA at any time to withdraw a State's HWIR-media program authorization based on allegations that the program fails to meet the minimum national standards for an HWIR-media program as set forth in 40 CFR 271.28(a), and discussed in today's proposal. Whenever such petitions are received, EPA would provide copies of the petition and all supporting documentation to the State and allow the State at least 30 days to respond. Following the State's response and any independent EPA investigation, EPA would respond to all third-party allegations in writing.

When EPA determines that a State's HWIR-media program authorization should be withdrawn, EPA will publish its tentative decision to withdraw the State's HWIR-media program in the Federal Register, and provide the public, including the State, at least 60 days to review and comment on the tentative program withdrawal determination. If requested, EPA would also hold an informal public hearing. At the close of the review and comment period, EPA would publish its final decision regarding withdrawal of the State's HWIR-media program in the Federal Register. EPA's notice of final decisions would include responses to any significant comments received during the public review and comment period.

Following withdrawal of a State's HWIR-media program, EPA would administer the HWIR-media program in that State using the Federal standards for HWIR-media, and Federal enforcement authorities. (See § 271.28(c)). EPA believes it is important for HWIR-media program implementation to continue even in States that lose their HWIR-media program authorization because reverting to existing RCRA Subtitle C hazardous waste management requirements would disrupt and delay the cleanup process. In addition, since States that receive HWIR-media authorization would expect that management standards for contaminated media would be tailored to specific cleanup sites through the HWIR-media process, EPA believes that it would be appropriate to continue implementation of the program for new cleanups even if a State's HWIR-media program authorization is withdrawn. Otherwise, management standards could revert to the existing RCRA standards for hazardous waste once a State's authorization for HWIR-media was withdrawn; then, the State would no longer be able to approve Remediation Management Plans (RMPs) or make contained-in decisions for contaminated media. Remediation Management Plans that were approved by the State prior to the withdrawal of its HWIR-media program would remain in effect. However, EPA could use Federal enforcement authorities to impose additional management requirements in these RMPs as necessary to ensure protection of human health and the environment.

d. HWIR-media authorization in States that can be no more stringent Than the Federal Program. Some States' statutes prohibit the promulgation of any rules that are more stringent than Federal RCRA regulations. EPA does not believe that such statutes would prohibit States from adopting and implementing any portion of Part 269, including decisions to continue regulation of media with constituent concentrations below Bright Line concentrations as hazardous. As proposed, this media management decision would be completely discretionary with the overseeing

agency. Consequently, it would be impossible to argue that a State that chooses to continue regulation of contaminated media under Subtitle C would be ''more stringent'' than the Federal RCRA program. As proposed, the Bright Line would not automatically reclassify media, even under the Federal RCRA program. Rather, it would act as a ''ceiling'' below which an agency overseeing cleanup of a site would have the authority and discretion to determine whether the media should continue to be managed as hazardous waste.

States that could be no more stringent than the Federal program might, however, be required to adopt regulations equivalent to the new regulations for LDR treatment standards and media treatment variances and remediation piles. Since these new requirements would be less stringent than the existing requirements, a State that is prohibited from having more stringent regulations might be required to provide equivalent flexibility.

7. Effect in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered the State hazardous waste program, in lieu of EPA administering the Federal program in that State. When new, more stringent, Federal requirements were promulgated or enacted, authorized States were required to update their hazardous waste programs within specified time frames to remain equivalent to the Federal program, as revised. States were not required to update their hazardous waste programs to conform to new Federal requirements that were less stringent than the authorized State program. New Federal requirements did not take effect in authorized States until the State adopted the requirements as State law and received authorization to implement the new requirements (in lieu of the Federal program).

In the HSWA amendments of 1984, Congress specified that the new requirements enacted in the amendments and all implementing regulations promulgated by EPA would take effect immediately in authorized and non-authorized States. (See RCRA section 3006(g); 42 U.S.C. 6926(g)). While States are still required to update their authorized hazardous waste programs to remain equivalent to the Federal program, EPA is directed to carry out HSWA requirements in authorized States until the State modifies its program, and receives final or interim authorization.

Since EPA modifies portions of the Federal hazardous waste program enacted prior to the HSWA amendments and portions of the Federal program enacted by the HSWA amendments, there are different time frames by which revisions to the Federal RCRA program become effective in authorized States. New, more stringent, Federal regulations that are promulgated pursuant to the pre-HSWA program do not take effect in authorized States until the State modifies and updates its hazardous waste program. New, more stringent, Federal regulations promulgated pursuant to the HSWA amendments take effect immediately in authorized and non-authorized States, and are implemented by EPA until the State adopts the new requirements and revises its authorized program. New Federal regulations (HSWA and pre-HSWA program) that are considered less stringent than the existing Federal or authorized State programs are optional for States to adopt and do not go into effect unless and until States adopt them, and are authorized to implement the provisions in lieu of EPA (except for less stringent HSWA requirements that are in effect and implemented by EPA in unauthorized States, such as Alaska). To ensure that authorized State programs accurately reflect the Federal program, States are required to update their authorized hazardous waste programs to incorporate all more stringent Federal regulations within the time frames specified in 40 CFR 271.21(e).

Today's proposal is promulgated in part pursuant to pre-HSWA authority, and in part pursuant to HSWA. The following sections of this proposed rule are proposed pursuant to pre-HSWA authority: (1) Codification of the contained-in policy for constituents lacking Bright Line concentrations; (2) Bright Line concentrations and decisions that media no longer contain hazardous waste; and (3) RMP issuance for management of remediation wastes that contain hazardous wastes. The following elements of today's proposal are proposed pursuant to HSWA and would be modifications to the existing HSWA program that would cause the Federal program to become less stringent: (1) LDR treatment requirements for hazardous contaminated soil addressed under new Part 269; (2) new regulations for remediation piles; (3) media treatment variances; and (4) interpretations that RCRA section 3004 (u) and (v) do not apply to cleanup-only facilities. In today's proposal, revocation of the CAMU regulations would be more stringent than existing HSWA regulations.

In general, today's proposal is less stringent than the existing Federal hazardous waste program and, therefore, optional for States to adopt. The sole exception is the proposed revocation of the CAMU regulations, which would be considered more stringent, and would thus require adoption by States within the time frames set forth in 40 CFR 271.21(e). These time frames would provide that State modifications be made within one year of the date of the Federal program change, or within two years if State statutory amendments are necessary.

Since the bulk of the HWIR-media program proposed today is less stringent than the existing Federal RCRA program, it would not be effective in authorized States unless and until the State chose to adopt it and become authorized. EPA believes that the relief provided by the HWIR-media program would significantly increase the speed and efficiency of cleanups. Therefore, States seeking authorization for a HWIR-media program would be encouraged to use their existing State enforcement authorities to provide for HWIR-media style relief while their authorization applications were being reviewed.

a. Pre-HSWA requirements. The pre-HSWA requirements proposed today would be less stringent than the existing RCRA requirements. Because they would be less stringent, they would be optional for States to adopt, and would not take effect in authorized States unless and until the State adopted and became authorized for them. States with final authorization (or States seeking final authorization concurrently with this rule), that choose to obtain authorization for today's HWIR-media rule, would have to adopt requirements that were no less stringent than the requirements specified in Part 269. States that seek final program authorization after finalization of HWIR-media regulations could choose to apply for final program authorization without the HWIR-media program.

b. HSWA Requirements. The HSWA requirements proposed today (with the exception of CAMU revocation) would relate to the Land Disposal Restriction (LDR) program, and would be less stringent than existing LDR requirements. They would be, therefore, optional in HSWA authorized States

and would not go into effect unless and until a State adopted and became authorized for them. Normally, less stringent HSWA requirements automatically take effect in non-HSWA authorized States. However, the Part 269 LDR treatment requirements would not take effect because they apply only to cleanup wastes addressed under a Part 269 program. Thus, they would become effective in non-HSWA authorized States only when such States obtain authorization to run a Part 269 program. States authorized for the LDR program that choose to obtain HWIR-media authorization, would have to adopt requirements that would be at least as stringent as the LDR requirements specified in Part 269. States that seek LDR authorization after promulgation of final HWIR-media regulations would have to adopt requirements no less stringent than the existing (non-Part 269) Federal LDR program, if they chose not to seek authorization for today's HWIR-media requirements.

Media treatment variances. Under current regulations at 40 CFR 268.44, EPA may grant waste- or site-specific variances from treatment standards in cases where it can be demonstrated that the treatment standard is inappropriate for the waste, or that the waste cannot be treated to specified levels, or treated by specified methods. Today's proposed rule would retain the availability of treatment variances in the implementation of the HWIR-media program, and establish HWIR-media specific treatment variance procedures for media managed under Part 269. The Agency is clarifying today that States could seek authorization for both the site-specific treatment variance procedures in 40 CFR 268.44, and the HWIR-media specific treatment variance procedures proposed in Part 269. EPA is aware that some States, especially States that chose to adopt the Federal LDR program by reference, could have already received authorization to issue site-specific LDR treatment variances under 40 CFR 268.44. Because there has been some confusion about this issue, and because EPA's current proposal would encourage States to become authorized for treatment variances, EPA requests the States to note in their HWIR-media program revision application, or other authorization application, or in official correspondence, whether or not they believe that they have been authorized for site-specific LDR treatment variances under 40 CFR 268.44. EPA would then evaluate that aspect of a State submittal to confirm the State's authorization for treatment variances. EPA requests comments on this proposal, especially from States that believe they are already authorized to approve LDR treatment variances.

CAMU revocation. EPA is proposing today to revoke the CAMU regulations at 40 CFR 264.552 and to ''grandfather'' CAMUs approved prior to the publication date of the final HWIR-media rule. Since revocation of the CAMU regulations would remove that option at the Federal level, even States that have adopted CAMU regulations as a matter of State law and/or become authorized for CAMUs would be blocked from approving new CAMUs by this date, when these more stringent Federal rules would go into effect. Of course, States could still use their CAMU regulations for non-hazardous wastes at their discretion, or for media that do not contain hazardous wastes (and that are not subject to LDRs).

In order to ensure that requirements for ''grandfathered'' CAMUs remain enforceable, States that have already been authorized for the CAMU regulations, and that choose to grandfather CAMUs, should retain their CAMU regulations (for those grandfathered CAMUs) until those CAMUs have expired or are terminated. States would be required, however, to make clear that existing State CAMU regulations would not be used to grant any new CAMUs for management of Federally hazardous waste after the date of publication of the final HWIR-media rule.

c. Examples. The following examples illustrate the effect of today's proposed rule in authorized States.

Example One: The State has received final base program authorization but has not yet been authorized for the land disposal restriction program.

Because the State has received final base program authorization, and the pre-HSWA HWIR-media regulations proposed today are less stringent than the existing program, the pre-HSWA HWIR-media regulations would not be effective in the State unless and until the State adopted and became authorized for them.

Since EPA would still be implementing the LDR program in the State, the Part 269 LDR treatment requirements for hazardous contaminated media and treatment variances for contaminated media would be effective immediately upon approval of the State's HWIR-media program, and would be implemented by EPA until the State received the necessary LDR program authorization. On the other hand, the new remediation pile provisions would become effective immediately in non-HSWA authorized States, because they are HSWA requirements that are not specific to the Part 269 program.

Example Two: The State has received final base program authorization, and is also authorized for the land disposal restriction program through the Third Third LDR rule.

Since the State has received final authorization and the pre-HSWA HWIR-media regulations proposed today are less stringent than the existing program, the pre-HSWA HWIR-media regulations would not be effective unless and until the State adopted and became authorized for them, as discussed in example one. Similarly, since the State would be authorized for the land disposal restriction program, and the remediation pile provisions (which are considered HSWA provisions because they affect LDRs) proposed today are considered less stringent than the existing LDR program, the remediation pile provisions proposed today would not be effective in the State unless and until the State adopted and became authorized for them.

For the less stringent Part 269 treatment standards, as explained in example one, these would not become effective in the State until the State chose to adopt a Part 269 program. Because the State would already be authorized for a sufficient LDR program, the State could also be authorized to run the LDR program of the HWIR-media program.

Example Three: The State is authorized for the corrective action management unit rule.

The CAMU revocation provision proposed today is the only provision that is more stringent than the existing Federal RCRA program and, therefore, mandatory for States to adopt. In addition, because revocation of the CAMU regulations would remove that option at the Federal level, even States that have adopted CAMU regulations as a matter of State law would be blocked from implementing those regulations when more stringent Federal rules take effect (date of publication of final HWIR-media rule).

8. Request for Comment on EPA's Approach to Authorization

EPA requests general comments on the approach to authorization outlined in today's proposal. In addition, as discussed above, EPA specifically requests comments that address the following issues and areas:

a. The use of differential authorization procedures for State program revisions, and whether the Category 2 authorization procedures discussed today would sufficiently recognize the sophistication of State programs while maintaining an appropriate level of EPA review. EPA is specifically interested in the ability of these procedures to adequately address evaluation of a State's capability to implement any given program revision;

b. The effect of differential authorization procedures, if any, on State's and EPA's ability to cluster authorization applications (i.e., the ability to prepare and review program revision applications that address more than one rule at the same time);

c. Whether the Category 2 procedures discussed today would be appropriate for authorization of the HWIR-media regulations, and other types of

regulations which these procedures should address;

d. The degree to which the authorization approach proposed today would, in practice, streamline and make preparation, review, and approval of State program revision applications more efficient;

e. The use of essential elements to target authorization applications and review and whether essential elements should be specified in regulations or discussed in preambles as guidance;

f. The need for a third authorization Category to address major revisions to State programs, the types of program revisions a third Category might address, and the potential requirements and procedures for a third Category;

g. The degree to which the Category 1 and 2 authorization procedures discussed today should be applied as guidance when authorizing existing rules using the current program revision procedures;

h. The clarification of the definition of equivalent, and whether the proposed definition should be used for all authorization decisions, or only for the Category 2 authorization decisions discussed in today's proposal;

i. The use of Category 2 authorization procedures for authorization of those States not incorporating an approved State CAA program for the combustion standards rule by reference (as discussed in section (V)(E)(4) of today's preamble);

j. The alternative approach to HWIR-media authorization discussed in section (V)(E)(6)(a);

k. Whether final base-program authorization is the appropriate prerequisite requirement for authorization of the general HWIR-media program;

l. Whether authorization for the LDR Third Third rule is the appropriate prerequisite requirement for authorization of the LDR portion of the HWIR-media rule;

m. The alternative approach to HWIR-media eligibility that would allow States proposing to use previously authorized authorities to implement an HWIR-media program to use the Category 1 authorization procedures, discussed in section (V)(E)(6)(a);

n. The approach to authorization of LDR treatment variances discussed in section (V)(E)(7)(b);

o. The degree to which the monitoring procedures discussed today would conform to the program monitoring procedures currently in place;

p. Whether the monitoring procedures discussed today are necessary, whether they should be codified for the HWIR-media rule, and whether they should be considered for application beyond the HWIR-media rule;

q. The feasibility of partial program withdrawal and the necessity for such a provision;

r. The proposed and alternative approaches to HWIR-media implementation following program withdrawal;

s. The effect today's proposed approach to authorization might have on a State's desire to seek authorization for a State HWIR-media program; and

t. Other suggestions for improvements to the authorization process.

F. Corrective Action Management Units—§ 264.552

Today's proposed rule, at § 264.552, would withdraw the existing regulations for Corrective Action Management Units (CAMUs), which were promulgated on February 16, 1993 (58 FR 8658). Today's proposal for Part 269 would replace much of the flexibility under the current CAMU regulations as they apply to contaminated media. EPA does not intend to withdraw the CAMU regulations without, at the same time, substituting one of today's options in its stead.

States with existing CAMU regulations would need to come in for program revisions, to make their programs as stringent as the Federal program. Today's proposal would also grandfather CAMUs that have already been approved by EPA and the States, by the publication date of the final HWIR-media rule. The original CAMU rulemaking also included provisions for temporary units to be used for management of cleanup wastes. These provisions would not be affected under today's proposal, thus the Agency is not reopening these requirements for comment at this time.

The CAMU rule was the Agency's initial attempt to resolve many of the problems that have been encountered by EPA and State cleanup programs in applying the prevention-oriented Subtitle C regulations (specifically, the land disposal restrictions (LDRs) and minimum technology requirements (MTRs)) to the management of cleanup wastes. The rule has allowed regulators to designate an area at a facility as a CAMU, and has specified that placement of cleanup wastes into a CAMU does not trigger LDR or MTR requirements that would otherwise apply. Because the rule was designed to provide flexibility to regulators for prescribing site-specific management requirements for cleanup wastes, the regulations do not prescribe specific standards for design or operation of CAMUs, or generic national treatment standards for cleanup wastes that are managed in CAMUs. Since its promulgation, the final CAMU rule has been used by EPA's Superfund program, the RCRA corrective action program, and other State cleanup programs. However, the actual number of CAMUs that have been approved to date is relatively small. EPA is aware of fewer than twenty CAMUs that have been approved.

Some parties have argued that the CAMU rule allows regulators too much discretion in determining appropriate, site-specific management requirements for cleanup wastes. Those parties support the idea of having some type of minimum national LDR treatment standards for cleanup wastes (especially for sludges and other non-media wastes), rather than allowing regulators to specify treatment requirements on a case-by-case basis.

When the HWIR–FACA Committee was initiated, EPA, and most of the State participants on the committee, agreed to consider whether the CAMU regulations should be modified or replaced with a different regulatory approach.

The Agency is proposing to replace the existing CAMU regulations with today's proposed rule, except that it would retain existing CAMUs approved prior to publication of the final HWIR-media rule. The Agency believes that much of the site-specific flexibility provided in the CAMU rule has been preserved in this proposal, especially for less-contaminated media. Further, the proposal would modify the minimum LDR treatment standards specified in the Part 269 regulations specifically to be more compatible with the realities of treating contaminated media. Today's proposal should also minimize potential disruptions to site cleanups that are planned or underway, since existing CAMUs approved prior to the publication date of a final HWIR-media rule could continue to operate until their cleanup activities are complete. (See discussion below.)

At the same time, the Agency believes that the CAMU rule has been used successfully to expedite cleanups, and that it has provided much needed flexibility for remedial actions at RCRA corrective action and Superfund. Furthermore, replacing the CAMU regulations with today's HWIR-media rules could have a significant impact in some situations, particularly in remedies involving sludges and other non-media wastes. The proposal would cover only contaminated media, whereas all types of cleanup wastes can be managed in CAMUs. Actually, a number of the CAMUs that have already

been approved will be managing sludges from cleanups. Thus, the flexibility provided under the proposed HWIR-media rule would apply to a more limited spectrum of cleanup wastes. Sludges and other non-media cleanup wastes would be subject to the traditional hazardous waste regulations, including LDRs and MTRs. (See discussion in section (V)(A)(2) of this preamble.)

Therefore, the Agency requests comments on what benefits might accrue if the CAMU rule were retained. (See letter from M. L. Mullins, Vice President-Regulatory Affairs, Chemical Manufacturers Association, to Michael Shapiro, Director, Office of Solid Waste, EPA (August 22, 1995).) Specifically, the Agency requests comments on what the ramifications may be of failing to provide the degree of relief that the CAMU rule has provided. The Agency is also interested in ways that the CAMU might be modified to target the CAMU provisions on wastes that pose lower risks. For example, the Agency could incorporate a Bright Line approach in CAMU.

Today's proposed rule would grandfather CAMUs that were approved before the publication date of this rule. Thus, an owner/operator who was conducting a cleanup that involved an approved CAMU would be able to continue using the unit until the cleanup is complete, under the terms of the permit or order. EPA believes that this provision is reasonable and would help avoid delays and disruptions to ongoing cleanup actions. In addition, EPA believes that not providing this type of grandfathering would raise important questions of fairness because they were approved according to the regulations in effect at the time, and because EPA has encouraged the use of CAMUs when the flexibility they provide is necessary to selecting and implementing sensible, protective remedies.

EPA considered various grandfathering options for CAMUs, such as establishing a certain time limit (e.g., one year) for operating existing CAMUs after the Part 269 rules were promulgated. EPA does not believe that such a limitation would be necessary or desirable. Some remedies require several years to fully implement, and could be adversely affected if an existing CAMU had to cease operations. For example, risks of exposure to highly contaminated sites could continue for several more years while the regulators, owners, and operators negotiate a new site remedy, instead of implementing the CAMU remedy they had already agreed upon and determined would be protective. The CAMUs that have been approved to date have been a key factor in accelerating the cleanup process and allowing protective remedies to be implemented at considerable cost savings.

If today's rule is finalized as proposed, States that have adopted the CAMU regulations would be required to revise these regulations after the publication of final HWIR-media regulations in order to remain as stringent as the Federal program. (Except when the State CAMU rules are as stringent as the current Federal program, for example, in requiring wastes to be treated to LDRs before being placed in a CAMU.) Of course, States would still be allowed to use the Area of Contamination (AOC) concept, which would not be changed by today's proposal (55 FR 8666, 8758–8760, March 8, 1990; and also the memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers, (March 13, 1996)). More discussion on State authorization for these HWIR-media rules is presented in section (V)(E) of this preamble.

G. Remediation Piles—§§ 260.10 and 264.554

Today's rulemaking proposal would establish a new type of unit—remediation piles—that would preserve needed flexibility for conducting certain types of cleanup activities. Proposed § 260.10 specifies the following definition:

> *Remediation Pile* means a pile that is used only for the temporary treatment or storage of remediation wastes, including hazardous contaminated media (as defined in § 269.3), during remedial operations.

This definition would appear in § 260.10, where most of the RCRA hazardous waste regulatory definitions are codified, rather than in § 269.3, which defines terms specific to the Part 269 regulations. This is because remediation piles would be able to accept all types of remediation wastes, rather than only hazardous contaminated media. As a result, remediation piles could be approved for remedial actions that are not regulated by Part 269.

The primary reason for creating this new type of unit is that under current regulations, waste piles are considered land disposal units, and all hazardous wastes must be treated to LDR standards before being placed into the pile. Remediation piles, however, would not be considered land disposal units under this proposed rule; they are not listed in section 3004(k), (see discussion below); and these regulations clearly specify that they may be used only for temporary treatment or storage of cleanup wastes. For reasons noted below, the Agency believes that this type of unit, which would not trigger LDRs, would provide necessary flexibility in situations where application of the LDRs would create obstacles to common sense remedies.

One of the principal goals of this proposed rule is to achieve a net environmental benefit by facilitating the cleanup of as many contaminated sites as possible. The Agency also believes that remediation piles would be necessary to facilitate the cleanup of many previously contaminated sites. The physical, economic, and technical limitations on the operation of a cleanup program could dictate that remediation wastes be temporarily stored and/or concentrated in a centralized location onsite prior to completion of the remedial activity. Similarly, once the wastes had been placed in a remediation pile it could be advantageous to begin some form of treatment or pretreatment to reduce the level of threat posed by the wastes prior to its ultimate disposal.

Because of the potentially large volumes of contaminated media encountered during remedial action, prohibiting such wastes from being temporarily treated or stored in onsite piles (unless it met LDR standards) would be counterproductive since it would be a disincentive to the cleanup activities. The Agency believes that the temporary existence of a controlled activity using a remediation pile would be preferable to the continuing, unmanaged presence of contaminated media, and the resulting threat against human health and the environment, for an indefinite period of time. In endorsing the idea of remediation piles, the Agency is in no way authorizing the indefinite operation of the piles, or the use of them for permanent disposal. The obligatory, temporary nature of remediation piles is the primary difference between the piles and the previously used CAMUs.

The design and operating requirements for remediation piles are specified in proposed § 264.554. Although these provisions are being proposed in § 264.554, remediation piles could also be approved under orders, and at interim status facilities. As explained above, placement of remediation wastes into a remediation pile would not trigger RCRA land

disposal restrictions, because such placement would not constitute ''land disposal'' according to RCRA § 3004(k)'s definition of land disposal. For a further discussion of the Agency's position that would be reasonable to interpret § 3004(k) to exclude placement of remediation wastes into units used solely for cleanup purposes. (See 58 FR 8658, 8662, (February 16, 1993)). The unit would also not be subject to minimum technology requirements (MTRs) under section 3004(o), since the pile would not be considered a land disposal unit subject to those requirements.

Other types of piles (e.g., piles not used for cleanup purposes) would remain subject to the Subpart L requirements of Parts 264 and 265, and wastes placed into such piles would be subject to LDRs. Additionally, the use of a remediation pile does not allow remediation wastes to be entirely exempt from the LDR requirements. Since remediation piles are temporary and not intended for disposal, all wastes being held in remediation piles must eventually meet LDRs at the time of their ultimate disposal.

EPA's objective in proposing the concept of remediation piles in Part 264 rather than in Part 269 with the rest of the HWIR-media provisions is that the Agency wishes to encourage remedial action of contaminated sites by making the use of these units more widely available for those cleanups that are not mandated by RMPs under Part 269, or include remediation wastes other than contaminated media.

Remediation piles are intended to preserve flexibility for decision makers in situations where site cleanup involves the temporary storage or treatment of remediation wastes prior to disposal. Unlike CAMUs, remediation piles could not be used for disposal of wastes; remediation piles would be required to close by removal of wastes (i.e., ''clean close''), as do tanks, containers, and other types of hazardous waste storage and treatment units. As with the existing CAMU regulations, remediation piles would have to be located at the cleanup site, and could not be used to manage any wastes other than remediation wastes.

The flexibility that would be provided by the proposal for remediation piles is currently available through use of the CAMU concept; such units would currently be considered CAMUs for regulatory purposes, and would be subject to the requirements of § 264.552. The net effect of this proposal for remediation piles would thus be to preserve the existing flexibility and regulatory relief from LDRs and MTRs in situations involving the temporary placement of remediation wastes in piles. Although today's Part 269 proposal would provide some relief for these types of situations (particularly for below the Bright Line wastes), EPA believes that remediation piles would be useful in facilitating cleanups at a large number of sites.

Because wastes and media volumes, and the expected duration of cleanup activities at cleanup sites all vary, EPA believes that the Director is best able to determine the site-specific conditions for the safe and effective operation of a remediation pile on a site-specific basis. Therefore, today's proposal for remediation piles does not prescribe any specific design or operating standards; the Director would establish such requirements on a case-by-case basis, using the decision factors specified for Temporary Units. (See § 264.553(c)).

EPA considered a more prescriptive approach that would have established certain minimum standards for remediation piles. For example, standards for liners could be specified in the regulation, as could standards for covers or other methods for controlling air emissions, and wind and water dispersal, or other design and operating standards. Comments are requested as to whether more national uniformity is necessary in the design and operation of remediation piles, or whether such decisions are more appropriately made on a site-specific basis. Comments are also requested as to the types of minimum standards that should be applied to remediation piles (assuming such national standards are necessary), whether certain time limits or renewable time limits should be set for operating such units, and whether creating this new type of unit would be necessary at all.

H. Dredged Material Exclusion—§ 261.4

In addition to the media management requirements discussed above, today's proposed rule contains a provision to clarify the relationship of RCRA Subtitle C to dredged material. Specifically, EPA today proposes to establish that dredged material disposed in waters of the United States in accordance with a permit issued under section 404 of the Clean Water Act (CWA) or in ocean waters in accordance with a permit issued under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA),[31] would not be subject to Subtitle C of the Resource Conservation and Recovery Act (RCRA)(§ 261.4(h)). This approach is authorized under RCRA section 1006, which calls for the Agency, in implementing RCRA, to avoid duplication with other Federal statutes.

At present, if dredged material proposed for disposal in the aquatic environment is contaminated or suspected of being contaminated, the potential application of both RCRA Subtitle C regulations, and dredged material regulations under CWA or MPRSA, complicates efficient assessment and management of potential environmental impacts. Today's proposal would eliminate the potential overlap of RCRA Subtitle C with the CWA and MPRSA programs by establishing an integrated regulatory scheme for dredged material disposal that ensures an accurate and environmentally sound evaluation of any potential impacts to the aquatic environment.

Dredged Material Regulation Under CWA and MPRSA

Section 404 of the CWA establishes a permit program to regulate the discharge of dredged or fill material into waters of the United States that is jointly administered by the U. S. Army Corps of Engineers (Corps) and EPA. Proposed discharges must comply with the environmental criteria provided in 40 CFR Part 230 in order to be authorized. The EPA and Corps regulations under section 404 define dredged material as ''material that is excavated or dredged from waters of the United States.'' Dredged material can be mechanically or hydraulically dredged, and disposed of by barges or pipelines into river channels, lakes, and estuaries. Today's proposal does not address ''fill material,'' such as that discharged to replace portions of the waters of the United States with dry land.

In addition to such discharges as open water disposal from a barge, the section 404 regulations specifically identify the runoff or return flow from a contained land or water disposal area into waters of the United States as a discharge of dredged material. In most cases, this type of discharge occurs from a weir and outfall pipe to drain water from a confined disposal facility (CDF), including the water entrained with the solid portion of the dredged material discharged at the site and from rainwater runoff. Impacts to uplands, as well as groundwater, air, and other endpoints, can be addressed within the section 404 permitting process as potential impacts of a discharge of dredged material into waters of the U.S. However, in those cases where upland-

[31] ''Permit'' also includes the administrative equivalent, a finding of compliance with the substantive requirements of the CWA or MPRSA, for U. S. Army Corps of Engineers' civil works projects authorized by Congress.

disposed dredged material has no return flow to waters of the United States, as defined by section 404, the dredged material is not regulated under the CWA, and therefore may be subject to RCRA Subtitle C, even under today's proposed regulatory revision.

The MPRSA regulates the transportation of material, including dredged material, that will be dumped into ocean waters. Section 102 of the MPRSA requires that EPA, in consultation with the Corps, develop environmental criteria for reviewing and evaluating applications for ocean dumping permits. Section 103 of the MPRSA assigns to the Corps the responsibility for authorizing the ocean dumping of dredged material, subject to EPA review and concurrence. In evaluating proposed ocean dumping activities, the Corps is required to determine whether such proposals comply with EPA's ocean dumping criteria (40 CFR Parts 220–228).

Dredged Material Regulation Under RCRA

RCRA (42 U.S.C. 6901 *et seq.*) regulates the assessment, cleanup, and disposal of solid and hazardous wastes under Subtitles D and C, respectively. A solid waste is considered hazardous for regulatory purposes if it is listed as hazardous in RCRA regulations or exhibits any of four hazardous waste characteristics: ignitability, corrosivity, reactivity, or toxicity. Dredged material could trigger RCRA's Subtitle C requirements by exhibiting any of the four characteristics or by containing a listed hazardous waste.

EPA regulations at 40 CFR Parts 270 and 124 set forth application requirements and procedures for issuing RCRA hazardous waste permits under RCRA Subtitle C. In developing a permit, the permitting authority considers the potential pathways of human and ecological exposures to hazardous wastes resulting from releases at the unit, and the potential magnitude and nature of those exposures. Permit conditions are established as necessary to achieve compliance with the standards and restrictions set forth in Parts 264 and 266 through 268 (and proposed 269) (or the authorized State program). In addition, RCRA section 3005(c)(3) authorizes the permit writer, on a site-specific basis, to add conditions to a permit that go beyond the applicable regulations where such additional requirements are necessary to protect human health and the environment (42 U.S.C. § 6925(c)(3)).

The specific requirements of RCRA Subtitle C that would otherwise apply to the disposal of dredged materials in the aquatic environment would differ depending on whether these activities were considered to be acts of ''land disposal'' as defined in RCRA § 3004(k). If considered to be ''land disposal,'' a more extensive set of requirements under RCRA Subtitle C would apply, including land disposal restrictions treatment standards (§ 3004(m)) and minimum technology requirements (§ 3004(o)).

Clarification of Regulatory Jurisdiction

EPA proposes to revise the RCRA regulations to provide that the discharge of dredged material to waters of the United States pursuant to a permit under section 404 of the CWA or to ocean waters pursuant to a permit under section 103 of the MPRSA would not be subject to RCRA Subtitle C requirements. Specifically, 40 CFR 261.4, which lists exclusions from the hazardous waste provisions of RCRA, would be amended by adding dredged material discharges covered by CWA or MPRSA permits (or authorized administratively in the case of Corps civil works projects) to the list of exclusions.

This proposal would exclude dredged material disposal only from the requirements of Subtitle C, and would not exclude it from the requirements of Subtitle D. This exclusion would not diminish the authority of the Administrator to take action under section 7003 of RCRA to address situations of imminent hazard to human health or the environment. As noted above, upland disposal of dredged material with no return flow to waters of the United States (i.e., not regulated under section 404 of CWA) would not be subject to the exclusion, and therefore would still be subject to the requirements of RCRA Subtitle C as appropriate. Finally, management of dredged material not disposed of in waters of the United States in accordance with a permit issued under section 404 of the Clean Water Act (CWA), or not disposed of in ocean waters in accordance with a permit issued under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA), (e.g., dredged material managed for purposes of cleanup under RCRA corrective action or CERCLA), would not be eligible for this exclusion, and therefore, could be subject to RCRA Subtitle C requirements.

Today's proposed rule would establish an integrated approach to the regulation of dredged material disposal that would avoid duplicative regulatory processes, while ensuring an accurate, appropriate, and environmentally sound evaluation of potential impacts to the aquatic environment. This approach is authorized under section 1006(b) of RCRA, which states that ''the Administrator * * * shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of * * * the Federal Water Pollution Control Act (CWA), * * * the Marine Protection, Research and Sanctuaries Act, * * *, and such other Acts of Congress as grant regulatory authority to the Administrator.'' Section 1006(b) of RCRA calls for the provisions of RCRA to be integrated with other statutes, including the CWA and the MPRSA, to avoid duplication when such integration ''can be done in a manner consistent with the goals and policies expressed'' in RCRA and the other Acts.

The Agency believes that the CWA and MPRSA programs described above fully protect human health and the environment from the consequences of dredged materials disposal. These programs incorporate appropriate biological and chemical assessments to evaluate potential impacts on water column and benthic organisms, and the potential for human health impacts caused by food chain transfer of contaminants. They also make available appropriate control measures for addressing contamination in each of the relevant pathways. These programs are more fully described in support documents that are included in the record for this proposal and are available in the docket for today's proposed rule.

The Agency believes that RCRA Subtitle C coverage of dredged materials disposal in the aquatic environment, whether or not this disposal is considered to be ''land disposal'' under RCRA, is duplicative and unnecessary when considered alongside the CWA and MPRSA coverage of these activities. The overriding goal of each of the three statutory programs is to protect human health and the environment, and the CWA and MPRSA programs fully achieve this goal by addressing the proposed aquatic disposal of dredged material.

Moreover, applying the RCRA Subtitle C program together with the CWA and MPRSA permitting programs might be unduly burdensome and cause unnecessary procedural difficulties—e.g., by requiring duplicate permit applications and procedures. It is also possible that the duplicative nature of the programs could in fact increase environmental risks by causing delays in proper disposal. The Agency believes that today's proposal, which would divide coverage, would therefore be

appropriate and consistent with the goals and policies in each of these statutes. Accordingly, under RCRA § 1006(b), today's regulatory proposal would be an appropriate way to integrate the CWA and MPRSA permitting schemes with the RCRA Subtitle C program.

VI. Alternative Approaches to HWIR-media Regulations

EPA believes that the specific regulatory proposal that is presented in today's proposed rule is consistent with the objectives that EPA and the States had in mind for the HWIR-media rule. Those objectives are discussed in section III of this preamble. However, alternative approaches may offer significant advantages as well as disadvantages compared to today's proposed rule; some might be quite different from the proposal. EPA will continue to examine such alternatives, and invites commenters to address these fundamental issues in addition to providing comments on the specifics of the rule as proposed.

As explained previously in this preamble, today's proposed rule was created expressly to reflect the concepts and directions identified in the ''Harmonized Approach'' developed by the FACA Committee. Thus, although a number of alternatives were identified and considered by EPA and other parties throughout the process of developing this proposal, adhering to the Harmonized Approach in many cases precluded certain alternative concepts from being included. In addition, not all controversial issues were resolved by the FACA Committee. In fact, some issues central to the framework of today's proposed rule provoked strong disagreement. The Agency specifically requests comments on alternatives in the areas where agreement was not reached.

In EPA's view, a critical element both within the proposal and in the other alternatives identified in the preamble (e.g., the Unitary Approach) is the rationale used for exempting wastes from Subtitle C. Under today's proposed rule, implementing agencies would be able to allow lower-risk contaminated media to generally exit the Subtitle C system based on the contained-in principle (i.e., Subtitle C doesn't apply if EPA or a State determines that a medium doesn't contain wastes that present a hazard (hazardous wastes) based on site-specific circumstances or controls in a RMP). The legal theory supporting ''conditional exclusions'' is broader than the contained-in theory, and need not be limited to contaminated media. The ''conditional exclusion'' theory is based upon EPA's understanding that RCRA provides EPA and the States the discretion to determine that a waste need not be defined as ''hazardous'' where restrictions are placed on management such that no improper management could occur that might threaten human health or the environment. (See definition of hazardous waste at RCRA section 1004(5)(B)). The HWIR-waste proposal included a full discussion of the legal basis for this position (60 FR 66344–469, Dec. 21, 1995). This theory is also discussed in section (V)(A)(4)(a). For the sake of clarity, it is repeated below.

EPA's original approach to determining whether a waste should be listed as hazardous focused on the inherent chemical composition of the waste and assumed that mismanagement would occur causing people or organisms to come into contact with the waste's constituents. (See 45 FR 33113, (May 19, 1980)). Based on more than a decade of experience with waste management, EPA believes that it is inappropriate to assume that worst-case mismanagement will occur. Moreover, EPA does not believe that worst-case assumptions are compelled by statute.

In recent hazardous waste listing decisions, EPA identified some likely ''mismanagement'' scenarios that are reasonable for almost all wastewaters or non-wastewaters, and looked hard at available data to determine if any of these are unlikely for the specific wastes being considered, or if other scenarios are likely, given available information about current waste management practices. (See the Carbamates Listing Determination (60 FR 7824, (February 9, 1995)) and the Dyes and Pigments Proposed Listing Determination (59 FR 66072, (December 22, 1994)). Further extending this logic, EPA believes that when a mismanagement scenario is not likely, or has been adequately addressed by other programs, the Agency need not consider the risk from that scenario in deciding whether to classify the waste as hazardous.

EPA believes that the definition of ''hazardous waste'' in RCRA section 1004(5) permits this approach to hazardous waste classification. Section 1004(5)(B) defines as ''hazardous'' any waste that may present a substantial present or potential hazard to human health or the environment ''when improperly * * * managed.'' 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 gives it flexibility in order to consider the need to regulate as hazardous those wastes that are not managed in an unsafe manner (section 3001 requires that EPA decide, in determining whether to list or otherwise identify a waste as hazardous waste, whether a waste ''should'' be subject to the requirements of Subtitle C.) EPA's existing regulatory standards for listing hazardous wastes reflect that flexibility by allowing specific 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, based on that mismanagement scenario.

The Agency believes, therefore, that it may be appropriate for EPA and the States to consider site-specific management controls when making decisions that media and remediation wastes, managed pursuant to a RMP or RAP under the various alternatives to today's proposed rule, are exempt from Subtitle C. EPA believes that this approach may be especially appropriate in the Part 269 context, because of the significant level of oversight generally given to cleanup actions. State or EPA oversight of cleanup activities, and the requirements set out in the RMP for management controls that are tailored to site-specific circumstances, could ensure that the site-specific management controls that the Director used as a basis for the ''conditional exclusion'' decision would continue to be implemented. EPA or States could specify that media exempted under ''conditional exclusions'' would only be considered nonhazardous so long as they were managed in the manner specified by the Director in the RAP or

RMP. Deviations (any, or specific ones) would result in a reversion to Subtitle C regulation.

Using this legal theory could have several advantages in the context of an HWIR-media rule. For one, allowing all contaminated media or remediation wastes to exit from Subtitle C could avoid many of the complexities that come with regulation within the hazardous waste regulatory system. Overseeing agencies would have much more flexibility to prescribe inclusive, site-wide solutions for contaminated media, rather than a limited series of separate approaches. In particular, more types of cleanup wastes, such as old sludges, could be covered under the HWIR-media system. This would provide significantly greater relief, because many corrective actions address old wastes as well as contaminated media.

Under the proposed rule, it would be entirely possible that cleanup wastes at the same site could be subject to as many as three different sets of regulatory requirements (for example, ''base'' Subtitle C regulations for non-media, modified Subtitle C regulations for media above the Bright Line, and site-specific requirements for media below the Bright Line). Using a conditional exclusion theory without dividing remediation wastes and media, and without dividing media above and below the bright line, could allow all cleanup wastes at a site to be covered under a single regulatory regime that would be more straightforward to implement, and easier to comply with and understand.

A specific alternative, introduced earlier in this proposal, called the Unitary Approach, would take a different approach on a number of key elements from the proposed approach. The following sections present detailed discussions of (1) the Unitary Approach, (2) a hybrid conditional exclusion approach which would combine elements of both the Unitary Approach and the proposed approach and, (3) some of the key elements of these several alternatives that deserve careful consideration.

A. The Unitary Approach

1. Overview of Unitary Approach

Under the Unitary Approach suggested by Industry (see letter from James R. Roewer, USWAG Program Manager, Utilities Solid Waste Activities Group, to Michael Shapiro, Director, Office of Solid Waste, EPA (September 15, 1995) in the docket to today's proposal) and discussed previously in section IV of this preamble, management of remediation wastes would proceed according to requirements set forth in an enforceable remedial action plan (RAP) approved by EPA or an authorized State. The RAP could be part of another document, for example, a CERCLA ROD, corrective action RFI workplan, etc. The non-RAP portions of the document might deal with other aspects of the investigation and cleanup not addressed in this proposed rule, such as the cleanup goals to be achieved, the extent of materials to be excavated during the cleanup, or the scope of the pre-cleanup investigation. This would be intended to avoid duplication and overlap with existing cleanup program requirements, while assuring that the RAP adequately described how remediation wastes will be managed protectively. In that manner, the RAP would be similar to the RMP in today's proposed rule.

More than one RAP might be used during the course of a remediation. For example, one document might govern management of wastes from the investigation or pilot study phase, while another might be employed for the remediation phase. A RAP might also be prepared and submitted for approval to allow subsequent management as remediation wastes, of materials that were originally produced as ''hazardous wastes'' during remediation and that had previously been staged as such, for example, drill cuttings or produced ground water.

Remediation wastes that would otherwise be hazardous wastes would not be subject to regulation as hazardous wastes when managed in accordance with an approved RAP. All hazardous remediation wastes managed during the cleanup, including during the investigation phases, would be eligible for management under a RAP. This is consistent with today's proposed approach for RMPs.

Management standards for the remediation wastes would be set forth in the approved RAP. The management standards would be tailored to be protective of human health and the environment, as determined by the overseeing Agency. EPA or the authorized State could employ such standards as it deemed appropriate for the specific remediation wastes involved, the location where the remediation wastes would be managed, and the site-specific risk posed by the contemplated management approach. For example, the substantive standards of the RCRA containment building regulations might be suitable in a given situation, or local ground water considerations might make it advisable for particular treatment tanks to have secondary containment. In setting the standards for a given RAP, the overseeing agency could turn to existing State or federal standards or remediation waste management practice or experience appropriate for the wastes as managed during the remedial activities contemplated by the RAP.

The RAP would have to describe how the wastes to be managed under it would be aggregated and stored, both on-site, and if applicable, off-site. The nature and effectiveness of any treatment methodologies to be used would need to be described as well. The specific method and location for disposal of any wastes or treatment residuals that would otherwise be required to be managed as hazardous waste would also be addressed. Of course, the option of simply managing a particular remediation waste as a hazardous waste would remain available and, in such an instance, that aspect of remediation waste management would not be addressed in the RAP subject to review and approval pursuant to this Part.

In the Unitary Approach proposed by industry, RCRA treatment requirements and the land disposal restrictions would not apply to remediation wastes, and there would be no Bright Line concept ensuring that higher-concern wastes were managed under Subtitle C-like standards. EPA and overseeing States would have the authority to prescribe in RAPs whatever management and treatment standards they deemed appropriate; the only specific regulatory standard would be that remedies be protective of human health and the environment. EPA recognizes that this approach would give program implementers much needed flexibility in overseeing cleanups. In its economic analysis supporting today's rulemaking (discussed later in this preamble), EPA assumed that the costs of waste treatment would be comparable under both the proposed and the Unitary approaches, because the overseeing agencies in both cases would generally require some level of treatment where a remedy involved management of highly contaminated waste. EPA acknowledges that the specific language of the Unitary Approach, as proposed by industry, does not provide guidance on when treatment might be needed. EPA solicits comments on whether the Unitary Approach (if adopted) should include specific direction in this area, and what language might be appropriate. One approach would be to include a Bright Line with a presumption for treatment of wastes above the Bright Line. This approach, however, would raise the implementation difficulties discussed

elsewhere. Another approach would be to capture the same intent through more general and flexible regulatory language. For example, the rule might specify that the overseeing agency consider, and as appropriate require, waste treatment before land disposal, where the remediation waste might present a substantial risk, either because of high concentrations of hazardous constituents or because it could not be contained reliably over time. This language would not prescribe a specific approach in any given situation, but it would ensure that treatment was seriously considered where wastes presented significant risks and effective treatment was available.

2. Legal Authority for the Unitary Approach

As discussed above (introduction to section VI), EPA believes that RCRA provides the Agency with the discretion to determine that wastes should not be defined as ''hazardous'' when mismanagement of the waste is not likely.

If EPA were to finalize a rule similar to the one suggested in the Unitary Approach, which is based upon a ''conditional exclusion'' or ''conditional exemption'' theory, the Agency would base the finding that mismanagement of the covered wastes and media is unlikely on the Agency's belief that States that are authorized for the HWIR-media program will set appropriate management standards, and provide an appropriate level of oversight of remedial actions, so as to ensure that such wastes are managed protectively. Specifically, EPA's conclusion that mismanagement is not likely would be based primarily on the rule's provisions for prior State program approval, public notice and comment on all RAPs, and ''streamlined'' State program withdrawal where a State is found not to be operating its HWIR-media program in a protective manner.

The Agency requests comment on whether this conclusion would be appropriate.

3. LDRs Under the Unitary Approach

Earlier in today's proposal, EPA discussed the applicability of the land disposal restrictions (LDRs) to contaminated media and requested comments on alternatives to the approach to the LDRs taken today. Under the Unitary Approach, remediation wastes (including contaminated media) addressed in a RAP would, as a general matter, be excluded from all RCRA Subtitle C requirements, including LDRs. The proponents of the Unitary Approach have not put forth a legal rationale to explain why LDRs would not continue to apply to hazardous wastes that are determined not to be hazardous after their point of generation. As was discussed in section (V)(A)(4) of this preamble, following the logic of the court in *Chemical Waste Management* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992), elimination of a waste's ''hazard'' designation does not necessarily eliminate LDR obligations. Thus, for wastes that have entered the Subtitle C system, and for which LDRs have attached, a finding that such wastes are conditionally exempt from RCRA may not eliminate LDR obligations.

If EPA were to promulgate a program modeled after the Unitary Approach, the Agency would likely address the residual LDR issue by applying the ''new treatability group'' approach to LDRs [instead of the approach proposed today]. As discussed earlier, changes in treatability group can result when the properties of a waste that affect treatment performance change enough so that the waste is no longer considered similar to the wastes EPA evaluated when it established the applicable LDR treatment standards. Each change in treatability group is a new point of generation for purposes of determining whether a waste is hazardous under RCRA Subtitle C. Therefore, if contaminated media were, by definition, considered a new treatability group under the LDR program, and, as discussed in the Unitary Approach, media addressed in a RAP is, by definition, not considered hazardous waste, media addressed in a RAP would not be subject to the LDR treatment standards. This would typically remove contaminated media addressed in a RAP from the duty to comply with the LDR requirements.[32]

For remediation wastes other than media, as long as the wastes were not prohibited from land disposal when first placed (i.e., when first land disposed), the land disposal restrictions do not attach unless these wastes are still considered hazardous when they are removed from the land. Therefore, if, due to issuance of a RAP, such wastes were determined to be non-hazardous before they were removed from the land, the land disposal restrictions would not apply. This approach would remove most non-media remediation wastes addressed in a RAP from the duty to comply with LDR requirements.[33]

As discussed above, EPA has struggled with the application of LDR requirements in developing today's proposal. The Agency requests comments on alternative approaches to the LDR requirements which would support a program modeled after the Unitary Approach consistent with the requirements of RCRA section 3004(m). For example, since a program modeled after the Unitary Approach would not automatically release all remediation wastes from the duty to comply with the LDRs, should the Agency concurrently promulgate the other approaches to the LDRs proposed today?

4. The RAP Process Under the Unitary Approach

To initiate the RAP process, the owner or operator of a facility at which the remediation would be conducted, would submit the proposed RAP to the Director. Upon receipt of the RAP, the Director would give public notice via local newspapers of the availability of the RAP and the opening of a minimum thirty-day comment period. If significant written opposition that also requested a hearing on the RAP were received during the comment period, an informal hearing might be held at a location in the vicinity of the facility at which the remediation would be conducted. Fifteen days advance notice of the hearing would have to be given. Not later than thirty days after the close of the public comment period or the conclusion of any informal hearing, whichever were later, the Director would have to inform the applicant in writing of whether the RAP satisfied the appropriate criteria. In the case of a denial, the Director must include a written statement of the reasons for denial. The Director's decision would be final Agency action for purposes of judicial review.

Major modifications and terminations of RAPs would follow the same procedures. The Director could terminate the RAP for cause at any time. A ''for cause'' event could include noncompliance with RAP provisions, failure of a remediation waste treatment methodology to perform as expected, or some unexpected negative impact of a treatment technology, for example.

[32] The exception would be media that are still considered hazardous (e.g., because a RAP has not been issued) when removed from the land. In this case, the applicable LDRs would attach and the media would have to attain compliance with the standards of RCRA section 3004(m) even if it were later made subject to a RAP and therefore determined to no longer be hazardous.

[33] The exception would be non-media hazardous remediation wastes (e.g., sludges, hazardous debris) which were first land-disposed (placed) after the effective date of the applicable land disposal prohibition.

5. State Authorization for the Unitary Approach

The Unitary Approach presented a proposal for State Authorization which was based on self-certification by States. EPA is not soliciting comment on this aspect of the Unitary Approach as proposed by Industry, because the Agency believes that there are statutory limitations to authorizing States by self-certification. If the Agency were to finalize the Unitary Approach, EPA would likely authorize States according to the process described in section (V)(E) of this proposal. EPA would adjust the essential elements described in that section in order to reflect the essential elements of the Unitary Approach, as opposed to today's proposed approach.

6. Enforcement Authorities Under the Unitary Approach

As with the proposed approach, EPA would retain its remedial and enforcement authorities with respect to solid wastes and hazardous substances that are not hazardous wastes (e.g., section 7003 of RCRA and sections 104 and 106 of CERCLA). Furthermore, EPA would have authority to revoke a State's authorization for this program without revoking any other Subtitle C program authorization held by the State, in which case EPA would then oversee completion of any ongoing activities under RAPs previously approved by the State in question. In any instance where a remediation waste was not managed in accordance with the approved RAP an appropriate enforcement response could be initiated by the authorized State, or if the State was dilatory in that respect, by EPA. (As in the proposed approach, remediation wastes that were managed out of compliance with the RAP could lose their exemption from Subtitle C.)

7. State Jurisdiction Under the Unitary Approach

Once a State has obtained authorization for this program, it would have authority to issue and oversee the contents and implementation of RAPs. Of course, that authority would extend only to management of remediation wastes within the authorized State. A State's authority with regard to RAP approval, however, would not run to wastes that would be managed in full accord with otherwise applicable hazardous waste management requirements. In other words, in the same way as in the proposed approach, if the owner or operator elected to manage hazardous wastes produced during remediation in full accord with otherwise applicable hazardous waste management requirements, there would simply be no need to seek redundant approval for such activities by means of RAP submission.

Of course, a State's authority would not extend beyond its borders. Accordingly, if an entity managing remediation wastes wished to manage remediation wastes in a RAP in a State other than that in which the remediation would be conducted, it would be required to get approval from the other State for that portion of the RAP addressing management in that other State. If the entity managing the remediation wastes wished to manage them in accordance with the otherwise applicable hazardous waste management requirements of the other State, no RAP approval would be necessary from that State for those activities. (In this respect, the Unitary Approach is similar to today's proposed approach).

As described above, all remediation wastes (including contaminated media, debris and non-media wastes) would be eligible for management under a RAP. Remediation waste might be defined, consistent with § 260.10, as ''all solid and hazardous wastes, and all media (including groundwater, surface water, soils and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous characteristic, that are managed for the purpose of implementing cleanup. For a given facility or media remediation site, remediation wastes may originate only from within the facility or site boundary, but may include waste managed in implementing RCRA sections 3004(v) or 3008(h) for releases beyond the facility boundary.'' This Unitary Approach would not have a Bright Line. Nor would this approach use a contained-in theory, but rather a conditional exclusion theory for excluding remediation wastes from the definition of hazardous wastes under Subtitle C.

The Agency requests comments on the approach outlined above. In particular, the Agency requests comments on whether the Unitary Approach should be adopted as described, or whether some combination of the several approaches discussed in today's preamble would be more appropriate.

B. Hybrid Approach

The Unitary Approach (discussed above) as an alternative to today's proposed rule would use a conditional exclusion theory to exempt all remediation wastes from Subtitle C regulation (except, in some cases, LDRs).

A more limited use of a conditional exemption for the HWIR-media rule would be compatible with (i.e., would not preclude) most of today's proposed rule. There are, in fact, a variety of ways in which one might combine important features of today's proposed rule with the Unitary Approach. For example, the rule could retain a Bright Line provision to distinguish between higher-risk and lower-risk media and wastes. Under this kind of an alternative, wastes above Bright Line concentrations could remain subject to modified Subtitle C requirements, similar to the approach proposed today. Another option would be to have all above and below the Bright Line wastes and media exempt from Subtitle C, but subject to different alternative management requirements. Either way, the rule could prescribe alternative management standards that might be very similar to ''base'' Subtitle C standards, or to the modified LDR standards specified in the proposal for above the Bright Line media.

The Agency also notes that a conditional exclusion approach could be implemented either on a national or site-specific basis. Specifically, as is urged by industry supporting the Unitary Approach, the Agency could make a generic determination that any remediation wastes managed according to a RAP that is issued by an approved program (subject to appropriate public participation requirements) would not be considered a hazardous waste under the RCRA program. Alternatively, the rule could leave that decision up to the overseeing agency on a site-specific basis, thus requiring the regulator explicitly to make the determination that, because of the management conditions imposed, all or some part of the media and wastes at the site do not present a ''hazard'' and thus should not be considered ''hazardous'' wastes. The Agency requests comment on which approach would be appropriate for implementing an HWIR-media rule based on a conditional exclusion theory.

For purposes of illustration, one such approach could use a conditional exclusion to exempt all remediation wastes below a Bright Line from Subtitle C. (This approach is presented as the hybrid contingent management option in Table 1.) Under this approach, the rule would define a Bright Line, either as constituent concentrations, or qualitatively. Then, the rule could specify that if EPA or an authorized State determined that remediation wastes were below a Bright Line at a specific site, and site-specific management requirements were written into a RAP or RMP, then those remediation wastes would be exempt

from Subtitle C so long as they were managed in accordance with the provisions of the RAP/RMP. In this type of a HWIR-media program, LDRs would be required for remediation wastes where LDR attached. (See (V)(C)). Also, a RMP for remediation wastes that were above the Bright Line would have to be the equivalent of a RCRA permit, because those remediation wastes would be subject to Subtitle C.

This hybrid option could have several advantages over the approach proposed today. This option would not set requirements for contaminated media that are different than those for other remediation wastes, which could simplify remedy decisions at cleanup sites. Also this option would eliminate the uncertainty of whether remediation wastes below the Bright Line would be subject to Subtitle C. The proposed approach allows the overseeing Agency to determine whether contaminated media below the Bright Line should be exempted from Subtitle C or not. Under this alternative option, remediation wastes below the Bright Line would be exempt from Subtitle C as long as they were managed in accordance with the RAP or RMP. Also, RAPs for wastes below the Bright Line could be simpler because they would not have to meet all the procedural requirements for RCRA permits.

The Agency requests comments on this alternative approach, and on other alternatives that could be adopted to exempt remediation wastes, as appropriate, from Subtitle C regulation. In doing so, the Agency is particularly interested in comments on the key elements of an HWIR-media rule discussed in the following section.

C. Key Elements of an HWIR-media Rule

EPA believes that many of the key elements of the different options and alternatives presented in this proposal could be combined in different ways to construct an effective HWIR-media program. The following is a discussion of those key elements, and a table illustrating three different combinations of the key elements. This table is intended to facilitate comparison of options. EPA requests comments on the combinations of key elements as presented, or on other combinations.

TABLE 1

Key elements	Proposed option	Hybrid contingent management option	Unitary approach
Legal Theory	Contained-in	Conditional Exclusion for below the Bright Line.	Conditional Exclusion.
Scope	Media only	All remediation wastes	All remediation wastes.
Bright Line	Bright Line—10^{-3} and Hazard index of 10.	Bright Line (a) (for media) same as proposal, or (b) qualitative Bright Line*.	No Bright Line.
Hazardous vs. Non-hazardous.	All media above Bright Line are subject to Subtitle C; below is site-specific decision.	All remediation wastes above Bright Line are subject to Subtitle C; below (when managed according to RAP or RMP) are not hazardous.	All remediation wastes managed according to RAP or RMP are not hazardous.
LDRs	LDRs required for media where LDRs attaches**.	LDRs required for wastes where LDRs attaches**.	LDRs required for wastes where LDRs attaches***.
Permitting	RMP serves as RCRA permit for media that remain subject to Subtitle C.	RMP serves as RCRA permit for wastes that are above the Bright Line; for wastes below the Bright Line, RMP does not have to serve as RCRA permit.	No requirement that RAP/RMP serve as RCRA permit, since wastes are not subject to Subtitle C.

* See discussion of qualitative Bright Line below.
** See discussion of applicability of LDRs in section (V)(C).
*** See discussion of alternative option for LDR applicability in section (VI)(A)(3).

1. Scope of the Rule (Regarding Non-media Remediation Wastes)

The proposed rule would apply only to contaminated media. Therefore, as discussed in section (V)(A)(2) of this preamble, hazardous cleanup wastes that are not media (such as sludges or other wastes that have not been mixed with soils or ground water), would only be eligible under the proposal for the limited regulatory relief provided by the provisions allowing management in remediation piles and through remediation management plans. Otherwise, these remediation wastes would be subject to existing Subtitle C requirements.

EPA recognizes that at many sites, cleanups involve excavating and managing large volumes of these non-media remediation waste materials. Therefore, the HWIR-media proposal is only a partial solution to the overall problem of regulating cleanups under RCRA Subtitle C. The Agency recognizes that excluding non-media from the HWIR-media rule coverage would leave in place many of the Subtitle C problems that arise in the course of cleanup. This issue was the subject of much discussion during the HWIR FACA process. As discussed above, today's proposed approach for resolution of this issue is linked to the contained-in theory that is used for exempting wastes from Subtitle C jurisdiction. Since the contained-in theory only applies to media that ''contain'' or do not ''contain'' hazardous wastes, the theory cannot, by definition, be extended to non-media wastes. These wastes are regulated under Subtitle C not because they ''contain'' hazardous wastes, but because they are hazardous wastes.

A conditional exclusion approach, like the Unitary Approach discussed above, would not make a distinction between media and non-media remediation wastes. All remediation wastes would be eligible for relief.

Because ''pure'' remediation wastes (i.e., those that have not been mixed with environmental media) are often similar—if not identical to—the ''as generated'' wastes for which the land disposal restrictions and other Subtitle C requirements were originally created, it has been argued that existing LDR and other requirements are more appropriate for management of these wastes than the HWIR-media requirements. To address this concern for the more concentrated wastes, the Agency could retain the concept of the Bright Line, for example, but determine that all remediation wastes above the Bright Line would be subject to the current national Subtitle C LDR standards, and all remediation wastes below the Bright Line would be eligible for a ''conditional exclusion''

from Subtitle C requirements under a site-specific RAP or RMP. This alternative would be identical to today's proposed approach, except that it would include non-media remediation wastes, and rely on a conditional exclusion theory (see discussion below) to exclude wastes below the Bright Line from Subtitle C as opposed to the contained-in theory. The Agency requests comments on this and any other alternative approaches for the scope of today's proposed rule.

Commenters should also review section (V)(A)(2) of today's preamble and § 269.2 of today's proposed rule for a further discussion of the scope of the proposal, including a discussion of whether and how contaminated debris should be included in the rule.

2. The Bright Line

The Bright Line concept originated as a compromise between those on the FACA Committee who favored setting uniform national standards for most, if not all, contaminated media, and those who favored a large degree of site-specific flexibility in the rule. In essence, the Bright Line serves to provide certainty that higher-risk media (if they are land disposed) would be treated to established national standards, while overseeing agencies would have considerable discretion in prescribing management standards for lower-risk media. This is conceptually similar to the ''principal threat'' concept that has been used in the Superfund program for several years (''A Guide to Principal Threat and Low Level Threat Wastes'' EPA/Superfund Publication: 9380.3–06FS (November 1991) and 40 CFR 300.430(a)).

In any case, distinguishing between higher- and lower-risk remediation wastes, and ensuring that the higher-risk wastes are handled according to certain minimum standards, has a number of positive aspects that are consistent with established Agency policies. However, reaching consensus on exactly how to calculate Bright Line concentrations is a considerable challenge. The Bright Line concept has something of a ''philosophical lightning rod'' among the various stakeholders.

The Agency has proposed one method of calculating the Bright Line, but has analyzed three alternative methods for calculating the Bright Line in the ''Economic Assessment.'' The Agency used the Soil Screening Levels (SSLs) from Superfund as the basis for calculating the proposed Bright Line. The SSLs are set using a residential exposure scenario. The Agency has already received comments from stakeholders that the residential exposure setting is not an appropriate basis for calculating the Bright Line at many remediation sites. The Agency acknowledges that, by using certain exposure assumptions in determining the Bright Line, especially residential exposure assumptions, the actual risks posed by remediation wastes at the site could be, in some circumstances, significantly lower than the 10^{-3} implied by the Bright Line. However, as discussed in section (V)(A)(4) the Bright Line is not intended to be an indication of actual risk, but is intended to reflect relative risks. Nonetheless, it is possible that setting the Bright Line in this way could lead to confusion, for example, in communicating to the public the actual risks posed by the site, and other similar problems. The 10^{-3} level is used to determine which wastes would typically receive stringent oversight, including treatment according to national treatment standards, but it does not reflect actual risks at actual sites. An alternative approach would be to use industrial land use assumptions in setting Bright Line levels. At this time, however, EPA does not believe that there is enough consensus around a methodology for non-residential exposure scenarios (e.g., industrial exposure scenarios) that could be used as the basis for a national rulemaking. The Agency requests suggestions of widely accepted methodologies for determining non-residential exposure scenarios (e.g., industrial exposure scenarios). The Agency also requests comments on whether the Bright Line should be based on different exposure scenarios (e.g., industrial). If so, how should the appropriate scenarios for a site be determined? How should the methodology for assessing alternative exposure scenarios be developed or used? Finally, the Agency has received comments from stakeholders that 10^{-3} may be too high of a risk for the Bright Line. The Agency requests comments on using alternative risk levels (such as 10^{-4}) to set the Bright Line.

The Agency also requests comment on the alternative of setting a qualitative Bright Line. The rule could describe qualitatively what should constitute ''above the Bright Line'' wastes and ''below the Bright Line wastes.'' The overseeing agency approving the RMP or RAP could determine for each specific site whether wastes were above or below the Bright Line, and specify that in the RMP or RAP. For example, the rule could define ''above the Bright Line wastes'' as wastes that have unusually high concentrations compared to the rest of the remediation waste at the site, or wastes that are highly mobile, or highly toxic. If the overseeing agency evaluated those criteria and determined that remediation wastes at that site met those criteria, then those wastes would be required to be managed as ''above the Bright Line wastes.'' The Agency requests comments on the merits of promulgating a qualitative Bright Line.

The combination of the Bright Line with the contained-in principle was of particular concern to the States. Although the Bright Line (as originally designed by the HWIR FACA Committee) was supposed to be a ''bright,'' clear distinction between media regulated under national standards and media subject to site-specific requirements, the Agency (at the request of the States), decided to propose the Bright Line not as an automatic contained-in concentration, but as an upper limit (or ''ceiling'') for contained-in determinations.

The Agency requests comments on whether the Bright Line concept should be retained, or whether all contaminated media (or all remediation wastes) should be subject to the same set of standards.

3. RAPs, RMPs, and RCRA Permits

The final key element of an HWIR-media program is whether the RAP or RMP must serve as a RCRA permit. Substantively, RAPs (discussed under the Unitary Approach) and RMPs (discussed under the proposed approach) serve the same purpose, but they differ in certain procedural respects. Under the proposed approach, some contaminated media and remediation wastes managed under RMPs would remain subject to Subtitle C. In those cases, RMPs must serve as RCRA permits for those wastes and media. Because all remediation wastes managed under RAPs under the Unitary Approach would be exempt from Subtitle C, RAPs need not serve as RCRA permits. Therefore, RMPs are proposed as meeting the minimum statutory requirements for public participation for RCRA permits, while RAPs are discussed as requiring even more simplified public participation requirements. Although neither the proposed approach nor the Unitary Approach propose to require it, it is EPA's expectation that in cases of extensive cleanups or significant on-site treatment, public participation procedures under either option would be more extensive than the statutory minimum. At the same time, the RAP approach would allow simplified procedures for routine responses (for example, removals) involving low concentration wastes.

4. Request for Comments

EPA requests comments on all of these key elements of an HWIR-media rule. EPA also requests comments on different combinations of these elements, including, but not limited to, the combinations discussed in this proposal as the proposed approach, the Unitary approach and the hybrid option.

VII. Effective Date of Final HWIR-Media Rule

Regulations promulgated pursuant to RCRA Subtitle C generally become effective six months after promulgation. RCRA section 3010 provides, however, for an earlier, or immediate, effective date in three circumstances: (1) Where the industry regulated by the rule at issue does not need six months to come into compliance; (2) the regulation is in response to an emergency situation; or (3) for other good cause.

Most of the rule proposed today would become effective within six months after promulgation. EPA is proposing, however, to make the CAMU rule withdrawal and ''grandfathering'' provisions, discussed in section (V)(F) above, effective upon publication. The basis for this decision is that the Agency does not believe that the regulated community requires six months to come into compliance with the CAMU withdrawal. Since all CAMUs approved at the time of publication of the final rule are ''grandfathered,'' withdrawal of the rule would not require any action on the part of those with approved CAMUs.

The Agency requests comments on whether it would be appropriate to make the CAMU withdrawal immediately effective.

VIII. Regulatory Requirements

A. Assessment of Potential Costs and Benefits

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant.'' Significant regulatory actions must be assessed in detail and are subject to full OMB review 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, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(c) Materially alter the budgetary impact of entitlements, 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 Executive Order.

The Agency has determined that today's proposed rule is a ''significant regulatory action'' under part (a) and possibly part (d) above. These parts are discussed fully in Executive Order 12866. This proposed rulemaking action is subject to full OMB review under the requirements of the Executive Order. The Agency has prepared an ''Economic Assessment of the Proposed Hazardous Waste Identification Rule for Contaminated Media,'' in support of today's action. A summary of this assessment is presented under section 4 below.

2. Background

As discussed in section (V)(A)(4)(a) of this preamble, the Agency has determined that media which ''contain'' hazardous waste must be managed as hazardous waste until they no longer contain such waste. Under this approach, EPA Regions and authorized States determine, on a case-by-case basis, what media ''contain'' hazardous waste, and therefore must be managed as hazardous waste.

RCRA Subtitle C regulatory requirements may be applied to contaminated media generated during several different types of site cleanups, including CERCLA remedial actions, State Superfund actions, RCRA corrective actions, RCRA closures, and voluntary cleanups. If contaminated media containing hazardous wastes are excavated in the process of site cleanup, they are required to be managed according to RCRA Subtitle C standards. These stringent requirements for excavated media, which often contain low levels of hazardous waste, have resulted in site cleanup decisions that effectively leave in place large volumes of contaminated media. As discussed in section (II)(A), EPA and the States have recognized that there are fundamental differences in the incentives and objectives for prevention-orientated versus cleanup-orientated waste management programs. Today's proposal seeks to alleviate many of the disincentives currently associated with the application of traditional RCRA Subtitle C requirements to cleanup programs.

3. Need for Regulation

Traditional RCRA Subtitle C management requirements for all excavated media containing any level of hazardous waste have resulted in less than optimal resource allocation. From a social perspective, too many resources are required to be devoted to the management of very low-risk media. This misallocation restricts availability of limited resources for use in other investments, including effective management of high-risk media and wastes. In addition, this disconnect between risk and management requirements creates disincentives for cleanup, impedes ongoing cleanup processes, and restricts the protective cleanup options available for consideration by the stakeholders. These unanticipated market distortions resulting from traditional RCRA Subtitle C management requirements for all excavated media containing any level of hazardous waste has convinced the Agency that reform is necessary. Through many discussions with stakeholders, particularly State and Federal cleanup programs, the Agency has determined that such reforms should provide meaningful regulatory structure and guidance designed to ensure safe management while, at the same time, providing site-specific flexibility that will help facilitate accelerated cleanups around the country. Particularly, as this proposal was designed specifically for the cleanup scenario, EPA believes that it will be better suited to the situations encountered at typical cleanup sites than some of the current regulations which are more appropriate for as-generated wastes. Specifically, EPA believes that reforms presented in today's proposal will facilitate more timely and less costly cleanups while maintaining protection of human health and the environment.

4. Assessment of Potential Costs and Benefits

The Agency has prepared an ''Economic Assessment'' to accompany today's proposed rulemaking. This ''Economic Assessment'' has been submitted to the Office of Management and Budget in accordance with Executive Order 12866.

a. Description of the HWIR-media proposal. HWIR-media will address an important limitation of the current RCRA Subtitle C program. The Subtitle C regulatory framework was designed primarily to ensure the safe cradle-to-grave management of currently generated hazardous wastes. Furthermore, the Subtitle C program

seeks to prevent releases, minimize generation, and maximize the legitimate reuse and recycling of hazardous waste. Subtitle C regulations contain detailed procedural and substantive management requirements that, when applied to the cleanup of contaminated media, often create incentives to leave this material in place or to select remedies that otherwise minimize the applicability of RCRA regulations. In addition, the level of regulation is not always commensurate with the risks posed by contaminated media. For example, media having very low levels of contamination are often regulated as hazardous waste under RCRA Subtitle C as a result of the contained-in policy.

The proposed rule would revise existing RCRA Subtitle C regulations by creating a new decision process for identifying and managing contaminated media. Under this framework, a set of hazardous constituent concentration levels would constitute a ''Bright Line'' for separating higher and lower levels of contaminated media. One Bright Line is proposed for soil and a second Bright Line for ground water and surface water. The proposed rule does not include a Bright Line for sediments; instead, site-specific decisions alone would determine whether sediment contains hazardous waste. Media that contain levels of contamination above the Bright Line would be managed as ''hazardous contaminated media'' under revised Subtitle C standards. Contaminated media with all constituent concentrations below the Bright Line would be eligible for a determination by the EPA, or authorized State agency overseeing the cleanup, that the media do not contain hazardous waste.

Today's proposal would also replace and withdraw the requirements for Corrective Action Management Units (CAMUs), simplify the state authorization procedures for RCRA program revisions, and streamline the permitting requirements for management of all types of remediation waste. Furthermore, the proposal would exempt from RCRA Subtitle C, dredged material permitted under the Clean Water Act or the Marine Protection, Research and Sanctuaries Act (MPRSA).

b. HWIR-media options analyzed. Executive Order 12866 requires and assessment of reasonably feasible alternatives to the proposed regulatory option. The Agency analyzed several options for this ''Economic Assessment.'' These options vary in two dimensions:

(i) *types of remediation waste* eligible for exclusion from Subtitle C.[34] The options include either:

—Contaminated media only (soils, non-navigational sediments, ground water, surface water), or

—All remediation waste (the above contaminated media plus old waste and debris); and

(ii) *partial or complete exclusion* of such wastes from Subtitle C. The options include potential exclusion from Subtitle C regulation of either:

—Media with all constituent concentrations below a proposed Bright Line, or

—All media, regardless of the extent of contamination.

The primary options analyzed are identified in Exhibit A below.

EXHIBIT A.—PRIMARY OPTIONS ANALYZED

Remediation wastes eligible for exclusion	Levels of contamination potentially excluded from subtitle C regulation	
	Lower risk (bright line)*	Lower and higher risk (No bright line)
Contaminated Media Only	Proposed Bright Line Option (Proposed Rule).	Conditional Exemption Option.
All Remediation Waste	Expanded Bright Line Option	Expanded Conditional Exemption Option** (Unitary Approach).

* Three other Bright Line options were examined applying alternative Bright Line concentrations. These findings are present in the Appendix to the full Economic Assessment, located in the RCRA Docket materials for this Action.

** This option is similar to the ''Unitary Approach'' proposed by industry.

NOTE: The Proposed Option contains no Bright Line for sediments. Only site-specific determination is proposed for the cleanup of contaminated sediments.

The Bright Line for contaminated soil under the proposed and expanded Bright Line options is defined for approximately one hundred hazardous constituents for which EPA has calculated Soil Screening Levels (SSLs). These SSLs are based on potential human health risk and were developed using risk equations and exposure assumptions specified in EPA's ''Risk Assessment Guidance for Superfund (RAGS).'' A lifetime cancer risk of 10^{-6} for carcinogens and a hazard quotient of one for non-carcinogens was applied to determine the Soil Screening Levels (SSLs). The HWIR-media soil Bright Line levels were derived from the inhalation and ingestion pathways of the SSLs, and correspond to an excess lifetime cancer risk of 10^{-3} for carcinogens and a hazard quotient of 10.

The levels from the inhalation and ingestion pathways from the Superfund SSLs are multiplied by 10 if the constituent is a non-carcinogen, and by 1,000 if the constituent is a carcinogen to achieve the target risk levels (referred to as the ''risk adjustment''). The Bright Line concentration is the lower of the risk-adjusted inhalation or soil ingestion-based levels. All Bright Line levels are capped at 10,000 ppm and the lead Bright Line is set at 4,000 ppm. The Conditional Exemption Options (base and expanded) do not rely on Bright Line constituent contamination levels. All contaminated media or all remediation waste would be exempt from RCRA Subtitle C under these options. Rather than using the Bright Line to determine management regimes, site-specific Remediation Management Plans would specify the management standards.

The Agency examined three alternative Bright Lines for the ''Economic Assessment.'' The findings are presented in Appendix C to the full

[34] Although, throughout this analysis, the Agency characterizes media determined to no longer contain, or wastes no longer considered hazardous, to be excluded or otherwise not subject to RCRA Subtitle C, as discussed in section (V)(C) of this Preamble, those wastes may nevertheless continue to be subject to LDRs.

''Economic Assessment,'' which is located in the docket for this action. The Bright Line for Alternative One (1) matches the proposed Bright Line but includes ground water leachate as an additional exposure pathway. The Alternative Two (2) Bright Line is based upon a compilation of the most stringent levels combining numbers from the Multipathway Analysis, constituent-specific ground water levels, and Exemption Quantitation Criteria (EQCs) for constituents without adequate analytical methods, or for which exit levels are below detection. The Alternative Three (3) Bright Line multiplies Soil Screening Levels for both carcinogens and non-carcinogens by 1,000, corresponding to a 10^{-3} cancer risk and a hazard quotient of 1,000, respectively. Appendix A of the full ''Economic Assessment'' provides the Bright Line levels for each constituent for the proposed Bright Line and the three alternative Bright Lines. Appendix C of the ''Economic Assessment'' discusses the findings for Alternatives 1, 2, and 3.

c. Data sources and methodology. The ''Economic Assessment'' of this proposed action analyzes the impact of HWIR-media options on the following types of remediation wastes: soils, sediments, ground water, old waste, and debris. Soils, sediments, and ground water are analyzed under the contaminated media only options (see Exhibit A), while old waste and debris are included under the all remediation waste options. Sludges at remediation sites frequently are found to be mixed with soil and sediment. These sludges are generally inseparable and occasionally indistinguishable from their host media. Such mixtures are included in the soil volumes analyzed under all options. Sludges were also found to be occasionally classified as old waste. Sludges identified in this manner are included in the old waste volumes examined under the all remediation waste options. The vast majority of media-like sludges, however, are believed to be generated from operating Subtitle C and Subtitle D surface impoundments and managed as hazardous waste. A sensitivity analysis presented in the Economic Assessment examines potential cost savings of applying the proposed Bright Line to sludges from these facilities. Data and analytical limitations have prevented an analysis of surface water impacts under the HWIR-media options.

The ''Economic Assessment'' projects a full range of potential cost savings from HWIR-media options; it does not attempt to estimate the actual cost savings. EPA used this approach because of the substantial uncertainties affecting the implementation of HWIR-media, including (1) the extent of State adoption of the rule; (2) the impact of the existing corrective action management unit (CAMU) rule, which has been disrupted by litigation; and (3) the extent of voluntary use of the HWIR-media flexibility by remediation decision-makers. To simplify the analysis, the Economic Assessment first estimates high-end potential cost savings by assuming that (1) all States quickly adopt HWIR-media; (2) the CAMU rule is ineffective; and (3) less expensive management methods are chosen when available under HWIR-media. Sensitivity analyses are then developed that address the impacts of these assumptions, resulting in a broad range of potential economic impacts. The Agency recognizes that HWIR-media may stimulate a certain degree of accelerated cleanup activity and corresponding cost impacts immediately following promulgation but has not developed a sensitivity analysis for this potential scenario.

For soil and sediment, EPA's analysis of potential cost savings of HWIR-media was conducted in six steps: (1) Develop an HWIR-media database of a sample of CERCLA remedial action and RCRA corrective action contaminated soil and sediment sites, detailing the amount of contaminated soil and sediment at each site and the maximum concentration of each hazardous constituent in each volume; (2) develop a basis for predicting the management technologies and costs for each site in the database under both the baseline and the HWIR-media options; (3) project the methods and costs of managing contaminated soil and sediment under the baseline of current Subtitle C requirements for the sample of sites in the HWIR-media database; (4) project the methods and costs of managing soil and sediment under the HWIR-media options for the sites in the database; (5) estimate the annual volume of soil and sediment to be remediated at all CERCLA remedial action, RCRA corrective action, RCRA closure, State superfund, and voluntary cleanup sites; and (6) estimate potential high-end aggregate cost savings by multiplying the changes in weighted average management costs under Steps 3 and 4 by the annual volumes from Step 5.

The Agency compiled a soil and sediment database using available data reported in CERCLA Records of Decision (RODs) signed in Federal fiscal years 1989 through 1993, the Corrective Action Regulatory Impact Analysis, and supporting research. Management methods were assigned to particular volumes of contaminated soil and sediment in the HWIR-media database based on the type of hazardous constituents in the contaminated media, the concentration of these hazardous constituents, and the volume to be remediated. The baseline and HWIR-media contaminated soil and sediment volumes reflect the amount of contaminated media planned to be managed at cleanup sites under current regulations. This analysis assumes a baseline site characterization cost that remains unchanged under HWIR-media. Beyond this, the HWIR-media analysis assumes that the unit or general area of contamination initially identified as containing constituents above the Bright Line will incur the cost of additional sampling and analysis costs. This is necessary to refine estimates of ''hot spot'' volumes and to distinguish between volumes above and below the Bright Line at specific sites. These incremental sampling and analysis costs are estimated at two dollars per ton for all soils and sediments. Volumes below the Bright Line will not incur these new costs. The Agency has not estimated the difference in implementation costs between the Bright Line and Expanded Bright Line options. The Expanded Bright Line option may result in lower incremental implementation costs because it avoids the need to separately characterize and manage contaminated media and other remedial wastes that are mixed together. Additional sampling and analysis costs are not incurred for volume partitioning under the no Bright Line option.

The media volume and cost estimates developed in Steps 1 through 4 above apply to a sample of RCRA and CERCLA facilities included in the HWIR-media database. The HWIR-media proposal, as written, will affect additional soil and sediment volumes from other actions, including RCRA closures, State Superfund sites, and voluntary cleanups. The baseline rate of contaminated soil and sediment generation for all potentially affected actions is estimated at 8.1 million tons annually for the period from 1996 through 2000. The results of the HWIR-media database analysis for the sample of sites were used to determine the fraction of annual contaminated soil and sediment volumes above and below the Bright Line and corresponding net cost impacts.

The methodology used to estimate ground water volumes, costs, and cost savings differs from the methodology for contaminated soil and sediment because of the lack of site-specific data on volumes of contaminated ground water. The ground water analysis used data on

the hazardous constituents present at actual CERCLA ground water cleanup sites (contained in the HWIR-media database) combined with randomly generated ground water volume estimates that reflect the national distribution of contaminated ground water plume volumes. Cleanup cost data were based on an analysis using a modified version of EPA's Cost of Remedial Action (CORA) Model. For estimating potential ground water cleanup cost savings under HWIR-media, EPA developed a methodology consisting of two major components: (1) A Monte Carlo simulation that generates hypothetical sites and estimates cleanup volumes associated with different target contaminant concentrations; and (2) a costing component based on EPA's CORA Model.

For the analyses conducted under the ''expanded'' options, old waste is defined as waste generated prior to the enactment of RCRA. The nationwide baseline volume generation of old waste under both RCRA and CERCLA is estimated at 1.8 million tons annually. This volume was estimated based on a comparison of the results of RCRA Corrective Action RIA analysis, HWIR-database results for RCRA soil, and database results for old waste at RCRA sites. Experts indicate that management methods for old wastes are typically similar to those for contaminated soil. Cost savings from HWIR-media, therefore, are estimated by applying the approach used for contaminated soils. Only the expanded options, which incorporate all remediation wastes into the HWIR-media analysis, address old waste.

The expanded options, which incorporate all remediation waste, also address hazardous debris. EPA gathered information on the current and projected management of hazardous debris from past regulatory and cost impact analyses, supplemented by expert opinion and best professional judgment. Total baseline contaminated debris generation is estimated at 0.36 million tons annually. The cost and economic impact analysis prepared for the Phase I Land Disposal Restrictions (LDR) rule for hazardous debris provided information on the amount of debris generated from cleanup activities, technologies used to manage the debris, and the projected average cost of treating debris under the baseline. EPA contacted several industry experts to discuss potential management practices under HWIR-media. The Agency also used the Corrective Action RIA for costs of Subtitle C and on-site disposal units, while the Subtitle D cost was derived from published sources.

d. Findings. This section presents the key findings of the ''Economic Assessment.'' The volumes of remediation wastes affected and associated net cost savings for the proposed option are presented. Findings for the primary alternatives are also presented. In addition, this section briefly summarizes key sensitivity analyses, non-monetary effects (both positive and negative), and industry impacts.

i. Volume Impacts and Cost Savings Proposed and Expanded Bright Line Options. Exhibit B identifies the portion of remediation waste that is estimated to be above and below the Proposed Bright Line Option (Proposed Rule) and the Expanded Bright Line Option. Ground water is excluded from this summary because the volume of ground water treated under the baseline and under HWIR-media is a function of the treatment duration required to achieve target constituent concentrations. Therefore, the total volume of contaminated ground water cannot be simply divided into volumes above and below the HWIR-media Bright Line. The Agency, however, estimates that only about 5 percent of CERCLA ground water sites contaminated with HWIR-media constituents have constituent concentrations that are all below the Bright Line.

EXHIBIT B.—REMEDIATION WASTES ABOVE AND BELOW THE PROPOSED AND EXPANDED BRIGHT LINE OPTIONS

[Million tons per year]

Media type	Baseline	Above bright line		Below bright line	
		Volume	Percent	Volume	Percent
Soil—CERCLA, State, and Voluntary	3.08	1.23	40	1.85	60
Soil—RCRA	4.56	0.46	10	4.10	90
Sediment—CERCLA	0.14	0.04	25	0.10	75
Sediment—RCRA	0.32	0.03	10	0.29	90
Proposed Bright Line Option	8.10	1.76	22	6.34	78
Old Waste—CERCLA	0.65	0.24	37	0.41	63
Old Waste—RCRA	1.14	0.42	37	0.72	63
Debris	0.36				
Expanded Bright Line Option	10.25	2.42	24	7.47	76

NOTE: The above and below bright line estimates exclude debris. Representative constituent concentration data for debris were unavailable.

The total annual volume of soil and sediment subject to RCRA Subtitle C jurisdiction may decline by up to 78 percent under the proposed option. Subtitle C volume under the proposed option drops from the baseline of 8.10 million tons to 1.76 million tons annually. The addition of old waste and debris under the expanded Bright Line option increases the total annual Subtitle C baseline volume to 10.25 million tons annually, an increase of 27 percent. The total volume eligible for exclusion from Subtitle C increases 18 percent, going from 6.34 million tons to 7.47 million tons annually.

The potential reduction in the volume of remediation waste managed under Subtitle C is the major reason for the cost savings of the Proposed HWIR-media Rule. Management procedures for remediation wastes below the Bright Line are substantially less costly due to less stringent requirements. In addition, treatment requirements for volumes above the Bright Line are modified, resulting in additional cost savings. The ''Economic Assessment'' estimates that about 84 percent of the potential cost savings of the proposed rule are from volumes below the Bright Line; the remaining savings are from volumes above the Bright Line.

Exhibit C presents point estimates for high-end total cost savings potentially resulting from the HWIR-media Proposal. These estimates are presented by remediation waste type, for the Proposed and the Expanded Bright Line Options. The potential high-end aggregate nationwide cost savings under the Proposed Bright Line Option are

estimated at $1.2 billion, annually. This estimate is derived from an annual baseline management cost estimate of $2.4 billion, covering soil, sediment, and groundwater. Most of the savings under the proposed option, $1.1 billion, result from reduced RCRA and CERCLA soil management costs. The Expanded Bright Line Option has a baseline management cost estimate of $3.2 billion, annually. The management costs under this HWIR-media option are reduced to $1.6 billion, resulting in net cost savings of approximately $1.6 billion per year. All estimated cost savings are net of implementation costs for the affected volumes, as discussed under section (4)(c) above. Actual nationwide cost savings may be significantly less than high-end estimates presented here. As noted earlier, several factors may contribute to reduced savings, including: the extent of State adoption, the impact of existing CAMU rule, and the extent to which remediation decision-makers adopt the less expensive media management technologies available under HWIR-media.

EXHIBIT C.—ESTIMATED HIGH-END COST SAVINGS UNDER THE PROPOSED AND EXPANDED BRIGHT LINE OPTIONS

Media type	Annual total cost		Net annual cost savings
	Baseline	HWIR-media options	
	Million Dollars		
Soil—CERCLA, State, and Voluntary	1,152	522	630 (55%)
Soil—RCRA	670	251	419 (63%)
Sediment—CERCLA	47	19	28 (63%)
Sediment—RCRA	52	22	30 (57%)
Ground Water—CERCLA	223	169	54 (24%)
Ground Water—RCRA Corrective Action	281	213	68 (24%)
Proposed Bright Line Option	2,425	1,196	1,229 (51%)
Old Waste—CERCLA	165	85	80 (49%)
Old Waste—RCRA	290	149	141 (49%)
Debris	294	203	91 (31%)
Expanded Bright Line Option	3,174	1,633	[35] 1,541 (49%)

[35] Inclusion of sludges increases this total to $1,732 million annually.

Conditional Exemption and Expanded Conditional Exemption (no Bright Line) Options. Volume impacts and potential net cost savings under the Conditional Exemption Options are difficult to estimate because these options do not establish specific Bright Line levels for contaminant concentrations, or any minimum treatment standards. Instead, the management of contaminated media (Conditional Exemption) or contaminated media and other remediation wastes (Expanded Conditional Exemption) would be determined by individual States or oversight agencies based on site-specific cleanup plans. Because of the lack of cleanup management standards or detailed guidance, States or oversight authorities may continue to follow current standards and cleanup decisions may be delayed or continue to be delayed. Thus, the conditional exemption options, despite increased flexibility, may actually achieve fewer cost savings than the Proposed Bright Line Option in the near term.

Over time, however, States are likely to develop their own explicit standards and guidelines for cleanup decisions that may be roughly equivalent to the Bright Line scenario. Conversations with various State officials have indicated that contaminated media containing concentrations close to the proposed Bright Line levels would likely be managed as if it were above the Bright Line. Eventually, therefore, State standards may likely be set similar to the proposed Bright Line levels. This would result in similar cost savings for the Conditional Exemption Options, over the longer term. The Conditional Exemption Options do, however, allow more management flexibility than the Bright Line Options. The Agency is not able to predict how various factors will affect State selection of cleanup remedies under the Conditional Exemption Options. EPA, therefore, has no basis to believe that, over the long term, cost savings under the Conditional Exemption Options are likely to be significantly different compared to the Bright Line Options.

ii. Sensitivity analyses. The ''Economic Assessment'' contains several sensitivity analyses, including analyses of three major analytical assumptions used to develop the baseline:

—all States quickly adopt and implement the HWIR-media Proposal;
—corrective action management units (CAMUs) and temporary units (TUs) are not used at any cleanup sites; and
—cleanup waste containing only a hazardous characteristic, in addition to media contaminated with listed hazardous wastes, are affected by HWIR-media.

The Agency has also developed a table designed to illustrate the distinctions between the baseline and corresponding management costs and cost savings under alternative policy options and implementation scenarios. This table is presented under ''Other Sensitivity Analyses'' at the end of this section.

State adoption. The options analyses presented above assume all States adopt, receive EPA authorization, and implement HWIR-media upon promulgation of the Final Rule. This scenario may not be completely realistic. Some States may not develop HWIR-media programs. Furthermore, programs that are developed are not likely to become effective immediately after the final rule is promulgated. These State programs will likely receive EPA authorization over a few years. In addition, States that do not adopt HWIR-media may influence program development and cleanup decisions in other States because of such factors as industry pressures, local or regional environmental issues, or public concerns and perceptions.

California, Illinois, New Jersey, New York, and Pennsylvania are the major generators of contaminated media in the United States. These States, combined, generate roughly 35 percent of the total annual volume of contaminated media managed ex-situ in the nation. These

States may be more likely to develop HWIR-media programs than other States for several reasons. For example, generators located in these States may be large potential beneficiaries from the rule. In addition, these States are likely to have larger and better developed cleanup programs and resources, allowing for protective site-specific cleanup decisions, and oversight. If only these States adopt HWIR-media, total annual cost savings may be reduced by approximately 60 to 70 percent. This assumes the remediation waste types and contaminants in these States are representative of the national total.

Another method for estimating the potential impacts of State adoption is a phased-in approach. Previous Agency-State interaction experience under RCRA indicates roughly 33 percent of the impacts of HWIR-media may begin accruing within one year after promulgation, 67 percent after two years, and 100 percent after three years. Total cost savings under HWIR-media may correspond to such a phased-in scenario.

Corrective Action Management Units (CAMUs). On February 16, 1993, the Agency published final regulations for corrective action management units (CAMUs) and temporary units (TUs). Under this action, placement of remediation wastes in an approved CAMU would not trigger land disposal restriction (LDR) requirements or minimum technology requirements (MTRs). Critics of this action brought suit against the Agency, challenging both the legal and policy basis for the CAMU Rule. The Agency has agreed to reexamine the CAMU regulations in the context of HWIR-media. Because of the litigation, the resulting limited use of CAMUs and the likely CAMU phase-out, the HWIR-media analysis assumed that CAMUs do not, and have never existed. Some CAMUs, however, currently exist and are grandfathered into the HWIR-media proposal. The Agency has conducted a sensitivity analysis, assuming the final ''expanded'' CAMU is effective in the baseline, in an effort to analyze the potential maximum impact of the CAMU provision.

There are some differences in the types of benefits achieved by CAMU and HWIR-media rules. This analysis assumes that the two rules achieve similar benefits for contaminated soils and sediments. The Agency's analysis in support of the final expanded CAMU Rule (''Regulatory Impact Analysis of the Final Rulemaking on Corrective Action Management Units and Temporary Units,'' Office of Solid Waste, U.S. EPA, January 11, 1993) estimated that the rule would reduce the volume of contaminated soil and sediment subject to LDR standards by 57 percent for CERCLA volumes and 72 percent for RCRA volumes. Based on these percentages, the Agency estimates that potential soil and sediment cost savings HWIR-media would decline by approximately $640 million or 52 percent if the final ''expanded'' CAMU rule was fully effective.

Listed versus characteristic contaminated media. The proposed rule does not distinguish between media contaminated with listed hazardous wastes, and media that must be managed as hazardous waste because it exhibits a characteristic. In both cases, the concentration levels of individual hazardous constituents in the media determine how the media will be regulated under HWIR-media. Early HWIR-media discussions focused only on media contaminated with listed hazardous waste. A sensitivity analysis was conducted for CERCLA and RCRA contaminated soil volumes. This analysis indicates the potential net savings from the Proposed Bright Line Option may be reduced by up to 10 percent if characteristic only media volumes were removed from HWIR-media consideration.

Other sensitivity analyses. Previous sensitivity analyses independently examined potential impacts on cost savings associated with limited state adoption, fully effective expanded CAMU, and characteristic contaminated media. This discussion compares the effects of limited state adoption, CAMU impacts under alternative implementation scenarios, and extends the analysis to the expanded Bright Line and no Bright Line (Unitary Approach) option. The purpose of this discussion is to present a direct comparison of impacts potentially associated with alternative policy options and implementation scenarios relevant to CAMU and HWIR-media.

The HWIR-media analysis is difficult to compare to the CAMU cost savings analysis. There is wide variation in assumptions related to baseline treatments, affected facilities, remediation waste types and volumes, and the projected remediation time frame for each analysis. The relationship between CAMU and alternative HWIR-media options presented in this section should be considered for general comparative purposes only.

Limited implementation of HWIR-media, as defined in this analysis, assumes HWIR-media adoption by the five states listed above. Limited implementation of CAMUs implies that only grand fathered CAMUs will operate. Aggressive implementation assumes 100 percent state adoption of HWIR-media and the final ''expanded'' CAMU rule. Total annual baseline management costs for HWIR-media affected remediation wastes, assuming full LDR compliance, are estimated at $3.52 billion (Exhibit D). This estimate covers RCRA and CERCLA soils and sediments, groundwater, old waste, debris, and sludges. Aggressive implementation of the expanded CAMU rule, covering all remediated waste except groundwater, would reduce this estimate to $2.67 billion, resulting in annual cost savings of approximately $0.84 billion. These savings were estimated to range from $1.20 to $2.00 billion in the January 11, 1993 Regulatory Impact Analysis for CAMU. A significant reduction in the level of incineration applied in the baseline accounts for the majority of this difference. Furthermore, CAMU assumed accelerated clean-up (remediation) levels in the years immediately following rule promulgation. Data available to the Agency since completion of the CAMU analysis in 1993 have proven both of these factors to be significantly overestimated. Cost savings attributable to only the current in-place (grand fathered) CAMUs are estimated at $0.04 billion annually.

The HWIR-media proposal and options reflect annual aggregate cost savings above and beyond the revised estimate for expanded CAMU. Aggressive implementation of the HWIR-media proposal, without CAMU consideration, is estimated to result in high-end cost savings of $1.23 billion beyond the baseline for soils, sediments, and groundwater. These savings are reduced to approximately $0.43 billion under the limited implementation scenario. Annual cost savings with the inclusion of old waste, debris, and sludges under the Expanded Bright Line and Unitary options may range anywhere from $0.61 to $2.07 billion, depending upon the option and extent of state adoption.

The Agency also examined the potential aggregate cost savings assuming both promulgation of HWIR-media, and retaining the expanded CAMU rule. Annual cost savings assuming full state adoption increase by approximately $0.59 billion beyond the HWIR-media proposal without CAMU. These incremental savings are derived from the inclusion of additional facilities previously unaffected by CAMU, plus an expanded media scope covering soils, sediments, and groundwater. With limited state adoption of HWIR-media, savings

increase by about $0.04 billion annually, derived only from groundwater. While not presented in Exhibit D, full implementation of the HWIR-media Unitary Approach option was found to provide no incremental savings beyond the expanded CAMU rule. The extent of implementation of both CAMU and HWIR-media has a significant impact on incremental and aggregate cost savings. Aggressive implementation of the HWIR-media proposal, combined with the final ''expanded'' CAMU, results in aggregate annual cost savings of $1.44 billion, or approximately 17 percent beyond the HWIR-media only scenario. Aggregate savings, while significantly lower overall, increase from $0.43 to $0.88 billion when the HWIR-media limited implementation scenario is combined with the final ''expanded'' CAMU.

EXHIBIT D.—ESTIMATED REMEDIATION WASTE MANAGEMENT COSTS UNDER ALTERNATIVE POLICY OPTIONS AND IMPLEMENTATION SCENARIOS

Remediation waste baseline and policy option	Implementation Scenario			
	Aggressive Implementation		Limited Implementation	
	Remediation waste management costs	Cost savings	Remediation waste management costs	Cost savings
	Billion Dollars Per Year			
Baseline [36] management costs: (no CAMU, no HWIR-media, all remediation waste)	3.52	.....	3.52	.....
Policy option and impact from baseline: Corrective Action Management Units (CAMU)	2.67	[37] 0.84	3.48	0.04
HWIR-media bright-line Proposal: (no CAMU consideration)	2.29	1.23	3.09	0.43
Aggregate Cost Savings: HWIR-Media Bright-Line proposal with expanded CAMU	2.08	1.44	2.63	0.88
HWIR-media expanded bright-line option: (no CAMU consideration)	1.79	1.73	2.91	0.61
HWIR-media expanded no bright-line option (unitary approach): (no CAMU consideration)	1.45	2.07	2.79	0.73

[36] This baseline includes CERCLA cleanup volumes managed under the Area of Contamination (AOC) concept. Current AOC management of RCRA volumes is believed to be negligible and is not included in this baseline.

[37] Updated data leading to significant revisions in baseline treatment methods, costs, volumes affected, and remediation schedule have led the Agency to adjust this figure from earlier estimates.

iii. Nonmonetary positive and negative effects. Currently, cleanup activities generating contaminated media containing a listed hazardous waste or exhibiting a hazardous characteristic are subject to the LDRs and MTRs when they involve placement of waste upon the land. When LDRs are triggered, contaminated media are subject to stringent and often costly treatment standards. Cleanup decision-makers, therefore, often prefer remedies that leave contaminated media in place in an effort to avoid triggering the LDRs. When MTRs are triggered by the creation, expansion, or replacement of landfills and surface impoundments managing hazardous waste, contaminated media are subject to technical standards for liner, cover, and leachate collection systems. Thus, cleanup decision-makers have, in the past, avoided consolidating or otherwise moving contaminated media during cleanup to bypass the MTRs.

When the costs resulting from LDRs and MTR are incorporated into a cleanup decision many cleanups become economically infeasible. The Agency believes, however, that with the increased flexibility and corresponding cost savings under the HWIR-media Proposed Rule, facility and site managers will conduct more cleanups than are currently being performed. Several factors would provide incentives to perform cleanups if excessive LDR and MTR costs were not incurred. For example, cleaning up a site reduces future potential liability, increases the salability of the land, and may generate public good will. Exhibit E summarizes the anticipated changes in management methods under HWIR-media.

EXHIBIT E.—ANTICIPATED INCENTIVES CREATED BY HWIR-MEDIA

Baseline management plans	HWIR-media incentives for non-hazardous media	Reason for change or no change
No excavation or treatment (e.g., containment).	Manage in-situ or ex-situ	LDRs either would not apply or would be more flexible and therefore a less costly ex-situ method may be chosen. Could also encourage in-situ or on-site ex-situ management because HWIR-media lets a facility operate under a Remediation Management Plan instead of a more costly Part B permit for in-situ or ex-situ treatment.
Manage in-situ	Manage ex-situ	LDRs either would not apply or would be more flexible and therefore a less costly (non-LDR) ex-situ method may be chosen.
Manage ex-situ	None; would still choose ex-situ treatment.	Previously preferred ex-situ to in-situ or no treatment; ability to select a less costly ex-situ method under HWIR-media will not cause shift from ex-situ management. May, however, choose a less expensive ex-situ method.

Although HWIR-media will reduce the stringency of regulation for some media currently managed as hazardous waste, EPA does not expect any of the options to significantly increase risks to human health and the environment for two reasons. First, there is a built-in process to minimize these risks under the HWIR-media proposal, namely State or EPA oversight of cleanups through Remediation Management Plan review, approval, and oversight. Second, under all of the options considered, active management of contaminated media is likely to eliminate possible exposure pathways. Thus, the Agency believes that the potential for negative benefits, that is, potential increases in risk, is negligible. Thus, EPA's selection of a regulatory option is driven primarily by balancing option protectiveness, improved long-term effectiveness of cleanups, implementation issues, and overall cost savings.

iv. Industry impacts. The economic impacts of HWIR-media will be distributed across industries that generate contaminated media and other remediation waste, as well as the environmental services industry which helps manage such contamination. All regulatory options will result in cost savings for generating industries and revenue losses, to some extent, for the commercial environmental services industry.

Petroleum and coal products (SIC 29), chemicals and allied products (SIC 28), and fabricated metals products (SIC 34), are the major industries generating contaminated media that will be affected by HWIR-media. Firms in these industries will be the main beneficiaries of cost savings from changes in cleanup practices. Total potential cost savings by industry, however, are estimated to represent less than 0.1 percent of each industry's aggregate annual revenues. Firm level impacts within affected industries are likely to be more diverse, depending upon the nature and extent of individual facility/firm cleanup responsibilities. Potential remedial action cost savings for an affected ''typical firm'' in the chemicals or fabricated metals industry are estimated to represent less than 2.0 percent of annual revenues.

The initial HWIR-media cost savings associated with a particular cleanup or set of cleanups could range from a one-time event (for firms with a single unit), to a continuous stream over the next 15 to 20 years for firms with multiple units/sites. These cost savings may help stimulate productive efficiencies, both on a micro- and macroeconomic level, depending upon how the cost savings are managed. Investment of the savings in the form of increased capital reserves, new capital purchases, or increased research and development may have long-term positive economic impacts on affected firms, and the general economy. Furthermore, much of the cost of most cleanup activities often falls on insurance companies. A reduction in projected remedial action costs as a result of HWIR-media may stimulate competitive insurance companies to lower premiums in an effort to expand market share.

Unlike in the case of generators, the effect of any cost savings associated with this rule will be to reduce the revenue stream to firms in the commercial environmental services industry. These firms work for a variety of generators who schedule cleanups at different times in the future. HWIR-media will not, however, have a uniform impact on the entire industry. Instead, the impacts will vary across three distinct industry segments: (1) the solid waste management industry segment, which provides transportation and disposal services for non-hazardous waste and contaminated media, (2) the hazardous waste management industry segment, which provides transportation and disposal services for hazardous waste and contaminated media, and, (3) the cleanup services industry segment, which provides engineering and technical advice for management of hazardous wastes.

The demand for the services of the solid waste management industry segment will increase under HWIR-media as more remediation wastes are disposed of in Subtitle D landfills. In contrast, the hazardous waste management industry segment could face a reduction in their revenue streams as smaller volumes are likely to be managed at commercial Subtitle C facilities. In addition, volumes that continue to be managed at such facilities may require less extensive treatment. The cleanup services industry segment is likely to incur reductions in their revenue streams under HWIR-media because over 95 percent of hazardous wastes and media are managed on-site. This implies that a large portion of projected cost savings to generators may translate into reduced revenues for this industry.

These industry segments are not mutually exclusive. Many of the larger firms in the environmental services industry operate in more than one segment of the industry. In addition, the analysis does not consider the impact of HWIR-media in increasing the speed of cleanup and stimulating new cleanups, which will offset revenue losses.

A decrease in demand for the services of the environmental services industry under HWIR-media will lower prices in the short-run as firms compete for the lower demand. At a lower price, however, services may be offered at a loss. Consequently, environmental services firms may exit the industry, consolidate, or decrease in size, and the supply of services may decline, until a new long-run equilibrium is reached.

5. Regulatory Issues

Regulatory issues most pertinent to this proposed action include environmental justice and Federal unfunded mandates. Both of these issues are discussed below.

a. Environmental Justice. Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. To address this goal, EPA examined the impacts of HWIR-media on low-income populations and minority populations. EPA concluded that HWIR-media will advance environmental justice, as follows:

—By encouraging the use of innovative treatment techniques, HWIR-media will reduce the number of hazardous waste incinerators that need to be located throughout the nation. This, in turn, will reduce the likelihood of an incinerator being sited in a low-income or minority community, thereby avoiding the negative public perceptions associated with incinerators.

—HWIR-media will assist in expediting site cleanups across the nation, by reducing the need for time-consuming permitting of on-site cleanup activities, increasing the flexibility of decision-makers to respond to site-specific conditions, and lessening administrative and regulatory complications and delays. This may free Superfund and other remediation resources to address additional sites. By encouraging excavation of contaminated media, the HWIR-media proposal will expedite the restoration of sites and lead to their beneficial use, which may result in new jobs and increased economic activity in low-income or minority communities. This economic activity could take the form of increased employment of local community members at the

cleanup sites; the sale and redevelopment of sites for new economic activities; and new beneficial uses for remediated properties, such as parks, transportation facilities, and even hospitals.

—HWIR-media's public participation provisions will enable local residents and other members of the public to participate in the development and approval of Remediation Management Plans.

The Agency believes that the oversight restrictions required under the HWIR-media proposal will ensure that increased human health risks to local communities are highly unlikely.

b. Unfunded mandates. The Agency also evaluated the proposed HWIR-media rule for compliance with the Unfunded Mandates Reform Act of 1995. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate or to the private sector, of $100 million or more in one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because the UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. Rather, State and tribal organizations are under no obligation to participate in the Part 269 program. In addition, promulgation of the HWIR-media rule, because it is considered generally less stringent than current requirements, is not expected to result in mandated costs estimated at $100 million or more to any State, local, or tribal governments, in any one year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. Finally, EPA has determined that the proposed HWIR-media rule contains no regulatory requirements that might significantly or uniquely affect small governments. Specifically, the program is generally less stringent than the existing program and makes no distinctions between small governments and any potentially regulated party.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires Federal agencies to assess whether proposed regulations will have a significant economic impact on a substantial number of small entities. EPA's ''Guidelines for Implementing the Regulatory Flexibility Act'' (May 1992), have determined that a Regulatory Flexibility Analysis (RFA) is required for all rulemakings, unless no impact is expected on any small entity. These guidelines further require the Agency to develop and consider alternatives that mitigate the impact of the rule on small entities. Furthermore, the Agency reserves the flexibility to tailor the level of effort devoted to an RFA based on the severity of a rule's anticipated impacts on small entities.

The Agency has determined that today's proposed rule will not have a significant adverse economic impact on a substantial number of small entities. HWIR-media confers remediation waste management cost savings on the regulated community while imposing implementation costs in cases where firms voluntarily seek cost savings. Therefore, in cases where remediation wastes are managed in the same manner under any option as under the baseline, no additional costs will be incurred under HWIR-media. If a different management method is used, a generator may have to incur additional implementation costs to obtain management cost savings. An economically rational generator, however, will change the management method and incur these additional implementation costs only if it is confident of obtaining net benefits, such as savings on remediation waste management.

In summary, the rule will confer net benefits in situations where the generator changes the management method under HWIR-media or impose zero net costs in situations where the generator uses baseline management methods. Because HWIR-media is not expected to impose net costs on any small entities, the Agency has not considered options to mitigate the impacts of the proposed rule on such entities. A full discussion of HWIR-media in the context of small entities is presented in Chapter 6 of the ''Economic Assessment.''

C. 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. 1775.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W., Washington, D.C. 20460 or by calling (202) 260–2740. This Information Collection Request is titled ''Hazardous Waste Identification Rule for Contaminated Media'' (or ''HWIR-media'').

The Agency has estimated the burden associated with complying with the requirements of this proposed rule. Included in that burden are estimates for industry respondents for complying with the specific requirements for: reading the regulations; media treatment variances; review of treatment results; content of RMPs; treatability studies; approval of RMPs; and expiration, termination and revocation of RMPs. For State respondents, the burden was estimated for interstate movement of contaminated media; and procedures for authorization of State hazardous waste programs.

The Agency has determined that this collection of information is necessary to determine compliance with the requirements of this proposal. In addition, the Agency will use the data collected to determine if Federal treatment standards are appropriate and whether they should be revised in the future. Responses to the collection of

information will be required to obtain or retain a benefit. For industry respondents, that benefit would be the more flexible requirements for management of hazardous contaminated media proposed in this proposal, instead of having to comply with the current Subtitle C standards. For State respondents, adoption of this regulation is optional, and the benefit would be for receiving authorization for this regulation. Section 3007(b) of RCRA and 40 CFR Part 2, Subpart B, which define EPA'sgeneral policy on the public disclosure of information, contain provisions for confidentiality. EPA has tried to minimize the burden of this collection of information on respondents.

The universe of respondents is expected to be sites conducting cleanup under: RCRA corrective action and closure; State and Federal CERCLA (or CERCLA-like) removal and remedial actions; and State voluntary cleanup programs which involve approval of RMPs. EPA estimates that the industry sites most likely to be affected by these requirements will be associated with the following SIC codes: 28 (Chemical and Allied Products); 2911 (Petroleum Refining); 34 (Fabricated Metal Products); and 3568 (Power Transmission Equipment).

EPA estimates that the annual respondent burden hours will be: for industry 259,165; for States 3,058; for a total of 262,223. The annual costs will be: for industry $63,661,186; for States $88,387; for a total of $63,749,573. The average per response for industry respondents would be 121.2 hours, and the average per response for state respondents would be 174.3 hours. The frequency of response would be once. The number of industry respondents would be 2,139 per year, and State respondents would be 16 per year.

EPA estimates total capital and start-up annualized over expected useful life to be: for industry $0.00; for states $0.00; total operation and maintenance to be: for industry $8.00; for States $8.00; and purchases of services to be: for industry $61,497; for States $0.00.

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 for HWIR-media'' to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; 725 17th Street, N.W., Washington, D.C. 20503; marked ''Attention: Desk Officer for EPA.'' Include the ICR No. 1775.01 in any correspondence.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 29, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by May 29, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 260

Hazardous Waste.

40 CFR Part 261

Hazardous Waste.

40 CFR Part 264

Hazardous Waste.

40 CFR Part 269

Administrative practice and procedures, Hazardous Waste, reporting and record keeping requirements.

40 CFR Part 271

Administrative practice and procedure and Intergovernmental relations.

Authority: These regulations are proposed under the authority of sections 2002(a), 3001, 3004, 3005, 3006, and 3007 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, 6924, 6926, and 6927.

Dated: April 12, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 260, 261, 262, 264, 268, 270 and 271 are proposed to be amended, and Part 269 is proposed to be added as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subpart A—General

1. The authority citation for part 260 continue to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6937, 6938, 6939, and 6974.

1a. Section 260.1 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), (b)(3) and (b)(4) to read as follows:

§ 260.1 Purpose, scope, and applicability.

(a) This part provides definitions of terms, general standards, and overview information applicable to Parts 260 through 269 of this chapter.

(b) In this part:

(1) Section 260.2 sets forth the rules that EPA will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to EPA under Parts 260 through 269 of this chapter.

(2) Section 260.3 establishes rules of grammatical construction for Parts 260 through 269 of this chapter.

(3) Section 260.10 defines the terms which are used in Parts 260 through 269 of this chapter.

(4) Section 260.20 establishes procedures for petitioning EPA to amend, modify, or revoke any provision of parts 260 through 269 of this chapter and establishes procedures governing EPA's action on such petitions.

* * * * *

2. Section 260.2 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

(a) Any information provided to EPA under Parts 260 through 269 of this chapter will be made available to the public to the extent and in the manner authorized by the Freedom of

Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b), part 2 of this chapter, as applicable.

(b) Any person who submits information to EPA in accordance with parts 260 through 269 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. * * *

3. Section 260.3 is amended by revising the introductory text to read as follows:

§ 260.3 Use of number and gender.

As used in parts 260 through 269 of this chapter:

* * * * *

Subpart B—Definitions

4. Section 260.10 is amended by revising the first sentence, by removing the second sentence, and by adding paragraph (3) to the definition for ''facility'' and adding the definition for ''remediation pile'' to read as follows:

§ 260.10 Definitions.

When used in Parts 260 through 273 of this chapter, the following terms have the meanings given below:

* * * * *

Facility * * *

* * * * *

(3) Notwithstanding paragraphs (1) and (2) of this definition, a media remediation site, as defined in § 269.3, does not constitute a facility for the purposes of § 264.101.

* * * * *

Remediation Pile means a pile that is used only for the temporary treatment or storage of remediation wastes, including hazardous contaminated media (as defined in 40 CFR 269.3), during remedial operations.

* * * * *

Subpart C—Rulemaking Petitions

5. Section 260.20(a) is amended by revising the first sentence to read as follows:

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provisions in Parts 260 through 273 of this chapter.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

6. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6933. 6a. Section 261.1(a)(1) is revised to read as follows:

§ 261.1 Purpose and scope.

(a) * * *

(1) Subpart A defines the terms ''solid waste'' and ''hazardous waste,'' identifies those wastes which are excluded from regulation under Parts 262 through 270 of this chapter and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

* * * * *

7. Section 261.4 is amended by adding paragraphs (g) and (h) to read as follows:

§ 261.4 Exclusions.

* * * * *

(g) Non-hazardous contaminated media. Media that are managed as part of remedial activities and that the Director has determined do not contain hazardous wastes (according to 269.4), but would otherwise be hazardous contaminated media, are not hazardous wastes.

(h) Dredged material discharged in accordance with a permit issued under section 404 of the Federal Water Pollution Control Act [33 U.S.C. § 1344] or in accordance with a permit issued for the purpose of transporting material for ocean dumping under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1413] is not a hazardous waste. For purposes of this subsection, the following definitions apply:

(1) The term ''dredged material'' has the same meaning as defined in 40 CFR 232.2.

(2) The term ''dredged material discharged'' has the same meaning as discharge of ''dredged material'' as defined in 40 CFR 232.2.

(3) The terms ''ocean'' and ''dumping'' have the same meaning as defined in 40 CFR 220.2.

(4) The term ''permit'' means a permit issued by the U.S. Army Corps of Engineers (Corps) or approved State under section 404 of the Federal Water Pollution Control Act [33 U.S.C. § 1344]; and/or a permit issued or by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1413]; or in the case of a Corps civil-works project, the administrative equivalent of a permit, as provided for in Corps regulations (e.g., see 33 CFR 336.1(b), 33 CFR 336.2(d), and 33 CFR 337.6).

Subpart C—Characteristics of Hazardous Wastes

8. Section 261.20(b) is revised to read as follows:

§ 261.20 General.

* * * * *

(b) A hazardous waste which is identified by a characteristic in this subpart is assigned every EPA Hazardous Waste Number that is applicable as set forth in this subpart. This number must be used in complying with the notification requirements of section 3010 of the Act and all applicable record-keeping and reporting requirements under parts 262 through 265 and parts 268 through 270 of this chapter.

* * * * *

Subpart D—Lists of Hazardous Wastes

9. Section 261.30(c) is revised to read as follows:

§ 261.30 General.

* * * * *

(c) Each hazardous waste listed in this subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of section 3010 of the Act and certain record-keeping and reporting requirements under parts 262 through 265 and parts 268 through 270 of this chapter.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

10. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6925, 6937, and 6938.

10a. Section 262.11(d) is revised to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264 through 269 and part 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

11. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

11a. Section 264.552 is amended by redesignating paragraphs (a) through (h) as paragraphs (c) through (j); and by adding new paragraphs (a) and (b) to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) Corrective Action Management Units may not be approved under this subpart after (date of publication of final rule).

(b) A Corrective Action Management Unit that was approved according to the provisions of the subpart prior to (date of publication of final HWIR-media rule) remains subject to the requirements of this part.

* * * * *

12. Part 264 is amended by adding new § 264.554 to subpart S to read as follows:

§ 264.554 Remediation piles.

(a) For piles that are used only for the temporary treatment or storage of remediation waste (including hazardous contaminated media as defined in 40 CFR 269.3) during remedial operations that are conducted in accordance with an approved permit or order, the Director may prescribe on a case-by-case basis design and operating standards for such units that are protective of human health and the environment. In establishing case-by-case standards for remediation piles, the Director shall consider the decision factors for temporary units, as specified in § 264.553.

(b) Placement of remediation waste (including hazardous contaminated media) into a remediation pile designated in an approved permit or order shall not constitute placement in a land disposal unit for the purposes of section 3004(k) of RCRA.

(c) Any remediation pile to which site-specific requirements are applied in accordance with paragraph (a) of this section shall be:

(1) Located within the boundary of the facility or media remediation site (as defined in 40 CFR 269.3); and

(2) Used only for the temporary treatment or storage of remediation wastes (as defined in 40 CFR 260.10).

(d) The Director shall specify in the permit or order the design, operating, and closure requirements for any remediation pile, the length of time the remediation pile will be allowed to operate, and any requirements for control of cross-media contaminant transfer. Remediation piles shall not be permitted to operate beyond the time that remedial operations are completed.

PART 268—LAND DISPOSAL RESTRICTIONS

13. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

13a. Section 268.1(b) is revised to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(b) Except as specifically provided otherwise in this part, Part 261 of this chapter, or in cases where hazardous contaminated media are subject to treatment standards under Part 269 in this chapter, the requirements of this part apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

* * * * *

14. 40 CFR is amended by adding part 269 to read as follows:

PART 269—REQUIREMENTS FOR MANAGEMENT OF HAZARDOUS CONTAMINATED MEDIA

Subpart A—General Provisions

Sec.
269.1 Scope.
269.2 Purpose and applicability.
269.3 Definitions.
269.4 Identification of media not subject to regulation as hazardous wastes.

Subpart B—Other Requirements Applicable to Management of Hazardous Contaminated Media

269.10 Applicability of other requirements.
269.11 Intentional contamination of media prohibited.
269.12 Interstate movement of contaminated media.

Subpart C—Treatment Requirements

269.30 Minimum LDR treatment requirements for media.
269.31 Media treatment variances.
269.32 More stringent treatment standards.
269.33 Review of treatment results.
269.34 Management of treatment residuals.

Subpart D—Remediation Management Plans (RMPs)

269.40 General requirements.
269.41 Content of RMPs.
269.42 Treatability studies.
269.43 Approval of RMPs.
269.44 Modification of RMPs.
269.45 Expiration, termination, and revocation of RMPs.
Appendix A to Part 269—HWIR-Media Bright Line Numbers
Appendix A–1 to Part 269—Bright Line Numbers
Appendix A–2 to Part 269—Bright Line Numbers for Ground Water
Appendix B to Part 269—Submittal of Treatability Data

Authority: 42 U.S.C. 6912(a), 6921, 6924, 6925, and 6926.

Subpart A—General Provisions

§ 269.1 Scope.

(a) The provisions of this part apply only to contaminated media that would otherwise be subject to regulation as hazardous wastes under RCRA Subtitle C regulations. The only exception is Subpart D of this part, which applies to all remediation wastes, including contaminated media.

(b) The provisions of this part modify and replace only certain specific Subtitle C regulations as they apply to the management of hazardous contaminated media. Other Subtitle C regulations that are not specifically addressed under this part will continue to apply to the management of hazardous contaminated media.

(c) The provisions of this part apply only to the treatment, storage, transportation and disposal of hazardous contaminated media that is conducted pursuant to site remediation activities. This part is not intended to affect remedy selection decisions. This part is intended to affect only decisions regarding the management of hazardous contaminated media as part of cleanup activities.

(d) The constituent concentration levels specified in Appendix A to this part are not cleanup levels, and the Environmental Protection Agency does not support their use as cleanup levels under Federal or State cleanup programs.

(e) The provisions of this part are not self-implementing. They may be applied to specific remedial actions only as approved by EPA, or a State authorized for this part.

§ 269.2 Purpose and applicability.

(a) The purpose of this part is to establish standards for management of hazardous contaminated media that are generated as part of remedial activities.

(b) The provisions of this part apply to treatment, storage and disposal of hazardous contaminated media which is conducted in accordance with a Remediation Management Plan (RMP) approved by EPA or a State program authorized for this part.

(c) The provisions of this part do not apply to non-media hazardous remediation wastes (except Subpart D) or to hazardous contaminated media that are not managed in a way that would otherwise subject the media to the requirements of this chapter.

§ 269.3 Definitions.

For the purposes of this part, the following definitions apply:

Bright Line constituent means any constituent found in media that is listed in Appendix A of this part, and that is:

(1) The basis for listing of a hazardous waste (as specified in Appendix VII of 40 CFR Part 261) found in that media; or

(2) A constituent that causes the media to exhibit a hazardous characteristic.

Hazardous contaminated media means media that contain hazardous wastes listed in Part 261 Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in Part 261 Subpart C of this chapter, except media which the Director has determined do not contain hazardous wastes pursuant to § 269.4 of this part (non-hazardous contaminated media).

Media means materials found in the natural environment such as soil, ground water, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. This definition does not include debris (as defined in 40 CFR 268.2).

Media remediation site means an area contaminated with hazardous waste that is subject to cleanup under State or Federal authority, and areas in close proximity to the contaminated area at which remediation wastes are being or will be managed pursuant to State or Federal remediation authorities (such as RCRA corrective action or CERCLA). A media remediation site is not a facility for the purpose of implementing corrective action under 40 CFR 264.101, but may be subject to such corrective action requirements if the site is located within such a facility (as defined in 40 CFR 260.10).

Non-hazardous contaminated media means media that are managed as part of remedial activities and that the Director has determined do not contain hazardous wastes (according to § 269.4), but would otherwise be subject to Subtitle C regulation.

Remediation Management Plan means the plan that describes specifically how hazardous contaminated media will be managed in accordance with this part. Such a plan may also include, where appropriate, requirements for other remediation wastes and any other (non-Part 269) requirements applicable to hazardous contaminated media.

Sediment is the mixture of assorted material that settles to the bottom of a water body. It includes the shells and coverings of mollusks and other animals, transported soil particles from surface erosion, organic matter from dead and rotting vegetation and animals, sewage, industrial wastes, other organic and inorganic materials and chemicals.

Soil means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil.

§ 269.4 Identification of media not subject to regulation as hazardous wastes.

(a) The Director may, as appropriate, determine that media which are generated and managed as part of remedial activities, and which would otherwise be subject to regulation under this chapter, do not contain hazardous wastes, provided that:

(1) There are no Bright Line constituents (as defined in § 269.3) in the media in concentrations equal to or greater than those specified in Appendix A of this part;

(2) The basis for the decision that the media do not contain hazardous wastes is documented in a Remediation Management Plan (RMP) approved in accordance with Subpart D of this part; and

(3) Appropriate requirements for the management of the media are specified in such RMP. Such materials will be considered non-hazardous contaminated media (as defined in § 269.3).

(b) [Reserved]

Subpart B—Other Requirements Applicable to Management of Hazardous Contaminated Media

§ 269.10 Applicability of other requirements.

(a) Except where expressly indicated, for hazardous contaminated media that are regulated under this part, the applicable requirements of 40 CFR Parts 262–267 and 270 continue to apply to the treatment, storage, and disposal of hazardous contaminated media.

(b) For hazardous contaminated media and non-hazardous contaminated media that remain subject to LDRs, the provisions of 40 CFR Part 268 do not apply, except for the following: 40 CFR 268.2 through 268.7 (definitions, dilution prohibition, surface impoundment treatment variance, case-by-case extensions, no migration petitions, and waste analysis and recordkeeping), and 40 CFR 268.50 (prohibition on storage prior to land disposal). Compliance with these provisions of Part 268, and with the provisions of Subpart C of this part, shall constitute compliance with the provisions of section 3004(m) of RCRA.

§ 269.11 Intentional contamination of media prohibited.

No generator, transporter, or owner or operator of a treatment, storage, or disposal facility shall in any way deliberately combine media and hazardous waste so as to become subject to the provisions of this part.

§ 269.12 Interstate movement of contaminated media.

(a) Hazardous contaminated media and non-hazardous contaminated media that are transported out of the State in which they are generated are subject to the requirements of 40 CFR parts 262–268 and 270 outside of the originating State, unless:

(1) The receiving State and any State through which the waste will be transported has been authorized to implement this part (or EPA is implementing this part in that State); and

(2) The generating State notifies the authority implementing Part 269 in the receiving State and any State through which the material will be transported of the plans to transport such media into or through that State and provides an opportunity to comment on the draft RMP setting out the basis for the classification of such media.

(b) If a receiving State or a State through which such media are transported is authorized for this part 269, that State may determine that media originating in other States:

(1) Contains hazardous waste and must be managed under Parts 261–268 and 270 when in that State; or

(2) Contains hazardous waste and must be managed under this part when in that State; or

(3) Contains solid waste and must be managed under that State's solid waste or other applicable authorities; or

(4) Contains no waste.

Subpart C—Treatment Requirements

§ 269.30 Minimum LDR treatment requirements for media.

(a) The requirements of this subpart apply to the following materials when they are removed from the land, except as identified in paragraph (b) of this section:

(1) Media subject to the requirements of this part as identified by § 269.1(a), (including media that have been determined, pursuant to § 269.4, to no longer contain hazardous wastes) when the waste contaminating the media was prohibited from land disposal at the time it was placed.

(2) Media subject to the requirements of this part as identified by § 269.1(a), (including media that have been determined, pursuant to § 269.4, to no longer contain hazardous wastes) when the waste contaminating the media is prohibited from land disposal at the time the media is removed from the land. To identify the effective date of applicable land disposal prohibitions, see 40 CFR part 268, Appendix VII.

(b) The requirements of this subpart do not apply to media identified by paragraph (a)(2) of this section when they are determined, pursuant to § 269.4, not to contain hazardous wastes before they are removed from the land.

(c) Media treatment standards must be specified in each RMP for all media identified by paragraph (a) of this section.

(d) Prior to land disposal, media identified in paragraph (a) of this section must be treated according to the applicable treatment requirements specified in paragraphs (e) and (f) of this section unless a variance is given according to § 269.31 (Media Treatment Variances), or the Director requires more stringent treatment standards according to § 269.32.

(e) (1) For soils, treatment must achieve the following standards for all constituents subject to treatment that are present in the soils at concentrations greater than 10 times the Universal Treatment Standard for the constituent(s):

(i) For non-metals, 90 percent reduction in total constituent concentrations, except as provided by paragraph (e)(2) of this section.

(ii) For metals, 90 percent reduction in constituent concentrations as measured in leachate from the treated media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations, except as provided by paragraph (e)(2) of this section.

(2) When treatment of any constituent subject to treatment to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, 10 times the Universal Treatment Standard shall be the treatment standard. Universal Treatment Standards are identified in 40 CFR 268.48 Table UTS.

(3) In addition to the treatment required by paragraph (e)(1) of this section, soils that exhibit the characteristic of ignitability, corrosivity, or reactivity must be treated by deactivation technologies which eliminate these characteristics.

(4) In addition to the treatment requirements of paragraphs (e)(1) and (3) of this section, the following treatment is required for soils that contain nonanalyzable constituents:

(i) Where the soil also contains analyzable constituents, treatment of those analyzable constituents to the levels specified in paragraph (e)(1) of this section; and

(ii) For soils containing only nonanalyzable constituents, treatment by the method specified in § 268.42 for the waste contained in the media.

(f) For media other than soils, such as ground water and sediments, treatment must achieve the applicable part 268 treatment standard(s) for each constituent subject to treatment.

(g) Constituents subject to treatment are:

(1) For media identified by paragraph (a) of this section because they contain or contained wastes listed under part 261, subpart D of this chapter, the constituents identified as regulated hazardous constituents in the table ''Treatment Standards for Hazardous Wastes'' in § 268.40 of this chapter for such waste; and

(2) For media identified by paragraph (a) of this section because it exhibits a characteristic of hazardous wastes as defined by part 261, subpart C of this chapter, any constituent listed in 40 CFR 268.48, Table UTS—Universal Treatment Standards that is present in the media, except zinc and vanadium.

(h) Treatment technologies employed in meeting these treatment standards must be designed and operated in a manner that controls the transfer of contaminants to other media.

§ 269.31 Media treatment variances.

(a) The Director may approve a variance from a treatment standard(s) specified in § 269.30, if the owner/operator demonstrates to the satisfaction of the Director that:

(1) Compliance with the standard(s) is technically impracticable; or

(2) Compliance with the standard(s) would require the use of a technology which is inappropriate for the media to be treated because the physical or chemical properties of media differ significantly from the media EPA examined in establishing the standard, or the standard is otherwise inappropriate for the hazardous contaminated media; or

(b) For media containing all constituents at levels below those specified in Appendix A of this part, the Director may approve a variance from a treatment standard specified in § 269.30 by specifying a level or method of treatment, if any, which substantially diminishes the toxicity of the waste or substantially reduces likelihood of migration of hazardous constituents from the waste so that short- and long-term threats to human health and the environment are minimized based on site-specific considerations.

(c) The Director may request any additional information, including additional sampling and analysis, if necessary to evaluate a media treatment variance demonstration.

(d) The Director may specify a media treatment variance as a numerical standard or as a specified treatment method or technology.

(e) Technologies used to comply with media treatment variances must optimize efficiency, result in substantial reductions in toxicity or mobility of constituents, and control cross media transfer.

(f) Proposed media treatment variances must be identified in RMPs and shall, at a minimum, be subject to the public participation requirements for RMPs specified in § 269.43.

§ 269.32 More stringent treatment standards.

For soil, the Director may require that constituents subject to treatment be treated to achieve standards more stringent than the standards specified in § 269.30, if s/he determines that the treatment required under § 269.30(e) and (f) would not substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized, based on site-specific circumstances.

§ 269.33 Review of treatment results.

If data indicate that the treatment standards specified in a RMP have not been met, the owner/operator shall:

(a) Submit a new or modified RMP containing procedures for treating the media subject to treatment to compliance with the specified treatment standard; or

(b) Submit an application for a media treatment variance under § 269.31(a) (1) or (2); or

(c) If appropriate, request that the Director specify a level or method of treatment, if any, that would meet the requirement of § 269.31(b).

§ 269.34 Management of treatment residuals.

(a) Treatment residuals from treating media identified by § 269.30(a) shall be managed as follows:

(1) Media residuals shall be subject to the standards of this part;

(2) Non-media residuals shall be subject to the RCRA Subtitle C or D standards applicable to the waste contaminating the media before treatment.

Subpart D—Remediation Management Plans (RMPs)

§ 269.40 General requirements.

(a) Before hazardous contaminated media may be managed according to the provisions of this part, the owner/operator must receive approval by the Director of a Remediation Management Plan (RMP), in accordance with the procedures in § 269.43.

(b) A RMP must be an enforceable document, and shall specify requirements for management of hazardous and non-hazardous contaminated media at a media remediation site, according to the provisions of this part and according to other applicable requirements of Subtitle C, including 40 CFR part 264 (except subparts B and C). A RMP may also incorporate requirements for the management of other remediation wastes at a media remediation site, in compliance with applicable provisions of part 264 of this chapter.

(c) For remedial activities involving treatment, storage or disposal of remediation wastes that would require a RCRA permit under 40 CFR 270.1, a RMP approved by the Director, and containing the necessary 40 CFR part 264 substantive requirements, shall constitute a RCRA permit for those activities, for the purposes of section 3005(c) of RCRA.

(d) The corrective action requirements of sections 3004 (u) and (v) of RCRA do not apply to persons engaging in treatment, storage, or disposal of hazardous wastes solely as part of a cleanup action pursuant to a RMP.

(e) A RMP may be:

(1) A stand-alone document that addresses only the requirements of this part, and does not address other remedial activities or units; or

(2) Included as part of a more comprehensive document that specifies requirements for compliance with this part, in addition to requirements for other remedial activities for the site. Such documents must be approved by the Director according to procedures that allow equivalent or greater opportunities for public involvement than those prescribed in § 269.43. Examples of such documents may include enforcement orders (that meet the minimum notice requirements of § 269.43), RCRA permits or permit modifications issued to hazardous waste management facilities, or other similar remedial documents approved by the Director.

(f) Approval of a RMP does not convey any property rights of any sort, or any exclusive privilege.

(g) Approval of a RMP does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 269.41 Content of RMPs.

(a) A draft RMP submitted to the Director for approval must contain sufficient information to demonstrate to the Director that the proposed management activities for contaminated media at the site will comply with the requirements of this part. If a draft RMP is submitted as part of a more comprehensive document(s) (in accordance with § 269.40(e)(2)), it may simply reference or otherwise identify where the information pertaining to part 269 requirements can be found in such document(s).

(b) If a RMP will be used only for the management of investigation derived wastes or for treatability studies, the RMP need only include the relevant information necessary to determine that the investigation or treatability study will be conducted in accordance with applicable requirements. It may not be necessary to include all the information specified in paragraph (c) of this section.

(c) The following information must be included in any RMP (except as specified in paragraph (b) of this section):

(1) Information demonstrating that the materials to be managed in accordance with this part are media, as defined in § 269.3.

(2) If applicable, information identifying hazardous remediation wastes (other than hazardous contaminated media) which will be managed according to the RMP but not under the requirements of 40 CFR part 269, and specifying that management of those wastes will comply with the applicable requirements of 40 CFR parts 260 through 268.

(3) If applicable, information identifying non-hazardous contaminated media, and specifying how such media will be managed.

(4) Description of the remediation wastes to be managed in accordance with the RMP, including information on constituent concentrations, and other properties of media and wastes that may affect how such materials should be treated and/or otherwise managed.

(5) Estimates of volumes of the hazardous contaminated media to be managed according to the provisions of this part;

(6) Plans or proposals specifying the technology(s), handling systems, design and operating parameters to be used in treating remediation wastes prior to disposal, in accordance with applicable LDR standards of §§ 269.30 through 269.34, or 40 CFR part 268, as applicable.

(7) Information which demonstrates to the Director that any proposed treatment system will be designed and operated in a manner that will adequately control the transfer of pollutants to other environmental media.

(8) Information which describes planned sampling and analysis procedures necessary to characterize the wastes or media to be managed, to ensure effective treatment of the materials has occurred, and to demonstrate compliance with the treatment standard, including quality assurance and quality control procedures.

(9) Agreement to submit data as specified in Appendix B of this part regarding treatment information from both treatability studies and full scale implementation of treatment systems conducted for the remedial activities under this RMP. Data from treatability studies shall be submitted as soon as the treatability study (or studies) has been completed. Full scale implementation data shall be submitted every three years, or after cleanup has been completed, whichever is first.

(10) Other information determined by the Director to be necessary for demonstrating compliance with the provisions of this part.

§ 269.42 Treatability studies.

(a) If the Director determines that a treatability study is necessary to determine the efficacy of a proposed treatment technology, and if conduct of the study requires a RCRA permit, the study may be approved under a RMP. In addition to the other requirements of this part, such RMPs shall specify how the study(s) will be conducted, including relevant data on system design and operating parameters, waste

characteristics, sampling, and, analytical procedures.

(b) Upon conclusion of a treatability study conducted according to an approved RMP, data shall be submitted to (EPA Headquarters) in the manner specified in appendix B of this part.

§ 269.43 Approval of RMPs.

(a) Draft RMPs shall be reviewed and approved according to the procedures specified in paragraphs (b) through (f) of this section. Alternative procedures which provide the same or greater opportunities for public review and comment may also be used, including the RCRA permit procedures of 40 CFR part 270, or the permit modification procedures of 40 CFR 270.41.

(b) A proposed RMP shall be signed in accordance with 40 CFR 270.11.

(c) The Director may, if necessary, add provisions to a draft RMP specifying the conditions under which media will be managed pursuant to the RMP, and concentration levels below which media will be determined not to contain hazardous waste. Such provisions may not be necessary when:

(1) The Director has established applicable State-wide contained-in concentration levels; or

(2) All media to be managed at the site will be managed as hazardous contaminated media, therefore making contained-in levels unnecessary.

(d) The Director may, if necessary, add provisions to a draft RMP specifying when threats to human health and the environment will be considered to have been minimized.

(e) When the Director determines that a draft RMP is complete and adequately demonstrates compliance with applicable requirements, the RMP shall be approved according to the following minimum procedures. If appropriate, the Director may require additional review and comment procedures.

(1) A notice of the Director's intention to approve the RMP shall be:

(i) Published in a major local newspaper of general circulation and broadcast over a local radio station, according to the procedures of 40 CFR 124.10(d); and

(ii) Sent to each unit of local government having jurisdiction over the area in which the site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site. The notice shall provide an opportunity for the public to submit written comments on the RMP within no fewer than 45 days.

(2) If within the comment period the Director receives written notice of opposition to the Director's intention to approve the RMP and a request for a hearing, the Director shall hold an informal hearing (including an opportunity for presentation of written and oral views) to discuss issues relating to the approval of the RMP. The Director may also determine independently that an informal hearing on the RMP is appropriate. Whenever possible, the Director shall schedule such hearing at a location convenient to the nearest population center to the site and give notice in accordance with paragraph (i)(1) of this section, of the date, time and subject matter of such hearing.

(3) The Director shall consider and respond to any significant written or oral comments received by the comment deadline on the proposed RMP, and may modify the RMP based on those comments as appropriate.

(4) When the Director determines that the RMP adequately demonstrates compliance with all applicable requirements, s/he shall notify the owner/operator, and all other commenters on the proposed RMP, in writing, that the RMP has been approved. The Director's approval of a RMP shall constitute final Agency action (not subject to the administrative appeals in 40 CFR 124.19).

(f) For remedial actions involving on-site combustion of hazardous remediation wastes, the procedural requirements for issuance of RCRA permits (specified in 40 CFR Parts 124 and 270 shall at a minimum be followed for review and approval of RMPs.

§ 269.44 Modification of RMPs.

(a) The Director shall specify in the RMP procedures for modifying the RMP. Such procedures must provide adequate opportunities for public review and comment on any modification that would result in a major or significant change in the management of contaminated media at the site, or which otherwise merits public review and comment.

(b) The Director may unilaterally modify an approved RMP, through appropriate procedures for public review and comment, based on new information which indicates that such modification may be necessary to ensure the effective implementation of remedial actions at the site.

§ 269.45 Expiration, termination, and revocation of RMPs.

The Director shall specify in an approved RMP the procedures under which the RMP will expire, be terminated or revoked. RMPs that pursuant to § 269.40(c) constitute RCRA permits for the purposes of section 3005(c), shall be for a fixed term, not to exceed 10 years, although they may be renewed. In addition, any such RMP for a hazardous waste land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with currently applicable requirements of RCRA sections 3004 and 3005. All RMPs which constitute RCRA permits must be renewed at least every 10 years (if they will remain in effect longer than that).

Appendix A to Part 269—HWIR-Media Bright Line Numbers

Appendix A–1 presents the Bright Lines for soil for the 107 HWIR-media constituents with Soil Screening Levels (SSLs). Appendix A–2 presents the Bright Lines for groundwater ingestion for 211 HWIR-media constituents.[1] The Bright Lines for both soil and groundwater exposures are calculated using a target risk of 10^{-3} for carcinogens and RfD x 10 for non-carcinogens. For constituents that have both carcinogenic and non-carcinogenic health effects, the lower of the two Bright Lines is reported.

Appendix A–1 to Part 269—Bright Line Numbers for Soil

The Bright Lines for soil in Appendix A–1 are based upon SSLs presented in the Superfund Soil Screening Guidance, which is available in the docket for this proposed rule. SSLs have been developed for 107 HWIR-media constituents and are calculated using risk equations presented in EPA's ''Risk Assessment Guidance for Superfund (RAGS).'' SSLs are either based on exposure by direct soil ingestion or by inhalation of volatiles from soil. The SSLs for these two exposure pathways are calculated using different risk equations. In addition, since carcinogens and non-carcinogens pose different kinds of health effects, there are two separate equations for each exposure pathway, depending upon the carcinogenicity of the constituent. These equations for each pathway are presented below:

Inhalation of Soil Contaminants

For cancer health effects:

[1] EPA was unable to develop ground water Bright Lines for nine constituents that lacked both an oral reference dose and an oral slope factor.

$$SSL = \frac{TR \times AT \times 365\ days/yr}{URF \times 1000 ug/mg \times EF \times ED \times \left[\frac{1}{VF} + \frac{1}{PEF}\right]}$$

For non-cancer health effects:

$$SSL = \frac{THQ \times AT \times 365\ days/yr}{EF \times ED \times \left[\frac{1}{RfC} + \left(\frac{1}{VF} + \frac{1}{PEF}\right)\right]}$$

The exposure assumptions used in the above risk equations for inhalation of soil contaminants are presented in Exhibit 1.

Ingestion of Soil Contaminants

For cancer health effects:

$$SSL = \frac{TR \times AT \times 365\ days/yr}{SF \times 10^{-6}\ kg/mg \times EF \times IF}$$

For non-cancer health effects:

$$SSL = \frac{THQ \times BW \times AT \times 365\ days/yr}{\left(\frac{1}{RfD}\right) \times 10^{-6}\ kg/mg \times EF \times ED \times IR}$$

The exposure assumptions used in the above risk equations for ingestion of soil contaminants are presented in Exhibit 2.

The calculated soil screening values for both the inhalation and ingestion pathways correspond to a cancer risk level of 10^{-6} for carcinogens and a non-cancer hazard quotient of one for non-carcinogens. The SSLs for cancerous and non-cancerous constituents are, therefore, multiplied by 1,000 and 10 respectively, so that the reported Bright Lines correspond to a target risk of 10^{-3} for carcinogens and RfD × 10 for non-carcinogens. All Bright Lines for soil are capped at 10,000 parts per million (ppm).

The soil saturation limit (Csat) for a constituent is reported as the inhalation pathway SSL if the Csat is lower than the calculated SSL. Csats are not risk-adjusted (i.e., they are not multiplied by a factor of 10 or 1,000) when calculating Bright Lines. When the Csat is lower than the risk-adjusted SSL for the soil ingestion pathway, the Bright Line is set at the Csat. The soil Bright Lines for 17 constituents are set at their Csat.

Exhibit 1.—Exposure Assumptions Used To Calculate Soil Inhalation

[Soil Screening Levels]

	Corresponding HWIR-media assumptions	
	Cancer	Non-cancer
SSL=soil screening level	calculated	calculated.
TR=target excess lifetime cancer	(mg/kg)	(mg/kg).
THQ=risk	10^{-6}	
AT=target hazard quotient		1.
URF=averaging time	70 years	30 years.
RfC=inhalation unit risk factor	constituent	
EF=inhalation reference	specific	constituent
ED=concentration	$(ug/m^3)^{-1}$	specific.
VF=exposure frequency		(mg/m^3).
PEF=exposure duration	350 days/yr	350 days/yr.
soil-to-air volatilization	30 years	30 years.
factor	constituent	constituent.
particulate emission factor	specific	specific.
	m^3/kg	m^3/kg.
	6.79×10^8	6.79×10^8.
	m^3/kg	m^3/kg.

Exhibit 2.—Exposure Assumptions Used To Calculate Soil Ingestion

[Soil Screening Levels]

	Corresponding HWIR-media assumptions	
	Cancer	Non-Cancer
SSL = soil screening level	calculated	calculated.
TR = target excess lifetime cancer	(mg/kg)	(mg/kg).
THQ = risk	10^{-6}	
AT = target hazard quotient		1.
BW = averaging time	70 years	6 years.
SF = body weight		15 kg.
RfD = oral slope factor	constituent	
IF = oral reference dose	specific	constituent.
IR = age-adjusted soil ingestion	$(mg/kg/day)^{-1}$	specific.
EF = factor		(mg/kg/day).
ED = soil ingestion rate	114 mg-yr/kg-day	
exposure frequency		200 mg/day.
exposure duration		350 days/yr.
	350 days	6 years.

APPENDIX A–1.—BRIGHT LINE NUMBERS FOR SOIL

CAS No.	Constituent	Bright Line for soil (ppm)	Path	Basis
630–20–6	1,1,1,2-Tetrachloroethane			
71–55–6	1,1,1-Trichloroethane	980	Inhal	Csat.
79–34–5	1,1,2,2-Tetrachloroethane	400	Inhal	Cancer.
79–00–5	1,1,2-Trichloroethane	800	Inhal	Cancer.
76–13–1	1,1,2-Trichloro-1,2,2-trifluoroethane			
75–34–3	1,1-Dichloroethane	9800	Inhal	Non-Cancer.
75–35–4	1,1-Dichloroethylene	40	Inhal	Cancer.
96–18–4	1,2,3-Trichloropropane			
95–94–3	1,2,4,5-Tetrachlorobenzene			
120–82–1	1,2,4-Trichlorobenzene	2400	Inhal	Non-Cancer.
96–12–8	1,2-Dibromo-3-chloropropane			
107–06–2	1,2-Dichloroethane	300	Inhal	Cancer.
78–87–5	1,2-Dichloropropane	110	Ingest	Cancer.
122–66–7	1,2-Diphenylhydrazine			
542–75–6	1,3-Dichloropropene	100	Inhal	Cancer.
99–65–0	1,3-Dinitrobenzene			
123–91–1	1,4-Dioxane			
99999–04–0	12378 PeCDFuran			
58–90–2	2,3,4,6-Tetrachlorophenol			
95–95–4	2,4,5-Trichlorophenol	10000	Cap	Non-Cancer.
93–76–5	2,4,5-Trichlorophenoxyacetic acid			
88–06–2	2,4,6-Trichlorophenol	10000	Cap	Cancer.
120–83–2	2,4-Dichlorophenol	2400	Ingest	Non-Cancer.
94–75–7	2,4-Dichlorophenoxyacetic acid (2,4–D)			
105–67–9	2,4-Dimethylphenol	10000	Cap	Non-Cancer.
51–28–5	2,4-Dinitrophenol	1600	Ingest	Non-Cancer.
121–14–2	2,4-Dinitrotoluene	1600	Ingest	Non-Cancer.
95–80–7	2,4-Toluenediamine			
606–20–2	2,6-Dinitrotoluene	780	Ingest	Non-Cancer.
823–40–5	2,6-Toluenediamine			
57117–31–4	23478 PeCDFuran			
99999–03–0	2378 HpCDDioxins			
99999–06–0	2378 HpCDFurans			
99999–02–0	2378 HxCDDioxins			
99999–05–0	2378 HxCDFurans			
99999–01–0	2378 PeCDDioxins			
1746–01–6	2378 TCDDioxin			
51207–31–9	2378 TCDFuran			
95–57–8	2-Chlorophenol	3900	Ingest	Non-Cancer.
126–99–8	2-Chloro-1,3-butadiene			
110–80–5	2-Ethoxyethanol			
91–59–8	2-Naphthylamine			
79–46–9	2-Nitropropane			
88–85–7	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)			
91–94–1	3,3'-Dichlorobenzidine	1000	Ingest	Cancer.
119–90–4	3,3'-Dimethoxybenzidine			
119–93–7	3,3'-Dimethylbenzidine			
107–05–1	3-Chloropropene			
56–49–5	3-Methylcholanthrene			
57–97–6	7,12-Dimethylbenz(a)anthracene			
83–32–9	Acenaphthene	10000	Cap	Non-Cancer.
67–64–1	Acetone (2-propanone)	10000	Cap	Non-Cancer.
75–05–8	Acetonitrile (methyl cyanide)			
98–86–2	Acetophenone			
107–02–8	Acrolein			
79–06–1	Acrylamide			
107–13–1	Acrylonitrile			
309–00–2	Aldrin	40	Ingest	Cancer.
319–84–6	alpha-HCH	100	Ingest	Cancer.
62–53–3	Aniline (benzeneamine)			
7440–36–0	Antimony (and compounds N.O.S.)	310	Ingest	Non-Cancer.
140–57–8	Aramite			
7440–38–2	Arsenic (and compounds N.O.S.)	400	Ingest	Cancer.
7440–39–3	Barium (and compounds N.O.S.)	10000	Cap	Non-Cancer.
71–43–2	Benzene	500	Inhal	Cancer.
92–87–5	Benzidine			
98–07–7	Benzotrichloride			
50–32–8	Benzo(a)pyrene	90	Ingest	Cancer.
205–99–2	Benzo(b)fluoranthene	900	Ingest	Cancer.
100–51–6	Benzyl alcohol			

APPENDIX A–1.—BRIGHT LINE NUMBERS FOR SOIL—Continued

CAS No.	Constituent	Bright Line for soil (ppm)	Path	Basis
100–44–7	Benzyl chloride			
56–55–3	Benz[a]anthracene	900	Ingest	Cancer.
7440–41–7	Beryllium (and compounds N.O.S.)	100	Ingest	Cancer.
319–85–7	beta-HCH	400	Ingest	Cancer.
111–44–4	Bis(2-chloroethyl) ether	300	Inhal	Cancer.
39638–32–9	Bis(2-chloroisopropyl) ether			
117–81–7	Bis(2-ethylhexyl) phthalate	210	Inhal	Csat.
75–27–4	Bromodichloromethane	1800	Inhal	Csat.
74–83–9	Bromomethane	20	Inhal	Non-Cancer.
71–36–3	Butanol	9700	Inhal	Csat.
85–68–7	Butyl benzyl phthalate	530	Inhal	Csat.
7440–43–9	Cadmium (and compounds N.O.S.)	390	Ingest	Non-Cancer.
75–15–0	Carbon disulfide	110	Inhal	Non-Cancer.
56–23–5	Carbon tetrachloride	200	Inhal	Cancer.
57–74–9	Chlordane	500	Ingest	Cancer.
108–90–7	Chlorobenzene	940	Inhal	Non-Cancer.
510–15–6	Chlorobenzilate			
124–48–1	Chlorodibromomethane	1900	Inhal	Csat.
67–66–3	Chloroform	200	Inhal	Cancer.
74–87–3	Chloromethane			
7440–47–3	Chromium (and compounds N.O.S.)	3900	Ingest	Non-Cancer.
218–01–9	Chrysene	10000	Cap	Cancer.
156–59–2	cis-1,2-Dichloroethene	1500	Inhal	Csat.
10061–01–5	Cis-1,3-Dichloropropene			
7440–50–8	Copper			
1319–77–3	Cresols			
98–82–8	Cumene			
57–12–5	Cyanide (amenable)	10000	Cap	Non-Cancer.
72–54–8	DDD	3000	Ingest	Cancer.
72–55–9	DDE	2000	Ingest	Cancer.
50–29–3	DDT	2000	Ingest	Cancer.
2303–16–4	Diallate			
53–70–3	Dibenz(a,h)anthracene	90	Ingest	Cancer.
74–95–3	Dibromomethane (methylene bromide)			
75–71–8	Dichlorodifluoromethane			
75–09–2	Dichloromethane (Methylene Chloride)	7000	Inhal	Cancer.
60–57–1	Dieldrin	40	Ingest	Cancer.
84–66–2	Diethyl phthalate	520	Inhal	Csat.
56–53–1	Diethylstibestrol			
60–51–5	Dimethoate.			
131–11–3	Dimethyl phthalate	1600	Inhal	Csat.
122–39–4	Diphenylamine			
298–04–4	Disulfoton			
84–74–2	Di-n-butyl phthalate	1100	Inhal	Csat.
117–84–0	Di-n-octyl phthalate	10000	Cap	Non-Cancer.
115–29–7	Endosulfan	40	Ingest	Non-Cancer.
72–20–8	Endrin	230	Ingest	Non-Cancer.
106–89–8	Epichlorohydrin			
141–78–6	Ethyl acetate			
60–29–7	Ethyl ether			
97–63–2	Ethyl methacrylate			
62–50–0	Ethyl methanesulfonate			
100–41–4	Ethylbenzene	260	Inhal	Csat.
106–93–4	Ethylene dibromide			
96–45–7	Ethylenethiourea			
52–85–7	Famphur			
206–44–0	Fluoranthene	10000	Cap	Non-Cancer.
86–73–7	Fluorene	10000	Cap	Non-Cancer.
50–00–0	Formaldehyde			
64–18–6	Formic acid			
110–00–9	Furan			
58–89–9	gamma-HCH (Lindane)	500	Ingest	Cancer.
76–44–8	Heptachlor	100	Ingest	Cancer.
1024–57–3	Heptachlor epoxide (a,b,g isomers)	70	Ingest	Cancer.
118–74–1	Hexachlorobenzene	400	Ingest	Cancer.
608–73–1	Hexachlorocyclohexane			
77–47–4	Hexachlorocyclopentadiene	20	Inhal	Non-Cancer.
67–72–1	Hexachloroethane	10000	Cap	Cancer.
70–30–4	Hexachlorophene			
87–68–3	Hexachloro-1,3-butadiene	1000	Inhal	Cancer.

APPENDIX A–1.—BRIGHT LINE NUMBERS FOR SOIL—Continued

CAS No.	Constituent	Bright Line for soil (ppm)	Path	Basis
193–39–5	Indeno(1,2,3-cd)pyrene	900	Ingest	Cancer.
78–83–1	Isobutyl alcohol			
78–59–1	Isophorone	3400	Inhal	Csat
143–50–0	Kepone			
7439–92–1	Lead (and compounds N.O.S.)	4000	Fixed.	
108–31–6	Maleic anhydride			
7439–97–6	Mercury (and compounds N.O.S.)	70	Inhal	Non-Cancer.
126–98–7	Methacrylonitrile			
67–56–1	Methanol			
72–43–5	Methoxychlor	3900	Ingest	Non-Cancer.
78–93–3	Methyl ethyl ketone			
108–10–1	Methyl isobutyl ketone			
80–62–6	Methyl methacrylate			
298–00–0	Methyl parathion			
7439–98–7	Molybdenum			
108–39–4	m-Cresol			
91–20–3	Naphthalene-			
7440–02–0	Nickel (and compounds N.O.S.)	10000	Cap	Non-Cancer.
98–95–3	Nitrobenzene	390	Ingest	Non-Cancer.
62–75–9	N-Nitrosodimethylamine			
86–30–6	N-Nitrosodiphenylamine	10000	Cap	Cancer.
621–64–7	N-Nitrosodi-n-propylamine	90	Ingest	Cancer.
10595–95–6	N-Nitrosomethylethylamine			
100–75–4	N-Nitrosopiperidine			
930–55–2	N-Nitrosopyrrolidine			
55–18–5	N-Nitroso-diethylamine			
924–16–3	N-Nitroso-di-n-butylamine			
3268–87–9	OCDD			
99999–07–0	Octachlorodibenzofuran (OCDF)			
152–16–9	Octamethyl pyrophosphoramide			
95–48–7	o-Cresol	10000	Cap	Non-Cancer.
95–50–1	o-Dichlorobenzene	300	Inhal	Csat.
95–53–4	o-Toluidine			
56–38–2	Parathion			
608–93–5	Pentachlorobenzene			
82–68–8	Pentachloronitrobenzene (PCNB)			
87–86–5	Pentachlorophenol	3000	Ingest	Cancer.
108–95–2	Phenol	10000	Cap	Non-Cancer.
25265–76–3	Phenylenediamine			
298–02–2	Phorate			
85–44–9	Phthalic anhydride			
1336–36–3	Polychlorinated biphenyls	1000	Ingest	Cancer.
23950–58–5	Pronamide			
129–00–0	Pyrene	10000	Cap	Non-Cancer.
110–86–1	Pyridine			
106–47–8	p-Chloroaniline	3100	Ingest	Non-Cancer.
106–44–5	p-Cresol			
106–46–7	p-Dichlorobenzene	10000	Cap	Cancer.
106–49–0	p-Toluidine			
94–59–7	Safrole			
7782–49–2	Selenium (and compounds N.O.S.)	3900	Ingest	Non-Cancer.
7440–22–4	Silver (and compounds N.O.S.)	3900	Ingest	Non-Cancer.
93–72–1	Silvex (2,4,5-TP)			
57–24–9	Strychnine and salts			
100–42–5	Styrene	1400	Inhal	Csat.
99–35–4	sym-Trinitrobenzene			
127–18–4	Tetrachloroethylene	10000	Cap	Cancer.
3689–24–5	Tetraethyl dithiopyrophosphate			
7440–28–0	Thallium			
108–88–3	Toluene	520	Inhal	Csat.
8001–35–2	Toxaphene	600	Ingest	Cancer.
156–60–5	trans-1,2-Dichloroethene	3600	Inhal	Csat.
10061–02–6	Trans-1,3-Dichloropropene			
75–25–2	Tribromomethane (Bromoform)	10000	Cap	Cancer.
79–01–6	Trichloroethylene	3000	Inhal	Cancer.
75–69–4	Trichlorofluoromethane			
126–72–7	Tris(2,3-dibromopropyl)phosphate			
7440–62–2	Vanadium	5500	Ingest	Non-Cancer.
75–01–4	Vinyl chloride (Chloroethene)	2	Inhal	Cancer.
1330–20–7	Xylenes	320	Inhal	Csat.

APPENDIX A–1.—BRIGHT LINE NUMBERS FOR SOIL—Continued

CAS No.	Constituent	Bright Line for soil (ppm)	Path	Basis
7440–66–6	Zinc (and compounds N.O.S.)	10000	Cap	Non-Cancer.

Appendix A–2 to Part 269—Bright Line Numbers for Ground Water

The Bright Lines for ground water in Appendix A–2 were calculated directly from risk equations in RAGS. Since carcinogens and non-carcinogens pose different kinds of health effects, two sets of risk equations and exposure assumptions are used to calculate Bright Lines for groundwater: For cancer health effects:

$$C = \frac{TR \times AT \times BW \times 365 \text{ days}}{SF \times IR \times EF \times ED}$$

For non-cancer health effects:

$$C = \frac{RfD \times 10 \times BW \times AT \times \times 365 \text{ days}}{IR \times EF \times ED}$$

The exposure assumptions used in the above risk equations are presented in Exhibit 3. These exposure assumptions are consistent with those used to develop the SSLs. For constituents with calculated Bright Lines for ground water less than the detection limit, the groundwater Bright Line is set at the detection limit, as defined by the Exemption Quantitation Criteria (EQC). The ground water Bright Lines for 15 constituents are set at their EQC's.

EXHIBIT 3.—EXPOSURE ASSUMPTIONS USED TO CALCULATE GROUND WATER BRIGHT LINES

			Corresponding HWIR-media assumptions	
			Cancer	Non-Cancer
C	=	Constituent concentration in groundwater	Calculated (mg/l)	Calculated (mg/l).
TR	=	Target excess lifetime cancer risk	$10^{-3—1}$ 70 years	—30 years.
AT	=	Averaging time	70 kg	70 kg.
BW	=	Body weight	Constituent	
SF	=	Oral cancer slope factor	Specific	Constituent.
RfD	=	Oral reference dose	$(mg/kg/day)^{-1}$	Specific.
IR	=	Groundwater ingestion rate		(mg/kg/day).
EF	=	Exposure frequency	2 liters/day	2 liters/day.
ED	=	Exposure duration	350 days, 30 years	350 days, 30 years.

TABLE TO APPENDIX A–2.—BRIGHT LINES FOR GROUNDWATER

CAS No.	Constituent	Groundwater Bright Line (mg/l)	Basis
630–20–6	1,1,1,2-Tetrachloroethane	3	Cancer.
71–55–6	1,1,1-Trichloroethane	(1)	
79–34–5	1,1,2,2-Tetrachloroethane	0.4	Cancer.
79–00–5	1,1,2-Trichloroethane	1	Non-Cancer.
76–13–1	1,1,2-Trichloro-1,2,2-trifluoroethane	10000	Non-Cancer.
75–34–3	1,1-Dichloroethane	0.9	Cancer.
75–35–4	1,1-Dichloroethylene	0.1	Cancer.
96–18–4	1,2,3-Trichloropropane	2	Non-Cancer.
95–94–3	1,2,4,5-Tetrachlorobenzene	0.1	Non-Cancer.
120–82–1	1,2,4-Trichlorobenzene	4	Non-Cancer.
96–12–8	1,2-Dibromo-3-chloropropane	0.06	Cancer.
107–06–2	1,2-Dichloroethane	0.9	Cancer.
78–87–5	1,2-Dichloropropane	1	Cancer.
122–66–7	1,2-Diphenylhydrazine	0.1	Cancer.
542–75–6	1,3-Dichloropropene	0.1	Non-Cancer.
99–65–0	1,3-Dinitrobenzene	0.04	Non-Cancer.
123–91–1	1,4-Dioxane	8	Cancer.
99999–04–0	12378 PeCDFuran	0.00001	Cancer.
58–90–2	2,3,4,6-Tetrachlorophenol	10	Non-Cancer.
95–95–4	2,4,5-Trichlorophenol	40	Non-Cancer.
93–76–5	2,4,5-Trichlorophenoxyacetic acid	4	Non-Cancer.
88–06–2	2,4,6-Trichlorophenol	8	Cancer.
120–83–2	2,4-Dichlorophenol	1	Non-Cancer.
94–75–7	2,4-Dichlorophenoxyacetic acid (2,4-D)	4	Non-Cancer.
105–67–9	2,4-Dimethylphenol	7	Non-Cancer.
51–28–5	2,4-Dinitrophenol	0.7	Non-Cancer.
121–14–2	2,4-Dinitrotoluene	0.1	Cancer.
95–80–7	2,4-Toluenediamine	0.03	Cancer.
606–20–2	2,6-Dinitrotoluene	0.1	Cancer.
823–40–5	2,6-Toluenediamine	70	Non-Cancer.
57117–31–4	23478 PeCDFuran	0.000001	Cancer.
99999–03–0	2378 HpCDDioxins	0.00005	Cancer.
99999–06–0	2378 HpCDFurans	0.00005	Cancer.

TABLE TO APPENDIX A–2.—BRIGHT LINES FOR GROUNDWATER—Continued

CAS No.	Constituent	Groundwater Bright Line (mg/l)	Basis
99999–02–0	2378 HxCDDioxins	0.000005	Cancer.
99999–05–0	2378 HxCDFurans	0.000005	Cancer.
99999–01–0	2378 PeCDDioxins	0.000001	Cancer.
1746–01–6	2378 TCDDioxin	0.0000005	Cancer.
51207–31–9	2378 TCDFuran	0.000005	Cancer.
95–57–8	2-Chlorophenol	2	Non-Cancer.
126–99–8	2-Chloro-1,3-butadiene	(1)	
110–80–5	2-Ethoxyethanol	100	Non-Cancer.
91–59–8	2-Naphthylamine	0.1	Cancer.
79–46–9	2-Nitropropane	(1)	
88–85–7	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	0.4	Non-Cancer.
91–94–1	3,3′-Dichlorobenzidine	0.2	Cancer.
119–90–4	3,3′-Dimethoxybenzidine	6	Cancer.
119–93–7	3,3′-Dimethylbenzidine	0.01	EQC Floor.
107–05–1	3-Chloropropene	(1)	
56–49–5	3-Methylcholanthrene	0.01	EQC Floor.
57–97–6	7,12-Dimethylbenz(a)anthracene	0.01	EQC Floor.
83–32–9	Acenaphthene	20	Non-Cancer.
67–64–1	Acetone (2-propanone)	40	Non-Cancer.
75–05–8	Acetonitrile (methyl cyanide)	2	Non-Cancer.
98–86–2	Acetophenone	40	Non-Cancer.
107–02–8	Acrolein	7	Non-Cancer.
79–06–1	Acrylamide	0.1	EQC Floor.
107–13–1	Acrylonitrile	0.2	Cancer.
309–00–2	Aldrin	0.005	Cancer.
319–84–6	alpha-HCH	0.01	Cancer.
62–53–3	Aniline (benzeneamine)	10	Cancer.
7440–36–0	Antimony (and compounds N.O.S.)	0.1	Non-Cancer.
140–57–8	Aramite	3	Cancer.
7440–38–2	Arsenic (and compounds N.O.S.)	0.05	Cancer.
7440–39–3	Barium (and compounds N.O.S.)	30	Non-Cancer.
71–43–2	Benzene	3	Cancer.
92–87–5	Benzidine	0.03	EQC Floor.
98–07–7	Benzotrichloride	0.007	Cancer.
50–32–8	Benzo(a)pyrene	0.01	Cancer.
205–99–2	Benzo(b)fluoranthene	0.1	Cancer.
100–51–6	Benzyl alcohol	100	Non-Cancer.
100–44–7	Benzyl chloride	0.5	Cancer.
56–55–3	Benz[a]anthracene	0.2	Cancer.
7440–41–7	Beryllium (and compounds N.O.S.)	0.02	Cancer.
319–85–7	beta-HCH	0.05	Cancer.
111–44–4	Bis(2-chloroethyl) ether	0.08	Cancer.
39638–32–9	Bis(2-chloroisopropyl) ether	1	Cancer.
117–81–7	Bis(2-ethylhexyl) phthalate	6	Cancer.
75–27–4	Bromodichloromethane	0.7	Cancer.
74–83–9	Bromomethane	0.5	Non-Cancer.
71–36–3	Butanol	40	Non-Cancer.
85–68–7	Butyl benzyl phthalate	70	Non-Cancer.
7440–43–9	Cadmium (and compounds N.O.S.)	0.2	Non-Cancer.
75–15–0	Carbon disulfide	40	Non-Cancer.
56–23–5	Carbon tetrachloride	0.3	Non-Cancer.
57–74–9	Chlordane	0.02	Non-Cancer.
108–90–7	Chlorobenzene	7	Non-Cancer.
510–15–6	Chlorobenzilate	0.3	Cancer.
124–48–1	Chlorodibromomethane	1	Cancer.
67–66–3	Chloroform	4	Non-Cancer.
74–87–3	Chloromethane	(1)	
7440–47–3	Chromium (and compounds N.O.S.)	2	Non-Cancer.
218–01–9	Chrysene	1	Cancer.
156–59–2	cis-1,2-Dichloroethene	4	Non-Cancer.
10061–01–5	Cis-1,3-Dichloropropene	0.1	Non-Cancer.
7440–50–8	Copper	10	Non-Cancer.
1319–77–3	Cresols	20	Non-Cancer.
98–82–8	Cumene	10	Non-Cancer.
57–12–5	Cyanide (amenable)	7	Non-Cancer.
72–54–8	DDD	0.4	Cancer.
72–55–9	DDE	0.3	Cancer.
50–29–3	DDT	0.2	Non-Cancer.
2303–16–4	Diallate	1	Cancer.
53–70–3	Dibenz(a,h)anthracene	0.002	Cancer.

TABLE TO APPENDIX A–2.—BRIGHT LINES FOR GROUNDWATER—Continued

CAS No.	Constituent	Groundwater Bright Line (mg/l)	Basis
74–95–3	Dibromomethane (methylene bromide)	4	Non-Cancer.
75–71–8	Dichlorodifluoromethane	70	Non-Cancer.
75–09–2	Dichloromethane (Methylene Chloride)	10	Cancer.
60–57–1	Dieldrin	0.005	Cancer.
84–66–2	Diethyl phthalate	300	Non-Cancer.
56–53–1	Diethylstibestrol	0.02	EQC Floor.
60–51–5	Dimethoate	0.07	Non-Cancer.
131–11–3	Dimethyl phthalate	4000	Non-Cancer.
122–39–4	Diphenylamine	9	Non-Cancer.
298–04–4	Disulfoton	0.01	Non-Cancer.
84–74–2	Di-n-butyl phthalate	40	Non-Cancer.
117–84–0	Di-n-octyl phthalate	7	Non-Cancer.
115–29–7	Endosulfan	0.02	Non-Cancer.
72–20–8	Endrin	0.1	Non-Cancer.
106–89–8	Epichlorohydrin	0.7	Non-Cancer.
141–78–6	Ethyl acetate	300	Non-Cancer.
60–29–7	Ethyl ether	70	Non-Cancer.
97–63–2	Ethyl methacrylate	30	Non-Cancer.
62–50–0	Ethyl methanesulfonate	0.02	EQC Floor.
100–41–4	Ethylbenzene	40	Non-Cancer.
106–93–4	Ethylene dibromide	0.001	Cancer.
96–45–7	Ethylenethiourea	0.03	Non-Cancer.
52–85–7	Famphur	0.02	EQC Floor.
206–44–0	Fluoranthene	10	Non-Cancer.
86–73–7	Fluorene	10	Non-Cancer.
50–00–0	Formaldehyde	70	Non-Cancer.
64–18–6	Formic acid	700	Non-Cancer.
110–00–9	Furan	0.4	Non-Cancer.
58–89–9	gamma-HCH (Lindane)	0.07	Cancer.
76–44–8	Heptachlor	0.02	Cancer.
1024–57–3	Heptachlor epoxide (alpha, beta, gamma)	0.005	Non-Cancer.
118–74–1	Hexachlorobenzene	0.05	Cancer.
608–73–1	Hexachlorocyclohexane	0.05	Cancer.
77–47–4	Hexachlorocyclopentadiene	3	Non-Cancer.
67–72–1	Hexachloroethane	0.4	Non-Cancer.
70–30–4	Hexachlorophene	0.1	Non-Cancer.
87–68–3	Hexachloro-1,3-butadiene	1	Cancer.
193–39–5	Indeno(1,2,3-cd)pyrene	0.1	Cancer.
78–83–1	Isobutyl alcohol	100	Non-Cancer.
78–59–1	Isophorone	70	Non-Cancer.
143–50–0	Kepone	0.02	EQC Floor.
7439–92–1	Lead (and compounds N.O.S.)	(1)	
108–31–6	Maleic anhydride	40	Non-Cancer.
7439–97–6	Mercury (and compounds N.O.S.)	0.1	Non-Cancer.
126–98–7	Methacrylonitrile	0.04	Non-Cancer.
67–56–1	Methanol	200	Non-Cancer.
72–43–5	Methoxychlor	2	Non-Cancer.
78–93–3	Methyl ethyl ketone	200	Non-Cancer.
108–10–1	Methyl isobutyl ketone	20	Non-Cancer.
80–62–6	Methyl methacrylate	30	Non-Cancer.
298–00–0	Methyl parathion	0.09	Non-Cancer.
7439–98–7	Molybdenum	2	Non-Cancer.
108–39–4	m-Cresol	20	Non-Cancer.
91–20–3	Naphthalene	10	Non-Cancer.
7440–02–0	Nickel (and compounds N.O.S.)	7	Non-Cancer.
98–95–3	Nitrobenzene	0.2	Non-Cancer.
62–75–9	N-Nitrosodimethylamine	0.01	EQC Floor.
86–30–6	N-Nitrosodiphenylamine	20	Cancer.
621–64–7	N-Nitrosodi-n-propylamine	0.01	EQC Floor.
10595–95–6	N-Nitrosomethylethylamine	0.01	EQC Floor.
100–75–4	N-Nitrosopiperidine	0.02	EQC Floor.
930–55–2	N-Nitrosopyrrolidine	0.04	Cancer.
55–18–5	N-Nitroso-diethylamine	0.02	EQC Floor.
924–16–3	N-Nitroso-di-n-butylamine	0.02	Cancer.
3268–87–9	OCDD	0.0005	Cancer.
99999–07–0	Octachlorodibenzofuran (OCDF)	0.0005	Cancer.
152–16–9	Octamethyl pyrophosphoramide	0.7	Non-Cancer.
95–48–7	o-Cresol	20	Non-Cancer.
95–50–1	o-Dichlorobenzene	30	Non-Cancer.
95–53–4	o-Toluidine	0.4	Cancer.

TABLE TO APPENDIX A–2.—BRIGHT LINES FOR GROUNDWATER—Continued

CAS No.	Constituent	Groundwater Bright Line (mg/l)	Basis
56–38–2	Parathion	2	Non-Cancer.
608–93–5	Pentachlorobenzene	0.3	Non-Cancer.
82–68–8	Pentachloronitrobenzene (PCNB)	0.3	Cancer.
87–86–5	Pentachlorophenol	0.7	Cancer.
108–95–2	Phenol	200	Non-Cancer.
25265–76–3	Phenylenediamine	2	Non-Cancer.
298–02–2	Phorate	0.07	Non-Cancer.
85–44–9	Phthalic anhydride	700	Non-Cancer.
1336–36–3	Polychlorinated biphenyls	0.01	Cancer.
23950–58–5	Pronamide	30	Non-Cancer.
129–00–0	Pyrene	10	Non-Cancer.
110–86–1	Pyridine	0.4	Non-Cancer.
106–47–8	p-Chloroaniline	1	Non-Cancer.
106–44–5	p-Cresol	([1]).	
106–46–7	p-Dichlorobenzene	4	Cancer.
106–49–0	p-Toluidine	0.4	Cancer.
94–59–7	Safrole	0.5	Cancer.
7782–49–2	Selenium (and compounds N.O.S.)	2	Non-Cancer.
7440–22–4	Silver (and compounds N.O.S.)	2	Non-Cancer.
93–72–1	Silvex (2,4,5–TP)	3	Non-Cancer.
57–24–9	Strychnine and salts	0.1	Non-Cancer.
100–42–5	Styrene	70	Non-Cancer.
99–35–4	sym-Trinitrobenzene	0.02	Non-Cancer.
127–18–4	Tetrachloroethylene	4	Non-Cancer.
3689–24–5	Tetraethyl dithiopyrophosphate	0.2	Non-Cancer.
7440–28–0	Thallium	([1])	
108–88–3	Toluene	70	Non-Cancer.
8001–35–2	Toxaphene	0.08	Cancer.
156–60–5	trans-1,2–Dichloroethene	7	Non-Cancer.
10061–02–6	Trans-1,3–Dichloropropene	0.1	Non-Cancer.
75–25–2	Tribromomethane (Bromoform)	7	Non-Cancer.
79–01–6	Trichloroethylene	([1])	
75–69–4	Trichlorofluoromethane	100	Non-Cancer.
126–72–7	Tris(2,3-dibromopropyl)phosphate	0.2	EQC Floor.
7440–62–2	Vanadium	3	Non-Cancer.
75–01–4	Vinyl chloride (Chloroethene)	0.04	Cancer.
1330–20–7	Xylenes	700	Non-Cancer.
7440–66–6	Zinc (and compounds N.O.S.)	100	Non-Cancer.

[1] No Data.

Appendix B to Part 269—Submittal of Treatability Data

Both treatability data and full-scale operating data shall be submitted to EPA for entry into the National Risk Management Research Laboratory (NRMRL) treatability database system. Data from treatability studies shall be submitted as soon as the treatability study (or studies) has been completed. Full-scale operating data shall be submitted every three years, or after the cleanup has been completed, whichever is first.

Data shall be submitted to: Chief, Site Management Support Branch,National Risk Management Research Laboratory,26 West Martin Luther King Drive,Cincinnati, Ohio 45268.

A copy of the entire treatability/performance study should be submitted if possible. No particular format is required for presentation of the data; however, the following information must be included:

—Site/laboratory name and address
—Point of contact
—Technology (or technologies) used
—Chemicals of contamination
—Size of study (i.e., bench top, pilot plant, full scale)
—Volumes treated
—Description of study/abstract
—Beginning and ending concentrations
—Percent removal
—Analytical method
—Source matrix
—Any important operational parameters
—Any other information that the site feels is important

Sites should be aware that any data submitted will be available to the general public through the NRMRL treatability database. Sites should not submit confidential business information (CBI) material.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

Subpart A—General Information

15. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

15a. Section 270.1 (a)(1) is revised to read as follows:

§ 270.1 Purpose and scope of these regulations.

(a) Coverage. (1) These permit regulations establish provisions for the Hazardous Waste Permit Program under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), (Pub. L. 94–580, as amended by Pub. L. 95–609 and by Pub. L. 96–482; 42 U.S.C. 6091 et seq.). They apply to EPA and to approved States to the extent provided in part 271 of this chapter. Other requirements can be found in Part 269 of this chapter.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

16a. Section 271.21 is amended by revising paragraph (b) introductory text, (b)(1), (b)(2) and (e)(2) introductory text; by reserving paragraph (h) and by adding paragraphs (i), (j) and (k) and by adding a table to the end of the section to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's Statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances. Submittals to support Category 1 and Category 2 program revisions (as listed in Table 1) shall be in accordance with paragraph (i) of this section.

(2) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act. In approving or disapproving program revisions, the Administrator shall follow the procedures of paragraph (b) (3) or (4) of this section. Procedures for review and approval of Category 1 and Category 2 program revisions (as listed in Table 1) shall be in accordance with paragraph (i) of this section.

* * * * *

(e) * * *

(2) Federal program changes are defined for purposes of this section as promulgated amendments to 40 CFR parts 124, 270, 260–269 and any self-implementing statutory provisions (i.e., those taking effect without prior implementing regulations) which are listed as State program requirements in this subpart. States must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

* * * * *

(h) (Reserved).

(i) Category 2 program revisions. Category 2 program revisions and prerequisite requirements are identified in Table 1 of this section. The procedures for authorization of Category 2 program revisions are as follows:

(1) The State shall submit an application for authorization of Category 2 program revision(s). The State application shall include:

(i) A certification by the State Attorney General (or the attorney for the State agency(ies) which have independent legal counsel) that the laws and regulations of the State provide adequate authority to implement a State program equivalent to the Federal program as listed in Table 1;

(ii) A certification by the Director (as ''Director'' is defined in 40 CFR 270.2) that the State intends to and has the capability to implement a State program equivalent to the Federal program. EPA may establish essential program elements for any Category 2 rule. When established, the Director's certification shall address each essential element individually.

(iii) An update to the State/EPA Memorandum of Agreement (MOA) provided in § 271.8 or a certification by the Director stating that the current MOA provides for adequate implementation of the program revision(s).

(iv) An update to the Program Description provided in § 271.6 or a certification by the Director stating that the current Program Description adequately addresses implementation of the program revision(s).

(v) Copies of all cited State laws and regulations showing that the cited State laws and regulations are lawfully adopted and fully effective at the time the certifications are signed.

(vi) At the State's discretion, any additional information which the State believes will support the application.

(2) Within 30 days of receipt of a Category 2 program revision application, EPA will review the application to determine if it is complete. If EPA determines that the application is not complete, EPA will provide the State a concise written Statement of the deficiencies of the application.

(3) Within 60 days of determining a Category 2 application is complete, EPA will review the application to determine whether the application describes a State program equivalent to the Federal program and follow the procedures of paragraph (b)(3) of this section for an immediate final rule to publish its decision to authorize or deny authorization of the program revision. The State and EPA may agree to a longer or shorter review period. The State and EPA may agree to use the procedures of paragraph (b)(4) of this section for a proposed/final rule.

(j) For purposes of Category 2 program revisions, State programs will be considered equivalent to the Federal program if the laws and regulations cited by the State provide for a program no less stringent than the analogous Federal program.

(k) For purposes of Category 2 program revisions, State certifications will be considered incomplete when:

(1) Copies of cited statutes or regulations were not included;

(2) The statutes or regulations cited by the State are not in effect;

(3) The State is not yet authorized for certain RCRA rules specified as necessary before seeking authorization of the program revision at issue, as identified in Table 1;

(4) The certification contains significant errors or omissions.

TABLE 1 to § 271.21

Program revision	Prerequisite regulations	Category
HWIR-media rule 40 CFR Part 269 (except 40 CFR 269.30–26934)	Final authorization as defined in § 270.2	2
LDR treatment requirements for media 40 CFR 269.30–26934	LDR Third Third Rule, 55 FR 22520 Jun. 1, 1990.	2
Site-specific LDR treatment variances 40 CFR 268.44	LDR Third Third, 55 FR 22520 Jun. 1, 1990.	2
HWIR-waste rule (60 FR 66344–663469, December 21, 1995)	Final authorization as defined in § 270.2	2
Revised Technical Standards for Hazardous Waste Combustion Facilities April 19, 1996.	Final authorization as defined in § 270.2	2

17. Add a new § 271.28 to subpart A to read as follows:

§ 271.28 Specific authorization provisions for an HWIR-media program.

(a) The essential elements of an HWIR-media program are:

(1) Authority to address all media that contain hazardous wastes listed in Part 261, Subpart D of this chapter, or that exhibit one or more of the characteristics of hazardous waste defined in part 261, subpart C of this chapter.

(2) Authority to address the hazards associated with media that are managed as part of remedial activities and that the Director has determined do not contain hazardous wastes (according to 40 CFR 269.4), but would otherwise be subject to Subtitle C regulation. States that choose to make contained-in decisions only when the concentrations of hazardous constituents in any given media are protective of human health and the environment, absent any additional management standards (i.e., eatable, drinkable concentrations), may receive HWIR-media authorization without certifying their ability to impose management standards on media that no longer contain hazardous waste.

(3) Authority to include, in the definition of media, materials found in the natural environment such as soil, ground water, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids that are inseparable by simple mechanical removal processes and made up primarily of media.

(4) Authority to exclude debris (as defined in 40 CFR 268.2) and non-media cleanup wastes from the requirements of 40 CFR part 269 (except the requirements for Remediation Management Plans).

(5) Authority to use the contained-in principle (or equivalent principles) to remove contaminated media from the definition of hazardous waste only if they contain hazardous constituents at concentrations at or below those specified in appendix A of part 269 of this chapter.

(6) Authority to require compliance with LDR requirements listed in 40 CFR 269.30 through 269.34.

(7) Authority to issue, modify and terminate (as appropriate) permits, orders, or other enforceable documents to impose management standards for media as described in essential elements 1–6 and 8 and 9.

(8) Requirements for public involvement in management decisions for hazardous and non-hazardous media as described in 40 CFR 269.43(e).

(9) Authority to require that data from treatability studies and full scale treatment of media that contain hazardous waste be submitted to EPA for inclusion in the National Risk Management Research Laboratory treatability database.

(b) EPA may withdraw authorization of a State HWIR-media program whenever:

(1) The State has failed to adequately address EPA concerns; or

(2) The State's HWIR-media program does not provide authority for all of the HWIR-media program essential elements as set forth in this section; or

(3) The State's HWIR-media program meets any one of the criteria for general program withdrawal as set forth in § 271.22. When withdrawing a State's HWIR-media program authorization, EPA will use the procedures of § 271.21(b)(4) for a proposed/final rule to provide notice of the proposed authorization decision.

(c) Following withdrawal of a State's HWIR-media program, the State is barred from making contained-in decisions or from approving RMPs and EPA will implement the Federal HWIR-media program in the State. RMPs issued by a State pursuant to its HWIR-media program prior to program withdrawal will remain in effect; however, EPA may use its enforcement authorities to impose additional requirements on media managed pursuant to such RMPs, as necessary to protect human health and the environment.

(d) Any person may, at any time, submit written information to EPA alleging inadequate State performance of an authorized HWIR-media program and EPA will consider such information when making decisions about the appropriate phase of monitoring for a State HWIR-media program. EPA will provide copies of all such written information to the Director and give the State at least 30 days to respond. Following receipt of the State's response, EPA will respond to all such information in writing. EPA and the State may agree to waive the opportunity for State response.

[FR Doc. 96–10096 Filed 4–26–96; 8:45 am]

BILLING CODE 6560–50–P

federal register

Monday
April 29, 1996

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 361, et al.

Rules of Practice for Motor Carrier Proceedings, Investigations, Disqualifications and Penalties; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 361, 362, 363, 364, 385, 386 and 391

[FHWA Docket No. MC–96–18]

RIN 2125–AD64

Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its rules of practice for motor carrier safety, hazardous materials, and other enforcement proceedings, motor carrier safety rating procedures, driver qualification proceedings, and its schedule of penalties for violations of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. The FHWA further proposes to add provisions on investigative authority and procedures and general motor carrier responsibilities. These rules would increase the efficiency of the practices, consolidate existing administrative review procedures, enhance due process and the awareness of the public and regulated community, and accommodate recent programmatic changes. The rules would apply to all motor carriers, other business entities, and individuals involved in motor carrier safety and hazardous materials administrative actions and proceedings with the FHWA after the effective date of the final rule.

DATES: Comments must be received on or before July 29, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–96–18, FHWA, Office of the Chief Counsel, HCC–10, Room 4232, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Paul Brennan, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Introduction

This rulemaking includes the first comprehensive rewrite of the FHWA's rules of practice for motor carrier administrative proceedings since 1985. It is the forerunner of a comprehensive revision of the Federal Motor Carrier Safety Regulations (FMCSR) anticipated to follow the completion of a zero-based review of those regulations presently underway in the agency. These proposed regulations would appear in previously unused chapters of that portion of the Code of Federal Regulations reserved for the FMCSR, thus leaving ample room for the future revisions. The current rules of practice for safety enforcement and driver qualification proceedings, found in 49 CFR part 386 and in § 391.47, would be replaced by new part 363. New part 361 restates, explains and expands upon statutory authority, administrative enforcement powers, and general responsibilities. New part 364 is the first general treatment of penalties for violations of safety rules provided in regulatory form. The amendments embodied in these three proposed parts are based on the FHWA's experience enforcing the motor carrier safety regulations through part 386. It is intended that the new procedures would make administrative actions and proceedings more efficient while enhancing the guarantee of due process to carriers, individuals, and other entities by substantially increasing awareness of the consequences of noncompliance with commercial motor vehicle safety and hazardous materials regulations.

New part 362 would replace current part 385, which provides administrative review procedures within the safety ratings process. Safety ratings continue to gain in relative importance in the entire safety program in response to legislative mandate, as a part of agency programmatic changes, and in the significance attached to the ratings by the industry itself. Updated procedures will allow for better accommodation of these interests. Parts 385 and 386 would be deleted and reserved for future use.

This rulemaking preamble will first briefly discuss the current statutory background. Each proposed part is then analyzed by describing some of the antecedents of any corresponding current procedures, followed by a section-by-section analysis of the proposed rules. Finally, the proposed rules themselves appear.

Statutory Background

Congress has delegated certain powers to regulate interstate commerce to the Department of Transportation in numerous pieces of legislation, most notably in the Department of Transportation Act (DOT Act), section 6, Pub. L. 85–670, 80 Stat. 931 (1966). Section 55 of the DOT Act transferred the authority of the Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce to the Federal Highway Administration (the agency), an operating administration of the DOT. 49 U.S.C. 104. This authority, first granted to the ICC in the Motor Carrier Act of 1935, Pub. L. 74–255, 49 Stat. 543, now appears in 49 U.S.C. Chapter 315. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations (FMCSRs), appearing generally at 49 CFR parts 390–399. The administrative powers to enforce Chapter 315 were also transferred from the ICC to the DOT in 1966, and appear in 49 U.S.C. Chapter 5.

The Motor Carrier Safety Act of 1984 (1984 Act), Pub. L. 98–554, 98 Stat. 2832, restated, for the first time, the interstate safety authority in terms of particular classes of commercial motor vehicles (CMV). These statutory classes coincided identically with the definition of CMV adopted by the agency in the existing FMCSRs issued under the Motor Carrier Act of 1935. The 1984 Act is codified at 49 U.S.C. Chapter 311, Subchapter III. These two largely overlapping statutes, i.e., Chapters 311 and 315, serve as parallel and complementary authorities for issuance of safety regulations for motor carriers and commercial motor vehicles operating in interstate commerce.

It should be noted that both chapters define interstate commerce as trade, traffic, or transportation in the United States which is between a place in a state and a place outside of such state or is between two places in the same state through another state or place outside the state. The DOT and the ICC interpret as within this jurisdiction transportation wholly within a state which is part of a continuing through movement of property or passengers across state lines. This ''crossing state lines'' definition represents a delegation of less than the full power possessed by Congress to regulate interstate commerce. A more complete delegation is found in other laws in which all trade, traffic, and transportation affecting interstate commerce is deemed

interstate commerce regardless of its direct connection with a movement of goods across state lines.

For example, the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Pub. L. 99–570, 100 Stat. 3 207–170, 49 U.S.C. chapter 313) applies to trade, traffic, and transportation on public highways wholly within a state as affecting interstate commerce because such trade, traffic and transportation intermingles with cross-border movements and therefore affects interstate commerce. The CMVSA established a national commercial driver's license program (CDL) for all drivers of CMVs, which were defined to exclude certain smaller vehicles covered under the 1984 Act and longstanding FHWA regulations, unless the agency determined that it was appropriate to include them. The FHWA did restrict the CDL program to larger vehicles. At the same time, the CMVSA extended jurisdictional coverage to drivers in commerce that had previously been considered entirely intrastate and thus beyond the jurisdictional reaches of the earlier acts. This was a major departure from the traditional, ICC-inherited zone of jurisdiction based on the origin and destination of the cargo being transported. The distinction can be seen most readily in drug testing requirements, which were initially issued by DOT 1989 under its parallel general safety authority in sections 31502 and 31136. Congress enacted specific drug and alcohol testing statutory requirements in 1991 by amending the CMVSA (49 U.S.C. 31306). This action had the effect of expanding the reach of testing from drivers of vehicles carrying interstate cargo to drivers of any vehicles meeting the definition of ''commercial motor vehicle'' provided in the CMVSA, which, by their very nature, affect interstate commerce.

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) Pub. L. 101–615, 104 Stat. 3244, replacing the Hazardous Materials Transportation Act (HMTA), Pub. L. 93–633, 88 Stat. 2156 (1975) required the DOT to issue regulations for the safe transportation of hazardous materials in inter- and intrastate commerce. 49 U.S.C. Chapter 51. The Research and Special Programs Administration (RSPA) of DOT issues the Hazardous Materials Regulations (HMR), which provide standards on the classification, packaging, handling, and registration of hazardous materials. The FHWA enforces the HMR in relation to the transportation of hazardous materials by highway.

The Motor Carrier Act of 1980, Pub. L. 96–296, 94 Stat. 793, and the Bus Regulatory Reform Act of 1982, Pub. L. 97–261, 96 Stat. 1121, established requirements for minimum levels of insurance for for-hire interstate motor carriers and all carriers of certain hazardous materials in inter- and intrastate commerce. 49 U.S.C. 31138–31139.

The Intermodal Safe Container Act of 1992, Pub.L. 102–548, 106 Stat. 3646, established weight certification requirements for tenderors and carriers of intermodal containers. 49 U.S.C. Chapter 59.

The various acts authorize the enforcement of the FMCSRs and HMRs and provide both civil and criminal penalties for violations. In practice, when circumstances dictate that an enforcement action be instituted, civil penalties are more commonly sought than criminal sanctions. The administrative rules proposed in this rulemaking apply, among other things, to the administrative adjudication of civil penalties assessed for violations of the FMCSR and the HMR.

Analysis

Part 361: Administrative

As proposed, this part sets forth the authority granted to the agency to enforce the commercial motor vehicle safety regulations—the FMCSRs and HMRs. It also describes the practices followed by the agency in exercising this authority and prescribes certain responsibilities imposed by these authorities upon motor carriers and others subject to these acts.

Background

Except for a somewhat obscure provision in appendix B to chapter III, subchapter B of the CFR, the authority for the agency's inspection and other administrative powers appears only in statute (see, e.g., 49 U.S.C. 501–525, 31133, and 5121). Standards and practices for the agency's training materials, policy guidance, and internal manuals which are available to the public, but only upon request. Including these standards and practices in the regulations would provide one convenient and authoritative reference source for all regulatees and put them on notice of what may be expected from Federal enforcement officials as well as what is expected of the regulated community.

Detailed intra-agency delegations of motor carrier safety-related functions at one time appeared in 49 CFR 301.60, but were removed in 1988 following a significant reorganization of the motor carrier safety functions and anticipated republication of the regulations under new authority. 53 FR 2035 (January 26, 1988). Specific delegations of authority from the Administrator to the Office of Motor Carriers now appear only in FHWA organizational documents.

Section-by-Section Analysis

Section 361.101 Purpose

This part would spell out the authority and procedures used by the FHWA to conduct investigations and other enforcement activities related to commercial motor vehicle safety, and the corresponding obligations of the regulated industry. Its purpose is to inform the public of the agency's role, to increase awareness of and compliance with the safety regulations, and to facilitate public contact with FHWA officials enforcing the regulations.

361.102 Authority and Delegations

The first sentence of paragraph (a) would list the chapters of title 49, U.S. Code, in which Congress has conferred on the Secretary of Transportation the authority to regulate commercial motor vehicle safety. Many sections of these chapters are cited throughout this document. One statutory provision which is not mentioned again is 42 U.S.C. 4917, which gives the Secretary the authority to enforce Environmental Protection Agency standards for the limitation of noise emissions resulting from the operation of motor carriers engaged in interstate commerce. The regulations implementing this provision appear in part 325, and would not be amended in this rulemaking.

The second sentence of paragraph (a) would specify the administrative powers the FHWA may employ in carrying out its regulatory authority. The intention of this sentence would be to allow application of all of these powers in the enforcement of each relevant regulatory chapter (i.e., 49 U.S.C. chs. 51, 59, 311, 313, and 315). The powers specified are virtually identical to those listed in title 49 U.S.C. 5121 and 31133, which are to be used in the enforcement of chapters 51 and 311, respectively. The administrative powers to enforce chapter 315 are provided in chapter 5 (see 49 U.S.C. 501(b)). Because the jurisdiction of chapters 311 and 315 are identical as applied by the FHWA, with 49 U.S.C. 31136 and 31502 routinely cited as parallel authority for safety regulations, the administrative powers available to enforce chapter 315 may also be said to be coextensive with those under chapter 311.

The authority to investigate violations of chapter 313, the commercial driver's license program, including drug and alcohol testing, appears in 49 U.S.C. 322 and 31317. (See 12018(a) of the CMVSA of 1986, in which the FHWA is granted the power to issue such regulations as may be necessary to carry out the chapter). It is under this authority that the administrative powers in 49 U.S.C. 31133 and chapter 5 would be applied in this rule to enforcement of chapter 313. Similar authority to enforce chapter 59 may be found in 49 U.S.C. 5907.

Paragraphs (b) and (c) would restate the delegation of these authorities within the Department of Transportation from the Secretary to FHWA officials in the field who routinely contact motor carriers. The delegations are broad in order to allow flexibility. The term ''agency'' is used wherever possible when referring to FHWA officials. The exact delegations from the Secretary of Transportation which have been made to the Federal Highway Administration appear in 49 CFR 1.48. Further delegations within the FHWA appear in FHWA organizational documents (generally FHWA Order 1–1) available for review at FHWA regional offices. See 49 CFR part 301. All of these subdelegations of powers delegated to the Secretary of Transportation are within the agency's discretion and are carefully designed to comport with principles of fairness, due process, and efficiency.

Paragraph (d) would restate the delegation of authority to the States which is provided in 49 U.S.C. 31134. Because States are partners with the Federal Government in enforcing motor carrier safety laws, it is important to reemphasize that nothing in this part would preempt States from enforcing State law. Other parts of the regulations do, however, provide standards for the preemption of State laws. See 49 CFR part 355; part 397, subpart E; and § 382.109.

Section 361.103 Inspection and Investigation

With the exception of paragraph (e), this section would detail the scope of the FHWA power to conduct on-site inspections or, as they are more commonly called, compliance reviews, one of the administrative powers listed in the previous section. It would be reemphasized in paragraph (a) that this power applies in carrying out all of the listed commercial motor vehicle safety chapters of the U.S. Code. The language on the conduct of on-site inspection and copying of records and equipment is taken from 49 U.S.C. 504(c) and 5121(c), with the added proviso that such inspections take place at reasonable times, a fundamental requirement of the law relating to administrative searches. Reasonable times would be further explained in paragraph (c) as the regular working hours of the carrier and certain other times in particular circumstances.

Consistent with 49 U.S.C. 504, the on-site inspection powers would apply only to motor carriers and other regulated entities, such as hazardous materials shippers and tenderors of intermodal containers. The term ''motor carrier'' is broadly defined in 49 CFR 390.5 as including a carrier's agents, officers, and representatives. In contrast, the other investigatory administrative powers, such as the power to issue subpoenas, require production of records, and take depositions, would apply to any entity so long as the administrative action is related to an authorized safety investigation. Thus, an entity perhaps not directly regulated by the FHWA, such as a trucking service company, a non-hazardous materials shipper, or a medical examiner, which possesses information related to an investigation of a violation of the safety regulations by a motor carrier would be required to produce records of that information upon request, enforceable through administrative subpoena and subsequent court order.

No distinction among regulated and other entities in application of any of the administrative powers, including on-site inspections, appears in 49 U.S.C. 31133(a). The proposed regulatory approach, however, is consistent with 49 U.S.C. 502 and 504 and the long-standing practice of the FHWA.

Proposed paragraph (b) restates two general principles of administrative law regarding the scope of investigations, questions about which have arisen in the past during the course of inspections. First, any records related to an investigation may be inspected, regardless of whether or not the FHWA requires the records to be maintained under its regulatory authority. Second, as part of an inspection and investigation, FHWA officials may question carrier officials and employees.

The last sentence of paragraph (b) would incorporate the carrier's right of accompaniment during an inspection, as provided in 49 U.S.C. 31133(b). This means the carrier or its representative must be given the opportunity to accompany the investigator during the inspection of records and equipment. The invitation does not have to be accepted, but it must be offered. Paragraph (d) is modeled on provisions in other agencies' regulations. It is proposed that an employer's consent to allow entry on its business premises of an agency official for purposes of conducting an investigation may not be conditioned on the outcome of the investigation or any resulting enforcement actions.

An agency official denied entry by an employer would not attempt to force entry. The right of access for inspection of records and equipment and administrative subpoenas are enforceable through a civil action in U.S. District Court for an appropriate order and such other relief as may be necessary and proper under the circumstances pursuant to proposed § 304.302 (derived from 49 U.S.C. 507).

Paragraph (e) would restate 49 U.S.C. 505(a) and would be included because it is related to the scope of investigations. Given the fluid nature of the motor carrier industry, reviewing lease arrangements may be essential in determining legal responsibility for compliance with the safety regulations. Paragraph (f) would detail the confidentiality of investigatory reports.

Section 361.104 Definitions

To avoid repetition, the definitions provided in § 390.5 are also applicable to this rule. The few additional definitions necessary for this rule are provided.

Section 361.105 Employer Obligations

Paragraph (a) would simply restate the responsibility of motor carriers and other persons to comply with applicable safety regulations. 49 U.S.C. 31135. Paragraph (b) would establish the duty of persons to post notices of violations when required by the FHWA. See 49 U.S.C. 521(b)(3). In addition, reasonable standards for posting such notices are proposed. Paragraph (c) would inform the public that safety regulations published in the Federal Register are available for review in FHWA offices.

Paragraph (c) also proposes to require that employers maintain a copy of applicable safety regulations and make it available to employees upon request. It has long been a requirement that employers assure compliance by their employees of the safety regulations (see 49 CFR 390.11). This obligation could not be met without ready access to the governing regulations. 49 U.S.C. 31502 authorizes the Secretary to prescribe requirements for the ''safety of operation and the equipment'' of motor carriers and the practical mandate to maintain an accessible source of knowledge of the requirements is clearly within this authority. The FHWA does not consider this an increased paperwork burden because printed copies of the regulations are readily available from a number of sources in addition to the

Government Printing Office at little or no cost.

Paragraphs (d) through (e) would reiterate the on-site inspection process from the point of view of the person being investigated.

Section 361.106 Vehicle Inspection

Although the FHWA does not generally focus its enforcement efforts on safety equipment inspections of CMVs on the roadside, this section would mirror 49 U.S.C. 31142, which provides the authority to conduct such inspections. Vehicles may also be inspected at a motor carrier's terminal. See 49 U.S.C. 504(c).

Section 361.107 Complaints

Little in this proposed section goes beyond the statutory language. Paragraphs (a) through (e) would be a mixture of 49 U.S.C. 506(b) and 31143(a), which set forth the FHWA's procedure and obligations in responding to complaints of violations of the safety regulations lodged by members of the public. The only addition to the statutes is the second sentence of paragraph (b), which would clarify what constitutes a nonfrivolous complaint. Proposed paragraphs (f) through (g) repeat the prohibitions in 49 U.S.C. 31105(a) on retaliation against employees who file complaints alleging violations of the safety regulations. Because of the numerous questions which the FHWA regularly receives in this area, paragraph (h) would inform the public that the prohibitions are enforced by the Department of Labor and cites the relevant regulations.

Section 361.108 Administrative Subpoenas

The administrative subpoena power would be elaborated, as authorized in 49 U.S.C. 502(d).

Section 361.109 Depositions and Production of Records

Two more administrative powers would be elaborated, as authorized in 49 U.S.C. 502 (e) and (f).

Part 362: Safety Ratings

This part would set forth the standards and procedures applicable to the determination of a motor carrier's safety fitness and the issuance of a safety rating by the FHWA.

Background

Section 215 of the 1984 Act, enacted on October 30, 1984 (now codified at 49 U.S.C. 31144), required the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles in interstate commerce. Even before the statutory mandate, the FHWA had been providing safety fitness information to the Interstate Commerce Commission since 1967, and had developed a rating system for motor carriers. Following the 1984 Act, the FHWA published an NPRM on June 25, 1986 (51 FR 23088), and issued a final rule on December 19, 1988, with an effective date of January 18, 1989 (53 FR 50961). The regulations are codified at 49 CFR part 385. The regulations were amended by the interim final rule published on August 16, 1991 (56 FR 40801) to implement the provisions of the Motor Carrier Safety Act of 1990 (MCSA of 1990) (section 15 of the Sanitary Food Transportation Act of 1990, Pub. L. 101–500, 104 Stat. 1218) which prohibits a motor carrier that receives an ''unsatisfactory'' safety rating from operating commercial motor vehicles to transport certain hazardous materials or more than 15 passengers.

The regulations established a ''safety fitness standard'' which the FHWA uses for assigning motor carrier safety ratings of ''satisfactory,'' ''conditional,'' or ''unsatisfactory.'' The safety ratings are used to prioritize motor carriers for review and focus enforcement resources on carriers with the most serious compliance problems. The safety ratings had routinely been made available to the ICC for consideration of operating authority applications and self-insurance, and have been available to the Department of Defense in the selection of carriers to transport hazardous materials and passengers, to other governmental and private industry shippers for carrier selection purposes, to insurance companies to assist in risk determinations and to the public upon request.

The current rule also prescribes procedures for administrative review of the rating based on factual disputes, and for requested changes in safety ratings based upon evidence that corrective actions have been taken to bring the motor carrier into compliance with the safety fitness standard.

Since the adoption of the safety rating regulations, the process has been the subject of occasional dispute. To some, the method used in determining a safety rating is abstract and confusing, especially when determined at the same time as, but not necessarily in conjunction with, the decision whether or not to initiate enforcement actions. The existence of both ''unsatisfactory'' and ''conditional'' ratings, moreover, has resulted in unintended significance being given to the ''conditional'' rating. Since it is less than a ''satisfactory'' rating, some shippers and others comparing the performance of various carriers may give the ''conditional'' ratings an overlay negative connotation not intended by the agency. Some motor carriers, on the other hand, equate the satisfactory rating with a level of excellence unintended by the agency and inconsistent with the general meaning of the term ''satisfactory,'' i.e., adequate.

Other motor carriers have argued that a rating may be based on alleged violations of the regulations discovered during on-site audits but not fully documented. It may then become difficult to contest these violations in an administrative proceeding challenging the rating. In practice, the FHWA has addressed this concern by taking a second investigative look at disputed violations.

Although the FHWA believes that current procedures satisfy the due process provisions of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, there is room for improvement and greater efficiency. The situation took on added significance with the enactment of the Motor Carrier Safety Act of 1990 and its requirement that motor carriers that receive an ''unsatisfactory'' safety rating be prohibited from operating commercial motor vehicles to transport hazardous materials and passengers. This prohibition, which becomes effective 45 days after receipt of an ''unsatisfactory'' safety rating, would clearly affect a motor carrier's ability to stay in business. In light of these concerns, and to improve the objectivity of the information on which ratings are based, the FHWA has already made several adjustments to the safety rating methodology and has heightened its responsiveness to carriers exposed to serious consequences following ratings.

Full compliance with all of the safety and hazardous materials regulations should certainly be the objective of all responsible motor carriers. At a minimum, however, a motor carrier must have managerial control over the critical functions of its operations that reflect on safety, i.e., it must have an effective system to assure compliance with the regulations. A negative rating is, of course avoided through full compliance. It is also avoided by adopting reliable measures to assure that the motor carrier's employees know what is required by the regulations, have the opportunity to achieve full compliance, and do not violate those regulations.

In reviewing a motor carrier's operations for rating purposes, the FHWA places more emphasis on compliance with those regulations that have the greatest immediate and direct

impact on safety. In evaluating the several factors that comprise the rating, violations of those regulations will have a greater effect on the overall rating. The FHWA has been using the concepts of ''acute'' and ''critical'' regulations to carry out this purpose. The term ''acute'' refers to regulatory requirements the violations of which would create an immediate risk to persons or property, e.g., using a driver after he has tested positive for alcohol. The term critical refers to those regulatory requirements the violation of which, if occurring in patterns, would indicate a breakdown in effective control over essential safety functions, e.g., using drivers beyond their allowable driving or duty hours. These concepts would now be codified if this proposal becomes final.

It is also being proposed that the safety ratings be reduced to only one category, eliminating both the ''satisfactory'' and ''conditional'' safety rating categories. Conditions may be attached to the avoidance of an ''unsatisfactory'' rating, but they would not place the motor carrier in a rating category from which negative assumptions may be drawn. This raises some additional questions to be resolved in the final rule, e.g., whether and how best to describe those carriers which are not rated ''unsatisfactory'' and what should be done with the ratings of those carriers currently rated ''conditional.''

The FHWA believes that Congress has expressed its will in the MCSA of 1990 (49 U.S.C. 5113) and in subsequent oversight reports that severe consequences should attach to an ''unsatisfactory'' rating. Although the language in that provision employs the terms ''satisfactory'' and ''conditional,'' no particular significance is attributed to those terms other than they are an improvement from the ''unsatisfactory'' classification. This proposal reflects the FHWA's continuing intention to focus on the ''unsatisfactory'' category and assure that before carriers are assigned such a rating, it is indeed a reflection of demonstrably poor compliance or performance. If the unsatisfactory safety rating is to be considered tantamount to a determination that the carrier assigned such a rating should not to be operating commercial motor vehicles in interstate commerce without appropriate corrective measures, then such a carrier should be well below average and the percentage of carriers earning such a rating ought to be relatively small. The information used to assign such a rating should be put to a more strenuous test before consequences attach.

The FHWA is, therefore, also proposing to give motor carriers advance notice of unsatisfactory ratings so that any challenges to the ratings can be resolved before the rating takes effect. In addition, expedited procedures for the review of unsatisfactory ratings are proposed for carriers when their ability to stay in business might be affected by such a rating. Finally, the FHWA is also proposing to recognize a practice that has been evolving over the last few years by affording some discretionary relief to motor carriers adversely affected by ratings that are able to demonstrate a willingness to comply and accept conditions designed to improve their safety management systems and practices.

It must be recognized that the FHWA will never be able to complete an individual on-premises compliance review of every motor carrier in existence. More and more, the information obtained from State accident reports and reports generated by the 2 million roadside inspections conducted each year is being used to identify carriers that may be experiencing safety or compliance problems and therefore pose potential safety risks. (As prescribed in current regulations, this information is also factored into a carrier's rating.) Complaints are also indications of the possible existence of compliance problems, and there is a statutory duty to investigate nonfrivolous complaints. As the amount and reliability of external information grows, the absence of negative indicators becomes a more reliable premise for refraining from individual, on-site compliance reviews. Moreover, a ''satisfactory'' rating produced by a compliance review is only a current assessment of a motor carrier's level of compliance, and its significance obviously diminishes with time.

In a one-category rating system, therefore, an ''unsatisfactory'' rating is definitely a negative finding, which is likely to have adverse impacts on the motor carrier's business opportunities. The remaining group of carriers that are not rated ''unsatisfactory'' would be comprised of those carriers with existing ''satisfactory'' or ''conditional'' ratings (which may be dated) and other carriers that are not rated (this would be the largest group). The latter subgroup of unrated carriers would be comprised both of carriers that survive future compliance reviews without receiving an ''unsatisfactory'' rating and those that have not been subject to on-premises compliance reviews. In this proposal, we would not use any terminology to describe carriers that are not rated ''unsatisfactory,'' so that no connotation, positive or negative, would attach. If readers are particularly opposed to this approach, the FHWA is interested in receiving comments on the use of categories and the proper terminology to be applied to them.

In this proposal, the FHWA would be prescribing the immediate termination of ''satisfactory'' and ''conditional'' ratings. This would have no impact on carriers presently holding such ratings as they would not be grouped in the unsatisfactory category. The FHWA is also particularly interested in comments on this issue.

In recent times, the FHWA has considered programs that would provide incentives to those carriers that demonstrate exceptional performance and compliance. Nothing in this proposal should be interpreted to mean that we have abandoned such concepts. The agency will continue to work with other organizations and associations, such as the Commercial Vehicle Safety Alliance, to develop the potential of using positive incentives to promote compliance.

Finally, the safety rating is only one means of promoting compliance with the safety regulations. The FHWA will continue to employ selective compliance and enforcement measures in the form of inspections, investigations, civil penalty assessments and criminal prosecutions. These will be driven, for the most part, by performance indicators and complaints. We will also continue to rely heavily on the partnership developed with State safety enforcement agencies through the Motor Carrier Safety Assistance Program. Enforcement actions are considered an effective tool to promote compliance and penalties will be imposed for violations of the safety regulations when circumstances warrant, regardless of the carrier's rating. This recognizes that many otherwise satisfactory motor carriers will tolerate violations of the regulations from time to time, or will get careless in their management practices designed to detect and eliminate violations. Enforcement is appropriate in such situations without necessarily affecting a carrier's overall rating.

This following section-by-section analysis explains these changes in more detail.

Section-by-Section Analysis

Section 362.101 Purpose

This section would identify the scope and purpose of the part. The definitions section of part 385 would be removed as unnecessary.

Section 362.102 Motor Carrier Identification Report

This requirement is presently found at § 385.21, and provides that interstate and foreign carriers must file a Motor Carrier Identification Report, Form MCS–150 (copy provided in the appendix), within 90 days of beginning operations. This is essential to an accurate motor carrier census and relates to the assignment of a DOT identification number. It also assists the FHWA in scheduling reviews of unrated motor carriers. Since this is a continuing requirement, the provision in the current rule requiring the filing of the report within 90 days of the effective date of the rule has been eliminated.

Section 362.103 Safety Fitness—Standard and Factors

The safety fitness standard in the current § 385.5 and the factors in § 385.7 would be clarified, simplified and combined into one section. This proposal also elaborates on the factors used to determine the rating and codifies the practice of placing special emphasis on compliance with ''acute'' and ''critical'' regulations.

Section 362.104 Determination of Safety Fitness—Safety Ratings

The current 49 CFR 385.9 would be amended to define the one safety rating that may be issued by the FHWA (''unsatisfactory''), and to describe what constitutes such rating. For example, a carrier would be issued an unsatisfactory rating if it is determined that the carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standards and factors prescribed in proposed § 362.103, and which has resulted in one or more of the specific occurrences listed in § 362.103(b)(1) (i) through (x). In addition, this section provides that an ''unsatisfactory'' safety rating may be avoided based on conditions, such as compliance with specific provisions of the safety or hazardous materials regulations, the requirements of a compliance order or settlement agreement, or notices to abate, which may be imposed at the time the proposed safety rating is issued.

This requirement is not intended to replace the current ''conditional'' safety rating. Rather, it is intended to provide the agency with flexibility to promote compliance with the regulations by obtaining the correction of deficiencies in specific areas of a carrier's operations without calling the motor carrier's entire safety fitness into question. The conditions upon which it would avoid ''unsatisfactory'' would be known by the motor carrier and the agency. No separate status would attach to the rating, nor would the existence or the nature of the conditions be routinely available to the public under § 362.110. The motor carrier could correct deficiencies without having its ability to stay in business negatively affected, as is generally the case with the current ''conditional'' safety rating.

Section 362.105 Unsatisfactory Rated Motor Carriers—Prohibition on Transportation of Hazardous Materials and Passengers; Ineligibility for Federal Contracts

This section would incorporate and clarify the existing prohibitions and penalties listed in section 49 CFR 385.13 that are applicable to motor carriers that receive a safety rating of unsatisfactory. The listing of applicable penalty statutes would be replaced with a reference to the penalty provisions listed in appendix A to part 386 of this chapter (Part 364 in this proposal). Finally, the references to the 45-day period during which a motor carrier must improve the safety rating would be removed and incorporated into the procedures for obtaining review of the rating (new § 362.108, see description below).

Section 362.106 Notification of a Safety Rating

This section would clarify and incorporate the rating notification requirements of the current § 385.11, and establish the concept of a proposed safety rating of unsatisfactory. A proposed safety rating of unsatisfactory would become the motor carrier's final safety rating 45 days after the date the notice of proposed safety rating is received by the motor carrier, unless the carrier petitions for a review or obtains relief pursuant to proposed § 362.108 (see below). This proposed rating incorporates the requirement in the MCSA of 1990 that a motor carrier receiving an unsatisfactory safety rating be given 45 days to improve its rating before the Act's prohibition of hazardous materials and passengers transportation takes effect. It would also eliminate a distinction between carriers based on type of operation by applying the concept of the proposed rating to all unsatisfactory findings and would afford all carriers the opportunity to be heard during that period and to improve the rating before consequences attach. This section also would provide that a proposed safety rating would not be made routinely available to the public until it becomes final. This would ensure that a proposed safety rating of unsatisfactory will not affect a motor carrier's business before the carrier is given the opportunity to improve or challenge its proposed rating.

The FHWA recognizes that the assignment of a negative safety rating often has graver consequences for the rated motor carrier than any civil penalties that might be sought for individual violations considered in the compilation of the rating. Several prohibitions attach to the assignment of an unsatisfactory rating and decisions are made daily by shippers and insurers on the basis of safety ratings. This is a primary purpose of the rating as conceived by Congress and implemented by the agency. For this reason, the agency treats the rating as a valuable compliance and enforcement measure and provides an administrative proceeding to afford the ratee with the opportunity to be heard before the rating is made known. The FHWA believes that withholding information about a proposed rating from the public is consistent with the Freedom of Information Act, which provides an exemption from required release of information compiled for law enforcement purposes (Exemption 7). The exemption applies because (a) a law enforcement proceeding would be pending, i.e. the determination of the motor carrier's safety fitness; and (b) the premature release of a proposed rating could reasonably be expected to cause harm in that the consequences would attach before a final decision was made. Since the purpose of providing the administrative proceeding is to prevent unintended consequences from inchoate determinations, release of proposed ratings to shippers and insurers who may very well act on the information could easily frustrate that purpose. It could also increase demand for expedited adjudication which could adversely impact an orderly consideration of all relevant issues. Moreover, the length of time between a proposed rating and a final rating is finite and would rarely exceed 45 days. The FHWA also recognizes that release of a proposed rating may be unavoidable under some circumstances, but it would be the agency's intent that routine release under § 362.110 would not occur.

Section 362.107 Change to Safety Rating Based on Corrective Actions

This section would continue the remedy presently available in § 385.17 by allowing for a change in an unsatisfactory rating to be requested both within the 45 days the rating remains in a proposed status and at any time after the rating becomes final. The

filing of a petition for change of a proposed rating would not stay this 45-day period, but if the FHWA cannot make a determination within the 45-day period and the motor carrier has submitted evidence that corrective actions have been taken, the period may be extended for up to an additional 10 days. This would allow the agency to prioritize requests based on the consequences a particular carrier may face from an adverse rating. This section would also provide for a higher level agency review of a denial of a request for a rating change. In cases where the resulting unsatisfactory rating causes an out-of-service order to be issued, an expedited review by the Associate Administrator would also be available.

Section 362.108 Administrative Review

This section would consolidate, clarify, and revise the existing procedures in §§ 385.15 and 385.17 dealing with petitions for review of safety ratings. The section would establish a single procedure applicable to reviews of proposed safety ratings of unsatisfactory and of denials of requests for changes in ratings under § 362.106. Petitions for reviews of safety ratings of unsatisfactory under this section would be similar to the procedures in the present § 385.15 applicable to reviews by the Director, Office of Motor Carrier Field Operations, in cases where there are factual or procedural disputes to be resolved. A motor carrier receiving notice of a proposed safety rating of unsatisfactory would still have the option of requesting a change in the rating based on corrective actions taken. This section would provide a carrier selecting that action with the additional opportunity to petition for review if it believes the rating or the denial of a change was based on errors of procedure or fact.

The existing 90-day filing deadline for petitions under this section would be reduced to 45 days for consistency and finality. When the procedure applies to proposed safety ratings of unsatisfactory, the request for review must be submitted during the 45-day period before the proposed rating becomes final. This section would maintain the current statutory requirement that the FHWA complete the review within 30 days in cases where the petition is filed by a motor carrier subject to the hazardous materials and passenger prohibition in § 362.105.

The petitioner would be required to submit with its petition all arguments and information it desires to be considered on review. In most cases, the Director, Office of Field Operations, will complete the review and render a decision on the basis of the written submission. The Director would have the discretion to request additional information or to call a conference. If it is determined that the motor carrier operations still fail to meet the safety fitness standard, the motor carrier would be provided with written notification that its petition has been denied and that the proposed safety rating of unsatisfactory is final. Except as provided below, the decision of the Director, Office of Motor Carrier Field Operations, would become the final agency action. Because the unsatisfactory rating generates an out-of-service order for a passenger or hazardous materials carrier, such motor carrier would have the right to an expedited administrative review of this decision by the Associate Administrator for Motor Carriers in accordance with 5 U.S.C. 554 and corresponding procedures are proposed in part 363. This is a new review procedure proposed to better guarantee due process of law. The expedited review, if timely requested, would be provided within 10 days from the date of the notice of denial of the initial review petition. The Associate Administrator may refer the petition for review for a hearing before an Administrator Law Judge (ALJ). The Associate Administrator or ALJ may stay any safety rating during the pendency of the expedited administrative review.

Section 362.109 Temporary Relief From Rating

This section would provide a means to grant temporary relief to a motor carrier from dire consequences of an unsatisfactory rating upon a showing of willingness to adopt necessary changes in safety management polices and practices and to make good faith efforts to improve safety performance. The temporary relief would be entirely discretionary on the part of the Regional Director, in the case of a petition for change in the rating, and the Director of the Office of Field Operations, in the case of an initial administrative review. The exercise of discretion by these officials is not reviewable as every carrier affected by a proposed rating or final rating is provided with ample opportunity for administrative review in this Part. This provision merely institutionalizes a practice that has been growing in the recent past whereby a rating is ''conditionally rescinded,'' to allow a motor carrier to demonstrate its improved practices in order to earn a better rating. If a motor carrier is forced to cease operating because of an unsatisfactory rating, it presumably would be unable to gather any experience with improved systems that would convince a reviewer that it had indeed committed itself to safety compliance. The proposed procedure would require the motor carrier to operate under a consent order for a period not to exceed 60 days at the conclusion of which a final rating would be assigned.

Section 362.110 Safety Fitness Information

This section would incorporate the requirements of the current § 385.19. The section has been clarified to make clear that the information would also be made available to State agencies.

Part 363: Enforcement Proceedings

The goal of this proposal is to improve the current rules of procedure for motor carrier enforcement proceedings. Mindful that this must also have been the goal each of the numerous times the rules have been amended since their inception in 1969, the task has been approached deliberately. To open the process to new ideas, various external sources have been consulted, notably the Model Adjudication Rules of the Administrative Conference of the United States (December 1993) and various procedural rules of other Federal agencies. On the other hand, in recognition of the importance of the historical context of the rules, the predecessors of the current rules, and their extensive amendments, were reviewed in hopes of identifying shortcomings and determining the underlying rationale for certain provisions which may now seem unnecessary, unclear, or unavailing.

This review reveals that even the first incarnation of motor carrier procedural rules by the FHWA, spare though they may have been, were not created in a vacuum, but were largely based on practices and procedures of the Interstate Commerce Commission from whence the FHWA inherited its motor carrier safety functions. Each subsequent amendment was believed to be necessary to address programmatic or statutory changes or to increase efficiency and fairness. And each amendment or wholesale revision was built on the foundation of previous rules. This effort is no different, notwithstanding the recourse to model rules.

Because of the importance of past practice in understanding both the current system and needed changes, and because such a history has not been compiled elsewhere, a fairly extensive examination of previous rules is offered.

The proposed rules will then be explained in this context.

Background

The current rules are the legacy of two distinct strains of administrative procedures of the ICC. Until 1966, the ICC had the sole responsibility on the Federal level for regulating motor carrier safety. In addition to its pervasive regulation of interstate routes, rates and services through a comprehensive system of certificates of authority to operate, the ICC also established standards for the safety of operation of motor carriers. Interstate Commerce Act, sec. 104, 24 Stat. 379, (1887); added ch. 498, 49 Stat. 546 (1935). Most of the safety standards were enforced through a rather onerous process involving numerous formal steps—opening an investigation, investigation, record production and depositions, proceedings before the full Commission, compliance orders, and, if it came to that, the withdrawal of operating authority.

In addition, the ICC had limited authority under section 222(h) of the Interstate Commerce Act to levy civil, monetary penalties against carriers for failure to keep records, file reports, or respond to questions posed by the ICC, so-called recordkeeping violations. Acts of fraud, misrepresentation, false statements, and intentional violations of nonrecordkeeping requirements in the FMCSRs were punishable solely as criminal offenses in Federal court, or through the formal process relating to operating authority. The section 222(h) recordkeeping violations subject to monetary penalties were enforced by the ICC in civil actions in the United States District Courts in the event informal administrative procedures to resolve such actions were unsuccessful.

The two separate enforcement tracks were carried over to the FHWA after the ICC's safety functions were transferred to DOT. In 1969, the FHWA issued rules of practice for motor carrier proceedings which crystallized the dichotomy. 34 FR 936 (January 22, 1969). Part 385 of title 49 CFR was entitled ''Collection and Compromise of Claims for Forfeiture under Section 222(h) of the Interstate Commerce Act.'' Part 386 provided ''The Rules of Practice for Motor Carrier Safety Proceedings under section 204(c) of the Interstate Commerce Act.''

Part 385 was very brief, providing requirements for claim notices and settlement agreements. Respondents were instructed that they should respond to the claim and should state whether they wished to discuss payment. A response was not mandatory. Section 222(h) claims that did not result in a settlement or to which there was no response were enforced through litigation in U.S. District Court. Mirroring the ICC situation, no administrative procedure was provided to resolve the claims.

As the FHWA's version of the ICC's formal process, part 386 was considerably more involved than part 385 and established the framework for the current rules of procedures.

All proceedings under part 386 alleging safety violations began with issuance of a notice of investigation (NOI) to a motor carrier, a procedural relic of the cumbersome ICC process. Under 49 U.S.C. 506, an order to compel compliance could not be issued without an NOI and an ''opportunity for a proceeding.'' The Federal Highway Administrator assigned to a hearing examiner all NOIs properly contested by the carrier in the form provided in the rule. After a hearing, the hearing examiner issued an order disposing of the proceedings, which was reviewable by the Administrator on his/her own motion or that of a party. The proceedings could also be disposed of by issuance of a consent order pursuant to the agreement of the parties. Improperly contested or unanswered NOIs could result in unilateral issuance of a final order by the Administrator. For the most part, the orders directed the carrier to comply with the safety regulations it was already duty bound to follow.

For enforcement of orders against regulated carriers, the FHWA had to petition the ICC to open its own investigation into the carrier's operating authority, thus bringing the matter back to that cumbersome process. Moreover, a revocation proceeding by the ICC would generally not be commenced without a showing that an FHWA order had been violated.

In 1977, the FHWA made the first extensive revisions to these procedural rules. 42 FR 18076 (April 5, 1977). Part 385 was repealed and its settlement procedures incorporated into part 386. The respondent's statement of desire to discuss payment of the amount of the claim became mandatory and an occasional source of confusion or, at least, an excuse not to file a proper response. It is not difficult to see that a statement expressing a willingness to settle could be seen by the uninitiated as a quasi admission of culpability at odds with a statement contesting the allegations of the claim. Some respondents merely stated they wished to discuss settlement and failed to file a reply consistent with the rules, thereby risking waiver of the right to contest the claim, waiver of the right to a hearing, or worse, default. This situation was exacerbated by regulatory changes in action taken by the FHWA upon a failure to reply.

In the interest of uniformity, the scope of Part 386 was expanded in 1977 to include monetary penalty actions arising under section 222(h) of the ICC Act (formerly processed under part 385) and the HMTA and to include driver qualification determinations. Unfortunately for uniformity, the standards for these proceedings varied in particulars. For example, the commencement of proceedings was trifurcated into issuances of claim letters for civil penalties, letters of disqualification or determinations for driver qualifications, and NOIs for violations of other safety rules. Significantly, monetary penalty assessments were now, for the first time, subject to an extensive administrative process.

In terms of procedures, no longer would all properly contested matters result in a hearing. Instead, ''to expedite the decisionmaking process and to reduce the number of unnecessary hearings,'' the Associate Administrator (AA) for Safety, rather than the Federal Highway Administrator, would only assign matters with material factual issues in dispute to a hearing officer. If no hearing was requested in the reply, the AA could simply issue a final order based on the evidence and arguments submitted.

When no reply was received at all, the outcome varied by the type of proceeding. If a driver failed to reply in accordance with the rules to a letter or determination of disqualification in a driver qualification proceeding, the letter or determination automatically became the final order of the Associate Administrator 30 days later. In contrast, no such automatic procedure existed when no reply at all was made to claim letters or NOIs. The AA still had to issue a final order, although it could be done *sua sponte.*

Also added to part 386 were pre-trial procedures on discovery and motion practice designed to expedite the proceedings and clarify procedural points which had arisen under the 1969 rules.

Minor revisions were made to the rules later in 1977, based on comments received from the public and six months of practice. 42 FR 53965 (October 4, 1977). Most significant among the changes, a motion by a party was required before the AA could issue a final order where no reply was made to the NOI or claim letter. In addition, discovery and amendment of pleadings were expanded to situations in which a

matter was not assigned for a hearing but decided by the AA based on the pleadings. Finally, for matters under the HMTA only, an option was added whereby a respondent could reply to a claim or NOI with a notice to submit evidence, rather than request a hearing, and then submit the evidence at a later date.

In 1985, the rules were again comprehensively amended. 50 FR 40304 (October 2, 1985). The precipitating factors were again statutory changes and internal reorganization. Pursuant to the Motor Carrier Safety Act of 1984 and amendments to the HMTA, the rule contained provisions for the FHWA to seek to enjoin in U.S. District Court carrier actions in violation of the FMCSRs and HMRs and to order out-of-service all carrier operations constituting an imminent hazard to safety.

A section on judicial appeal of final orders was also added to the rule consistent with the 1984 Act. This became important because the 1984 Act authorized the FHWA, for the first time, to assess civil, monetary penalties for non-recordkeeping violations of the FMCSRs. Prior to the 1984 Act, monetary penalties could only be assessed for violations of the HMRs and recordkeeping requirements in section 222(h) of the ICC Act and the FMCSR. The 1984 Act expressly made all penalty assessments subject to the notice and hearing requirements of the Administrative Procedure Act. Thus, the reach and depth of the FHWA's civil penalty authority was greatly expanded, and the procedural rules were amended to reflect this new authority and responsibility.

In terms of procedure, however, the basic trichotomy of the 1977 rules was continued—driver qualification, civil penalty, and NOI proceedings. Despite the sudden predominance of civil penalties in terms of the safety program generally, and, specifically, of the relative number of administrative proceedings, the civil penalty procedures were little changed from the 1977 rules, which, in turn, were largely based on the old ICC NOI procedures. Although these procedures met the requirement in the 1984 Act to comply with the Administrative Procedure Act, they perhaps did not offer the clearest and most efficient method of resolving the new influx of cases.

The civil penalty procedures were amended, however, in several minor ways relevant to this discussion. First, similar to the earlier provisions for driver qualification proceedings, the failure to reply to a claim letter automatically resulted in the letter becoming the final order of the Associate Administrator for the newly organized Office of Motor Carriers (AA) without a separate order having to be issued upon the motion of a party. Unlike the qualification section, however, this seemingly applied only to a complete failure to reply, and not merely a failure to reply in the form provided in the rule. For NOIs, nothing changed in this regard. Final orders continued to be issued by the AA only upon motion of a party. Second, the procedure for notice of intent to submit evidence without a hearing was extended from hazardous materials cases to all civil penalty proceedings. Third, Administrative Law Judges formally replaced hearing officers as arbiters, although this had been the practice for some time. Fourth, the discovery and hearing procedure sections were made more detailed to closer approximate the Federal Rules of Civil Procedure (title 28, U.S.C.).

The important results of the 1985 amendments were the expansion of civil penalty authority and the addition of out-of-service order authority. These two developments further marginalized the venerable NOI process. In practice, civil penalty proceedings came to greatly overshadow the cumbersome NOI proceedings. Instead of having to endure a long administrative process possibly resulting in an order to comply with regulations with which a carrier was already bound to comply, and which could only be enforced through intervention in ICC proceedings, another long process, direct administrative action could be taken against the carrier in the form of financial penalty. If a carrier persisted in a state of noncompliance, it could now be directly ordered out of service as an imminent hazard. An NOI-based order to comply with the regulations paled in comparison with these new powers.

The next revision of the rules made only technical amendments. 53 FR 2035 (January 26, 1988). Added to the authorities and scope sections in part 386 were references to the CMVSA of 1986 (49 U.S.C. Chapter 313), in order to implement the CMVSA-based civil and criminal penalties added to 49 U.S.C. 521(b). The Administrative Law Judge's power to dismiss matters referred by the AA for a hearing was made explicit. And the rather detailed delegations of authority from the Administrator to various positions within the Office of Motor Carriers were removed from the regulations and placed in the FHWA Organization Manual,[1] consistent with an agency-wide trend to maximize flexibility.

A small change was made to the rules on December 19, 1988 (53 FR 50961). The FHWA clarified that an out-of-service order designed to eliminate an imminent hazard applied immediately, pending an opportunity for review within 10 days.

More extensive amendments were made in 1991. 56 FR 10183 (March 11, 1991); NPRM, 55 FR 11224 (March 27, 1990). A new subpart G spelled out the statutory civil penalty assessment criteria and specified the four types of FHWA orders the violation of which could lead to additional penalties. The four types of orders were notice to abate, notice to post, final order, and out-of-service order. New appendix A to part 386 established a penalty schedule ranging from $500 to $10,000 for violations of such orders. These amendments implemented a provision of the 1984 Act (49 U.S.C. 521(b)(7)).

Another 1991 amendment added a ''new'' order to the AA's enforcement arsenal—the compliance order, last heard from in ICC proceedings predating the formation of the DOT. See § 386.21. The compliance order attempted to give meaning to the largely moribund NOI process, the procedures for which nevertheless remained in the regulations. The compliance order became the name of the final order issued by the AA in an NOI proceeding in which a consent order could not be achieved. A compliance order could go beyond the NOI in that it could direct a carrier to ''take reasonable measures beyond the requirements of the regulations, in the time and manner specified, to assure future compliance.'' The order warned that failure to take those measures would constitute a violation of a final order of the AA, subjecting the carrier to the additional penalties of appendix A and an out-of-service order if the carrier's operations constituted an imminent hazard to safety. In practice, it is not common for a compliance order to be issued directing a carrier to take compliance measures beyond those required in the safety regulations, but such measures may be dictated by the circumstances. The rule allows challenges to the reasonableness of these measures. In order to expedite the use of NOIs, the NOI and civil penalty procedures were merged into § 386.14, though the differences in default standards, discussed above, remained. The combination of NOIs and civil penalty

[1] FHWA Orders 1–1, Part I, Chapter 7, Motor Carrier Safety, is available for inspection and copying as provided at 49 CFR part 7, appendix D.

claims into a single administrative proceeding has been permitted since the 1985 rules.

In practice, it is common for NOIs and notices of claims to be both combined or issued separately at the same time in parallel proceedings, on those occasions when NOIs are used. The primary use of the NOI is as a warning that further violations of the same regulations could constitute an imminent hazard and lead to an out-of-service order, as provided in § 386.21(c).

The 1991 rulemaking made two further amendments worth mentioning. First, settlement agreements were amended to require a statement that failure to pay in accordance with the agreement resulted in the original claim amount becoming due and payable immediately. Second, a provision was added to the out-of-service procedure allowing a vehicle in transit at the time it is ordered out of service to proceed to its immediate destination. Both of these concepts are incorporated in the proposed rules.

Section-by-Section Analysis

Subpart A—Civil Penalty Proceedings

Section 363.101 Nature of Proceeding

Civil penalty proceedings would be defined broadly as administrative proceedings in which the FHWA seeks payment of a fine or orders a motor carrier, individual, or other regulated entity, the ''respondent,'' to take some action. Civil penalty proceedings are based on violations of the FMCSRs or HMRs, which must be established administratively by final order of the agency. Civil penalty proceedings would include all motor carrier safety, hazardous materials and intermodal container administrative enforcement proceedings by the FHWA, other than those involving driver qualification and safety ratings. For example, proceedings resulting from issuance of an out-of-service order are civil penalty proceedings.

Driver qualification procedures are proposed in subpart B of this part. Safety ratings are issued and may generally be contested in accordance with proposed part 302. However, when the safety rating has the effect of placing a carrier out of service, the carrier is offered the same opportunity for an expedited hearing as is available to a carrier subject to a direct out-of-service order.

The notice of investigation (NOI) procedure, the resurfaced, ICC-originated process which allows for a finding of violations but provides no penalties, would finally be laid to rest. Any orders, findings, notices, or warnings the NOI procedure may have allowed would be incorporated into the civil penalty process. The use of one set of procedures for all claims arising from a single set of violations should result in clearer standards and greater efficiency, and would eliminate parallel proceedings arising from an NOI and a monetary claim based on a single set of violations.

The procedures are designed to comport with the Administrative Procedure Act and principles of due process. The proposed rules ensure that persons are adequately notified of the violations they are alleged to have committed and of their right to the opportunity to be heard by the agency, and, in the appropriate circumstances, to a hearing before an Administrative Law Judge.

Section 363.102 Notice of Violation (Complaint)

A Notice of Violation setting forth the allegations of the claim of the agency against the respondent would begin a proceeding. Paragraphs (a) and (b) propose the minimum information to be included in the notice. The only item which is not a restatement of part 386 is the reply form at paragraph (a)(5), which will be discussed below. To ensure that respondents are notified of the agency's claim, paragraph (c) would specify as the form of service to be used in issuing the notice one which utilizes a return receipt. This requirement is consistent with current practice.

Section 363.103 Form Reply to Notice of Violation

It is proposed to include with each notice of violation a reply form on which the respondent is asked to check off its intended response to the claim. The respondent may check only one option on the reply form. The choices are to: (1) Pay the penalty, (2) discuss settlement, and (3) contest the claim. If (2) is chosen, respondent retains the right to contest the claim or pay the penalty at a later date, as detailed below. For the first time, replies may be sent by telefax, although respondent retains the burden to prove it has made a timely reply. If no reply form (or payment or answer to the claim) is served on the agency within 15 days, the notice of violation becomes the final order, the violations are established as alleged, and the respondent waives the right to contest the claim.

The intent of these provisions is to increase the efficiency of the notice of claim process currently provided in part 386. Providing one or two time periods in which to respond to claims and disqualification determinations would be simpler than the 3 or 4 periods currently provided in part 386. Though it adds a step, the reply form is designed to provide a clear starting point to the process and to obtain a clear and simple statement from the respondent of its intentions with regard to the claim. Cases involving respondents that do not reply can be processed expeditiously.

On the other hand, the reply form would add flexibility. The agency can easily amend the claim to reflect any changed circumstances discovered as a result of settlement negotiations. Respondents would avoid generating perhaps lengthy and involved replies on the record, only to resolve the matter later outside formal channels.

Because of the immediate severity of an out-of-service order, and the consequent reduction in the time period to resolve contested issues, no reply form is sent along with an out-of-service order. See § 363.110.

Section 363.104 Special Procedures for Out-of-Service Orders

This section is largely a restatement of what presently appears in § 386.72(b)(1), but would add a requirement for personal service, a reference to the penalty for noncompliance, and a provision for expedited adjudication under proposed § 363.110. The authority summarily to order a motor carrier to cease all or parts of its operations because violations of the FMCS are creating an imminent hazard is found at 49 U.S.C. 521(b)(5)(A).

Section 363.105 Payment of the Claim

This is the first, and obviously simplest, resolution to a notice of violation assessing a monetary penalty. Because payment terminates the proceeding, it may be made with or without filing the reply form. However, if payment is chosen on the reply form, but is not made to the agency within the time to reply, the notice becomes the final agency order as if the respondent failed to reply. Paragraph (a) would provide that payment may be made at any time in the course of the proceeding before issuance of a final order. If it takes the form of a settlement agreement, however, it must be done in accordance with § 363.106. Of course, payment of the monetary claim might not terminate the proceeding if some other order is also being sought.

Paragraph (c) makes it clear that payment of the claim is tantamount to a final order finding the facts of the violations as alleged in the notice, unless the parties expressly agree in writing to treat the violations otherwise. This is important because certain future agency enforcement actions may be

based on, and certain consequences may flow from, prior and continued violations of the safety regulations.

Section 363.106 Settlement of Civil Penalty Claims; Generally

Settlement may occur at any time in the process including after the termination of negotiations under § 363.107 and during a hearing. Settlement procedures have been a key feature of the FHWA civil penalty process since their inception in 1969. Settlement of alleged violations before resort to a final formal adjudication is efficient and promotes the partnership of the FHWA and its regulated entities directed toward safer commercial motor vehicle transportation.

The content of settlement agreements would not be substantively altered from that required in part 386. As civil penalty proceedings are not limited in this proposed rule to monetary claims, so may settlement agreements resolve the terms of other orders sought against respondent by the agency. Thus, the consent order procedure in part 386, which provided for issuance by the agency of such other orders, and which could include settlement agreements resolving monetary claims anyway, is no longer necessary.

It should be noted that settlement agreements will contain a finding that certain violations did, in fact, occur. Settlement agreements should not be necessary in cases in which full payment of the claim is made and no other orders are sought or terms placed on respondent. Full payment automatically results in a finding of the violations as alleged in the notice.

Paragraph (d) involves the situation in which partial payment is made by a respondent, with or without an accompanying unilateral expression of the respondent's intent in offering the payment. The FHWA's acceptance of partial payment, as indicated by cashing a check, for instance, in no way should be interpreted as settlement of the claim or as forgiving the remainder of the claim. All settlement agreements must be in the form provided in paragraph (b).

Paragraph (e) would allow execution of settlement agreement during the course of administrative proceedings, upon the consent of parties and without the approval of the AA.

Section 363.107 Settlement Negotiations

In contrast to the general requirements in the preceding section applying in all instances of settlements, this section would establish procedures when the settlement negotiations option is chosen by the respondent on the form reply. Respondents would retain the opportunity to convert the proceeding into a contested claim at any point in the negotiation process. They could do this by requesting an administrative adjudication and filing an answer to the notice of violation. For its part, the agency could discontinue negotiations it feels are not proving fruitful by sending the respondent a final notice of violation.

Paragraph (d) proposes a 90-day limit on this initial negotiation process. If a settlement agreement is not reached within 90 days, the agency may issue a final notice of violation to the respondent. The purpose of this provision is to keep the administrative case moving toward resolution. As justice delayed is justice denied, so does a delayed penalty reduce its effectiveness. Under current practice, some cases in which a respondent has indicated a willingness to settle have a tendency to languish when agreement cannot be readily reached. This provision should help to avoid consequent case backlogs and should actually promote settlement as it pushes the case along the track toward resolution. In accordance with § 363.106, a settlement may be reached at any point in the civil penalty process, including in contested claims being administratively adjudicated.

Paragraph (e) would establish the procedures when a final notice of violation is sent to a respondent after negotiations have been expressly terminated by one of the parties or 90 days have passed without settlement. For flexibility, the final notice may simply incorporate the original notice of violation. For efficiency, if the negotiations have revealed, for example, that one of the claimed violations did not occur, the final notice may be amended deleting that charge. The procedures for replying to the final notice similarly would incorporate those for immediately contesting the original claim. At this point, after negotiations have indicated that the parties cannot agree on resolution of the claim and that it is indeed contested, the respondent would have no choice but to answer the notice in writing.

Section 363.108 Request for an Administrative Adjudication

This section proposes procedures for contested claims. The procedures would apply when the ''contest the claim'' option is chosen on the reply form or when the settlement option is chosen but settlement is not reached. A contested claim would be resolved in an administrative proceeding adjudicated by a neutral third party provided by the agency. Depending on the choice of the respondent and the existence of material factual issues in dispute, the third party may be the Associate Administrator (AA) or an Administrative Law Judge (ALJ). The AA would decide whether or not a case will be referred to an ALJ.

Paragraph (a) would provide a respondent 28 days from receipt of the notice of violation to serve a written answer on the agency contesting the claim. If the answer is responding to an original notice of violation this means that the respondent would be required to send the agency the reply form in 15 days and the written answer within another 13 days after that. Of course, respondent may choose to file an answer within 15 days of the notice of violation, in which case a reply form would be unnecessary. As with the reply form, the answer may be served on the agency by telefax.

The content of the answer in paragraph (c) would be similar to that currently required in replies under Part 386. Paragraph (c)(3) would clarify that referral to an ALJ may not be available in all instances where it is requested, but only where there are factual issues in dispute. Part 386 presently states this concept in terms of an oral hearing, i.e., an oral hearing is only available for cases with factual issues. Questions sometimes arise when contested claims without factual issues are decided by the AA without referral to an ALJ, much less an oral hearing, even though a hearing was requested. Though § 386.16(b) clearly gives the AA this power, as provided by the 1977 amendments, the section on content of replies does not reflect it. The proposed rule clearly states the agency's intent that the opportunity for a hearing does not mean that all contested matters are referred to an ALJ for a hearing. Finally, consistent with the standard in Part 386, failure to request referral to an ALJ would result in a waiver of the right to opportunity for it.

The provision in part 386 allowing the respondent to file a notice of intent to submit evidence without an oral hearing, with its own array of deadlines, would be eliminated as unnecessary. Paragraph (c)(3) would simply give the respondent the option of requesting referral to an ALJ or not. For tactical or efficiency reasons, a respondent may very well wish the AA, instead of an ALJ, to resolve its contested claim, even where factual issues are present. (See, however, discussion under § 363.109).

If the respondent fails to answer the claim, paragraph (d) would provide that the notice of violation becomes the final agency order in the same manner as

when the reply form was not served on the agency. Moreover, merely choosing an administrative adjudication on the reply form without filing an answer would also be deemed a failure to answer.

If the notice is answered, but not in the form provided in this section, the respondent may be found in default in the discretion of the AA or ALJ. Default would have the same effect as a failure to answer. In both situations, the ALJ or AA would issue a final order without inquiry as to the charged violations.

These provisions would clearly assign the power to determine the adequacy of the answer in various situations. Findings of default and failure to answer, and resulting Final Order finding of the violations as alleged, would support any subsequent collection actions taken by the agency.

Section 363.109 Procedures in Administrative Adjudications

All contested claims would be transmitted to the AA to either decide or refer to an ALJ for decision. Only the AA could determine whether or not there are factual issues in dispute and assign an ALJ to resolve a contested claim, unless the AA expressly requests the ALJ to make that determination. Assigning to an ALJ only those cases with apparent or potential factual issues has been a feature of the rules since 1977, and has been upheld in litigation on numerous occasions as complying both with the Administrative Procedure Act and due process principles. Issues of efficiency and adjudicative economy dictate that this standard continue in effect.

The first sentence of subsection (b) proposes that if there are facts in dispute and respondent has requested referral, the AA must refer the matter to an ALJ. Subsection (c) proposes to provide the AA with the discretion to decide the matter in two circumstances: (1) Where referral is requested but there are no factual issues, and (2) where referral is not requested.

There may be another situation between these two poles, however. If respondent has not requested referral, but the AA nevertheless believes referral would be beneficial to resolve a factual or other issue, should the AA have such discretion? May respondents be required to participate in possibly costly adjudication even though respondent is comfortable with potentially ''lesser'' process? The second sentence of subsection (b) would allow referral in those instances in the discretion of the AA. The FHWA requests comments on this issue.

Subsections (d) and (e) would accomplish in two short statements and one reference what the procedures have attempted over the years to do by detail. The Federal Rules of Civil Procedure, the approximation of which served as justification for the ever expanding standards in part 386 on discovery and motion practice, are incorporated into the civil penalty process, thereby eliminating the need for virtually all of subpart D to part 386. The AA and ALJ may suspend or adapt the Federal rules as appropriate, in conformance with the Administrative Procedure Act.

Subsections (f) and (g) would authorize the ALJ to employ appropriate process, including alternative dispute resolution. Subsection (h) would set minimal standards for appearance of representatives of respondents in administrative proceedings.

Subsection (i) would provide that the parties in an administrative adjudication may withdraw the matter under certain circumstances. Withdrawal by a party, or by the consent of the parties, would terminate the jurisdiction of the ALJ.

Section 363.110 Expedited Review by Associate Administrator

This section proposes expedited procedures for administrative review of out-of-service orders or unsatisfactory safety ratings after review by the Director of the Office of Field Operations. Subsection (c) would reduce the time to conduct an entire administrative adjudication to 10 days because subsection (b) provides that the out-of-service order shall remain in effect pending resolution of the contested claim. This last provision has been a part of the regulations since the 1985 amendments added the out-of-service procedure. The FHWA believes that it complies with intent of Congress in the 1984 Act. The rest of subsection (b) would restate the ''immediate destination'' exception which was added to part 386 in the 1991 amendments. In the interest of uniformity, subsection (d) would incorporate the procedures in § 363.109.

Sections 363.111 Through 363.116

With few exceptions, these sections would incorporate the provisions of subpart E of part 386, on decisions and appeals, into the new rule without substantive change. Section 386.66, which set a one year period before considering motions for modification of orders, would not be carried over. There would be no minimum time for an order to be in effect before it may be rescinded or modified by order of the AA or ALJ. Any such motions may be made pursuant to § 363.109(e).

For the sake of clarity, § 363.114 would add a sentence to what is now in § 386.67, liberally interpreting 49 U.S.C. 521(b)(8) to allow judicial review for contested claims resulting in a final agency order, but not for those claims that are resolved through settlement agreement or in which respondent failed to answer or defaulted. The statute provides that judicial review is only available after a hearing. The FHWA believes its interpretation is appropriate because these proposed rules provide for resolution of contested claims in an administrative adjudication without a formal reply. Of course, ultimately the courts must interpret the statute to determine their scope of review.

The grounds for review of an ALJ's decision by the Associate Administrator would be explained in somewhat greater detail in 49 CFR 363.111(b) than current 49 CFR 386.62.

Subpart B—Driver Qualification Proceedings

Section 363.201 Nature of the Proceeding

Driver qualification (DQ) proceedings are the means by which the agency adjudicates challenges to its determinations concerning a driver's qualifications to operate a CMW.

Section 363.202 Commencement of Proceedings

DQ proceedings would begin with a notice of determination or letter of disqualification, which may be sent to a driver unilaterally by the agency, in resolution of a conflict of medical evaluations under § 363.204 (formerly § 391.47), or to notify the driver of the consequences of a conviction for certain driving offenses.

Section 363.203 Answer

The content of an answer is proposed. A failure to answer would result in the notice of determination or letter of disqualification becoming the final order of the agency automatically in the same manner as a failure to answer a notice of violation in a civil penalty proceeding. Thus, the three different standards for failure to reply under Part 386 are condensed into one under this proposed rule.

Section 363.204 Special Proceeding for Resolution of Conflicts of Medical Evaluation

This section, because it is entirely procedural in nature, would be moved from its present location in § 391.47 and remain relatively unchanged. A change is proposed as to the status of drivers

during the pendency of this special proceeding and is discussed under § 363.205, below.

Section 363.205 Driver's Qualification Status Pending Proceedings

Two different statuses are possible under current provisions. A driver is either physically qualified or unqualified. This section would clarify the driver's status during proceedings based on the circumstances that brought about the proceedings. It would also change current § 391.47, which requires that a driver be considered unqualified while any conflict of medical opinion is being resolved. Although the agency operated in the past on a presumption that, in the interest of safety, the driver was unqualified, such a result is not required in all cases. It is likely, moreover, that this presumption inhibited drivers from seeking resolution through the FHWA, which has primary authority to make qualification determinations for drivers in interstate commerce.

After consultations with the Department of Labor and the Equal Employment Opportunity Commission, which have responsibilities for implementing the anti-discrimination provisions of the Rehabilitation Act, 29 U.S.C. 701 *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, respectively, the change in status is being proposed. The changes would allow the driver's status, supported by at least one medical opinion, to remain qualified during the pendency of driver qualification proceedings with respect to the driver's employer if the conflict arose during the term of employment. However, if a driver involved in a conflict is not currently employed, e.g., an applicant, the driver, would be deemed unqualified with respect to a potential employer with which the driver's status is in conflict.

Section 363.206 Administrative Adjudication

The procedures for agency action on answers to notices of determination would track those for administrative adjudication of contested civil penalty claims. The civil penalty administrative procedures would be incorporated by reference.

Subpart C—General Provisions

Section 363.301 Applicability

These general provisions would apply to this part and part 362 on safety ratings.

Section 363.302 Computation of Time

The time computation standards would be largely unchanged from § 386.32 (a) and (b). Those provisions in that section which currently allow the addition of five days to specified time periods to account for use of the U.S. Postal Service in serving documents, § 386.32(c) (1) and (3), would not be carried over to the proposed rule. Instead, the proposed rule would provide that service is complete upon mailing so that the date of the postmark would control.

Section 363.303 Service

A general definition of service would be added to the regulations. A certificate of service would be required to accompany all documents served in an administrative proceeding, except the agency's notice and the respondent's form reply, which occur before a matter is contested. A service list will be provided in the agency's notice, which will establish the persons who must be served with documents. Whereas § 386.31 states these certificate and list requirements in terms of pleadings and motions, this section would make it clear that service requirements apply early in administrative proceedings, before any assignment of an ALJ.

Section 363.304 Extension of Time

This section would be carried over from part 386, with the added provision that an extension of time may be effected pursuant to mutual consent of the parties.

Section 363.305 Administrative Law Judge

This section would enumerate the powers of the ALJs, as well as the limitations on that power. It would also provide for the disqualification of ALJs. The provisions on limitations and disqualification are modeled after the procedural regulations of the Federal Aviation Administration. See 14 CFR 13.205 (b) and (c).

Section 363.306 Certification of Documents

This section would provide good faith standards for the filing of documents in administrative proceedings. Sanctions are also proposed for the ALJ or AA to impose if the standards are not met. This section is based on 14 CFR 13.207.

Section 363.307 Interlocutory Appeals

This section, based on 14 CFR 13.219, would provide standards and procedures for interlocutory appeals to the AA of matters before the ALJ.

Part 364: Violations, Penalties, and Collections

Background

Much of the penalty information in this part appears in the U.S. Code and, until now, has not appeared in published regulations. One exception is appendix A to part 386 on penalties for violations of agency notices and orders, which was published in 1991. Other exceptions are the driver disqualification periods in 49 CFR 383.51 and 391.15 and the special penalties for violations of out-of-service orders in § 383.53, all of which were required to be published by the CMVSA of 1986 and subsequent amendments.

Section-by-Section Analysis

Subpart A—General

Section 364.101 Purpose

The purpose of this proposed subpart is to inform the public of the standards for assessment and collection of penalties for violations of the FMCSRs and HMRs.

Section 364.102 Policy

This section would serve as a general summary of the part. Subsection (a) would state the general policy that penalties serve as a tool to obtain compliance with the regulations. Generally, the enforcement program is but a part, albeit significant, of the mission of the Office of Motor Carriers to reduce highway accidents and injuries by increasing compliance with safety regulations. Most carriers, drivers, and other entities choose to comply with the regulations willingly. Various educational and other compliance programs are available to assist them. For those carriers who intentionally refuse to comply with or carelessly ignore the regulations, however, enforcement may become necessary.

Subsection (b) would list the statutory penalty criteria used by the FHWA to assess penalty amounts. These factors would be explained in depth in § 364.104. The last sentence would inform respondents that information developed in an administrative adjudication may affect the amount of penalty ultimately ordered. Subsection (c) would express the notion that good faith efforts to achieve compliance will be taken into account in assessing penalties or settling claims. Subsection (e) would apply concepts of comity and resource allocation in stating that it is within the discretion of the agency not to act to enforce violations of the safety regulations when another governmental entity has already imposed appropriate penalties for the same violations.

Subpart B—Civil Penalties

Section 364.201 Types of Violation and Maximum Monetary Penalties

The penalty amounts in this section would be listed by the type of violation and would track the structures of the relevant statues.

Subsection (a) would refer to violations of parts 382 and 390–399 of the FMCSRs and is based on the penalty structure in 49 U.S.C. 521(b)(2)(A), part of the 1984 Act. The penalty structure is incorporated into the enforcement scheme for violations of Part 382 drug and alcohol testing requirements in 49 CFR 382.507, as authorized by 49 U.S.C. 31306, 31317, and 322(a).

The statutory description of violation types would be augmented in places by language from the legislative history of the 1984 Act, especially the description in proposed § 364.201(a)(2) of what constitutes a serious pattern of violations. See S. Rep. No. 424, 98th Cong., 2d Sess. 10–13 (1984). The definition of a serious pattern would be further elucidated by the agency's interpretation. The interpretation in § 364.201(a)(1) of a ''knowing'' recordkeeping violation as including violations occurring where the means to verify the incorrect records existed is based on published decisions of ALJs in civil penalty proceedings. See *In the Matter of Trinity Transportation, Inc.*, 55 FR 43291 (October 26, 1990); for other decisions, see Federal Register notices beginning at 55 FR 43264; 55 FR 2924 (January 29, 1990); 57 FR 29710 (June 26, 1992); 58 FR 16916 (March 31, 1993); 58 FR 62450 (November 26, 1993). Various examples of types of violations are also proposed in the section.

Subsection (b) would list violations and amounts pertaining to commercial driver's licenses and is based on 49 U.S.C. 521(b)(2)(B).

Paragraph (1) of subsection (c), on the penalty amount for failing to maintain minimum levels of financial responsibility, is based on 49 U.S.C. 31138–31139. Paragraph (2) would state the rebuttable presumption that lack of proof of insurance indicates lack of insurance. It also states the current enforcement practice which allows rebuttal of that presumption upon presentation of proof within 10 days. Though the statute makes no distinction in penalties, allowing a $10,000 maximum for all violations, paragraph (3) would provide that mere failure to present proof of insurance, where the insurance actually exists, is a separate recordkeeping offense, subject to a much smaller penalty than the failure to have the insurance.

Proposed subsection (d), on violations of the HMRs, is based on 49 U.S.C. 5123. Subsection (e) would represent the current appendix A to part 386, on violations of notices and orders.

Section 364.202 Civil Penalty Assessment Factors

This section would further explain the penalty assessment criteria listed in § 364.102(b). The criteria are statutory and found in 49 U.S.C. 5123(c) and 521(b)(2)(C). The criteria would be categorized as involving either the violation or the violator. The proposed explanation of each factor is based on the agency's reasonable interpretation of the statute in light of current agency practice. Particular attention should be paid to the factor proposed in paragraph (2) of subsection (b), history of prior offenses, which may be used by the agency to determine if a carrier's operations constitute an imminent hazard to safety subject to an out-of-service order. Proposed subsection (c) is a reminder that the application of the factors in a particular case may be used in a decision to pursue means of enforcement other than monetary penalties.

Subpart C—Criminal Penalties and Other Sanctions

Section 364.301 Criminal Penalties

Criminal penalties are rarely pursued by the Federal government of violations of commercial motor vehicle safety regulations. Since passage of the 1984 Act, the object of the great majority of safety enforcement cases has been compliance with the regulations through the assessment of monetary penalties. Other civil penalties, such as out-of-service orders, have also gained in importance since 1984. The commercial motor vehicle safety program is administrative in the first instance. Generally, commercial motor vehicle transportation is a highly regulated industry, with safety as an important part of the overall regulatory scheme. *International Brotherhood of Teamsters* v. *U.S. DOT*, 932 F.2d 1292, 1300 (9th Cir. 1991). The FHWA's regulatory program is not converted into a criminal law enforcement scheme merely because the government also retains certain parallel criminal penalty authority.

The advantage to this structure is that the agency can take direct administrative action against violators, when necessary, supported by the authority to enforce agency orders in court. Before the 1984 Act, the agency had only limited civil and criminal penalty authority which could not be enforced directly by the agency in Federal court. In practice, these cases generally did not receive very high priority in the hierarchy of demands placed upon many United States Attorneys and the courts. This regrettable situation was largely ameliorated with the expanded civil penalty authority of the 1984 Act. This section would serve as notice, however, that the criminal penalty authority still exists. In fact it was enhanced in the 1984 Act. Subsection (e) would notify the public that willful violations may be referred to the Department of Justice for possible criminal enforcement.

Section 364.302 Injunctions

This proposed section is intended to notify the public of the authority of the FHWA to bring civil actions in U.S. District Court to enforce many of its safety regulations and orders, and, in the case of the transportation of hazardous materials, to eliminate an imminent hazard to safety. It is based on 49 U.S.C. 507 and 5122. In practice, the form of relief sought is usually injunctive, typically an order to a motor carrier to cease operations, although the statutes allow all appropriate or necessary relief, including punitive damages.

It is important to note that the regulations and orders which may be enforced in this way are somewhat limited, and do not include all of the safety regulations which have been discussed in this document. Hazardous materials regulations and orders may be enforced, and imminent hazards eliminated, pursuant to 49 U.S.C. 5122. For most, but not all, CMV safety violations not involving hazardous materials, 49 U.S.C. 507 authorizes enforcement actions. But 49 U.S.C. 507 specifically excepts violations of the financial responsibility requirements for motor carriers, found in 49 U.S.C. 31138 and 31139, from the authority to enforce directly through civil action. This is unlike the statutory section authorizing the use of administrative powers (49 U.S.C. 31133), which contains no such exclusion and thus does apply to enforcement of financial responsibility requirements.

Neither chapter 313, on the CDL program, nor chapter 59, on Intermodal Safe Container Transportation, contain any express provisions for injunctive relief, nor are those chapters mentioned at all in 49 U.S.C. 507. Therefore, those chapters are not included in this section articulating the statutory authority for injunctive relief.

Finally, the authority to seek an injunction directly in court (49 U.S.C. 507) should be distinguished from the

authority to administratively order a vehicle, employee, or employer to cease operations which pose an imminent hazard to safety (49 U.S.C. 521(b)(5)(A)). The latter process contemplates an administrative proceeding before any attempts at enforcement in court. This ''out-of-service order'' procedure is discussed in subsections (c) and (d), and may be used to enforce CDL and intermodal container violations.

Section 364.303 Driver Disqualifications

This section would be a restatement of disqualification periods applicable to drivers who commit certain violations. These disqualification sanctions also appear in §§ 383.51 and 391.15. Drivers are also unqualified for any period in which they fail to meet the qualification requirements of part 391.

Subpart D—Monetary Penalty Collections

Section 364.401 Payment

Payment is demanded upon issuance of a final order imposing a monetary penalty and generally due and payable within 30 days thereafter. Unless judicial review is sought, the penalty amount is subject to the accrual of interest after the date specified in the final order.

Section 364.402 Collections

This section would provide that monies due and payable will be collected pursuant to the Federal debt collection regulations. If administrative actions fail to result in payment, the matter will be referred to the Department of Justice for collection in a civil action filed in U.S. District Court. 49 U.S.C. 521(b)(4), 5123(d), 31138(d)(4), 31139(f)(4).

Removal of Parts 385 and 386

Because this rulemaking is a comprehensive revision of safety ratings and enforcement case procedures, it is proposed to remove and reserve parts 385 and 386 from the Code of Federal Regulations.

Removal and Reservation of Section 391.47

Because the procedure for resolution of medical conflicts would be revised and relocated in subpart B of part 303, it is proposed to remove and reserve § 391.47 of 49 CFR part 391.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

FHWA has 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. The proposals contained in this document would not result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. This proposal would augment, replace or amend existing procedures and practices. Any economic consequences flowing from the procedures in the proposal are primarily mandated by statute. A regulatory evaluation is not required because of the ministerial nature of this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the agency has evaluated the effects of this NPRM on small entities. No economic impacts of this rulemaking are foreseen as the rule would impose no additional substantive burdens that are not already required by the regulations to which these procedural rules would serve as the adjective law. Therefore, the FHWA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The rules proposed herein in no way preempt State authority or jurisdiction, nor do they establish any conflicts with existing State role in the regulation and enforcement of commercial motor vehicle safety. It has therefore been determined that the NPRM does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

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

National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that the proposed rule would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 49 CFR Parts 361, 362, 363, 364, 385, 386, and 391

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Highway safety, Motor carriers.

Issued on: April 18, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, CFR, subtitle B, chapter III, by removing and reserving parts 385 and 386, and by adding parts 361, 362, 363, and 364 as set forth below:

1. Chapter III is amended by adding parts 361, 362, 363, and 364 to read as follows:

PART 361—ADMINISTRATIVE ENFORCEMENT

Sec.

361.101 Purpose.
361.102 Authority and delegation.
361.103 Inspection and investigation.
361.104 Definitions.
361.105 Employer obligations.
361.106 Vehicle/driver inspection.
361.107 Complaints.
361.108 Administrative subpoenas.
361.109 Depositions and production of records.

Authority: 49 U.S.C. 104, 307, chapters 5, 51, 59, 311, 313, and 315.

§ 361.101 Purpose.

This part:

(a) Restates the authority of the Department of Transportation (DOT) to regulate and investigate persons, property, equipment, and records relating to commercial motor vehicle transportation, intermodal safe container transportation, and the highway transportation of hazardous materials;

(b) Describes certain obligations and rights of motor carriers and other entities subject to DOT regulations; and

(c) Identifies the DOT officials authorized to enforce motor carrier and hazardous materials regulations.

§ 361.102 Authority and delegation.

(a) The authority of the Secretary of Transportation to regulate and investigate commercial motor vehicle safety, including motor carriers, commercial motor vehicles and drivers, and the highway transportation of hazardous materials, is codified in 49 U.S.C. Chapters 5, 51, 59, 311, 313, and 315, and 42 U.S.C. 4917. In carrying out the provisions of these chapters, the Secretary may conduct inspections and investigations, compile statistics, make reports, issue subpoenas, require the production of records and property, take depositions, hold hearings, prescribe recordkeeping and reporting requirements, conduct or make contracts for studies, development, testing evaluation and training, and perform other acts the Secretary considers appropriate.

(b) The authority of the Secretary listed in paragraph (a) of this section has been delegated to the Federal Highway Administrator (49 U.S.C. 104(c); 49 CFR 1.48), and is codified in 49 CFR part 325 (Noise Control), the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR Parts 350–399) and relevant portions of the Hazardous Materials Regulations (HMRs) (primarily 49 CFR Parts 171–173, 177–178, and 180). The Federal Highway Administrator has delegated the authority to enforce the FMCSRs and the HMRs to the Associate Administrator for Motor Carriers.

(c) The Associate Administrator for Motor Carriers has retained the authority to approve operating procedures for investigations under this part, including inspections, and has delegated to subordinate managers, supervisors, and field personnel, hereinafter ''special agents,'' the authority to perform such investigations.

(d) The Administrator may delegate to a State which is receiving a grant under 49 U.S.C. 31102 such functions respecting the enforcement (including investigations) of the provisions of this subchapter and regulations issued herein as the Administrator determines appropriate. Nothing in this part shall preempt the authority of any State to conduct investigations, initiate enforcement proceedings, or otherwise implement applicable provisions of State law with respect to motor carrier safety.

§ 361.103 Inspection and investigation.

The FHWA may begin an investigation on its own initiative or on a complaint.

(a) Upon a display of official DOT credentials, special agents may enter without delay at reasonable times any place of business, property, equipment, or commercial motor vehicle of a person subject to the provisions of 49 U.S.C. Chapters 5, 51, 59, 311, 313, and 315, and 42 U.S.C. 4917. Special agents may take the following actions:

(1) Inspect the equipment and property of a motor carrier or other person on the premises of the motor carrier, or the equipment of the motor carrier at any other location, and inspect any commercial motor vehicle of the motor carrier whether or not in operation; and

(2) Inspect and copy any record of—

(i) A carrier, lessor, association, or other person subject to the provisions of 49 U.S.C. Chapters 5, 51, 59, 311, 313, and 315, and 42 U.S.C. 4917; and

(ii) A person controlling, controlled by, or under common control with a carrier, if the agent considers inspection relevant to that person's relation to, or transaction with, that carrier.

(3) Inspect and copy records, property, and equipment related to manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a package or a container for use by a person transporting hazardous material by commercial motor vehicle, and to the highway transportation of hazardous materials.

(b) Special agents may inspect and copy any record related to an investigation, whether or not it is required to be maintained by Federal Highway Administration (FHWA) regulations or orders. Special agents may ask any employer, owner, operator, agent, employee, or other person for information necessary to carry out their statutory and regulatory functions. Special agents shall offer the employer or other person subject to the investigation a right of accompaniment during an inspection and shall notify the person of the general purpose for which the information is sought.

(c) Reasonable times for inspections are the regular working hours of the motor carrier or other person, or other times agreed to by the carrier or other person, required by exigent circumstances, or authorized by any court of the United States. If the person operates twenty-four hours per day, reasonable time means whenever authorized agents can obtain access to records necessary to conduct an inspection, and a representative of the person can exercise the right of accompaniment.

(d) The right of a special agent to enter upon the premises of any person, inspect vehicles, examine records, or interview any person shall not imply or be conditioned upon a waiver of any cause of action, claim, order or penalty.

(e) The Associate Administrator may require a motor carrier to file with the FHWA a copy of any lease agreement or other business arrangement that is related to transportation safety.

(f) Information received in an investigation, including the identity of the person investigated and any other person who provides information during the investigation, may be kept confidential under the investigatory file exception, or other appropriate exception, to the public disclosure requirements of 5 U.S.C. 552.

§ 361.104 Definitions.

Words or phrases defined in 49 CFR 383.5 and 390.5 of this subchapter apply in parts 361–364. In addition—

Abate or abatement means to discontinue regulatory violations by refraining from or taking actions, identified in a notice, to correct noncompliance.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Associate Administrator means the Associate Administrator for Motor Carriers or an authorized delegate of that official.

Federal Motor Carrier Safety Regulations (FMCSRs) means safety regulations issued by the Federal Highway Administration under the authority provided in 49 U.S.C. 104(c) or delegated by the Secretary of Transportation in 49 CFR 1.48, and set forth in subchapter B of this chapter.

Hazardous Materials Regulations (HMR) means safety regulations issued by the Research and Special Programs Administration under authority delegated by the Secretary of Transportation in 49 CFR 1.53, and set forth in subchapter C of chapter I of this title.

Respondent means a party against whom relief is sought or claim is made.

Special agent means an individual employed by the Federal Highway Administration and empowered by the Secretary through delegations of authority to perform the activities referred to in § 361.103.

§ 361.105 Employer obligations.

(a) An employer, employee, and other person shall comply with applicable commercial motor vehicle safety regulations.

(b) A violator shall post all notices of violation which have become final, as required by any notice issued by a special agent. Such notices shall be posted by the employer in each motor carrier's places of employment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall insure that such notices are not altered, defaced, or covered by other materials.

(c) All regulations on commercial motor vehicle safety and hazardous materials safety are published in the Federal Register, codified in the Code of Federal Regulations, and available for review and copying at the Regional Offices of the Federal Highway Administration. An employer shall maintain current copies of applicable regulations, and shall make them available for inspection to any employee upon request.

(d) After proper identification of a special agent through the display of credentials, and an explanation of the purpose of the investigation, a person shall, upon the request of the special agent, provide access to:

(1) The records requested to be reviewed;

(2) Employees of the person to be interviewed; and

(3) Any equipment or property used in the transportation of persons or property or to ensure compliance with the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

(e) The request for the production of records or access to employees or equipment may be made at the initiation of the investigation or at any time thereafter.

§ 361.106 Vehicle/driver inspection.

Upon the instruction of a duly authorized Federal, State or local enforcement official, each commercial motor vehicle used in interstate commerce shall be subject to an inspection of all safety equipment and operating conditions required under the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations. Each driver of such vehicle shall also be subject to an inspection by such enforcement officials of all documents required to be maintained by that driver under those regulations.

§ 361.107 Complaints.

(a) A person, including a governmental authority, may file with the Associate Administrator a complaint concerning an alleged violation of this chapter. The complaint must state the facts that are alleged to constitute a violation. Any office of the FHWA's Office of Motor Carriers will accept a written complaint. For a listing of FHWA Regional Offices see § 390.27 of this subchapter. There are also Office of Motor Carrier facilities located in each State and listed in local telephone directories.

(b) The Associate Administrator shall timely investigate any nonfrivolous written complaint alleging that a substantial violation of any regulation issued under this chapter is occurring or has occurred within the preceding 60 days. Nonfrivolous written complaints are allegations of violations of applicable safety regulations containing sufficient descriptive detail and knowledge of events to create a reasonable suspicion that the violations occurred or are occurring. Substantial violation in this context means the same as a pattern of serious violations or a substantial health and safety violation, as those terms are defined in part 364 of this subchapter, or patterns of record falsification that evidences an intent to avoid detection of such violations.

(c) The Associate Administrator may dismiss a complaint determined not to state reasonable grounds for investigation and need not conduct separate investigations of duplicative complaints.

(d) The complainant shall be timely notified of findings resulting from an investigation or of dismissal of a complaint.

(e) The agency shall not disclose the identity of complainants without their consent unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Associate Administrator shall take every practical measure within his authority to assure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

(f) No motor carrier or other employer subject to the regulations in this chapter shall discharge, discipline, or in any manner discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because such employee (or any person acting pursuant to a request of such employee) has filed any complaint or instituted or caused to be instituted any proceeding relating to a violation of a commercial motor vehicle safety rule, regulation, standard, or order, or has testified or is about to testify in any such proceeding.

(g) No motor carrier or other employer subject to the regulations in this chapter shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety or health, or because of the employee's reasonable apprehension of serious injury to himself or the public due to the unsafe condition of such equipment. The unsafe conditions causing the employee's apprehension of injury must be of such nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a bona fide danger of an accident, injury, or serious impairment of health, resulting from the unsafe condition. In order to qualify for protection under this section, the employee must have sought from his employer, and have been unable to obtain, correction of the unsafe condition.

(h) Violations of paragraphs (f) and (g) of this section are subject to enforcement by the Occupational Safety and Health Administration (OSHA) of the Department of Labor. The proper steps for an employee to follow when pursuing their rights under these paragraphs are found in 49 U.S.C. 31105(b) and 29 CFR part 1978.

§ 361.108 Administrative subpoenas.

(a) The Associate Administrator may subpoena witnesses and records related to a proceeding or investigation from a place in the United States to the designated place of the proceeding or investigation.

(b) If a person fails to comply with a subpoena, the Associate Administrator may file a civil action in the district court of the United States in which the proceeding or investigation is being conducted to enforce the subpoena. The court may punish a refusal to obey an order of the court to comply with a subpoena.

(c) A motor carrier not complying with a subpoena of the Associate Administrator to appear, testify, or produce records is subject to a fine of at least $100 but not more than $5,000, and imprisonment of not more than one year.

§ 361.109 Depositions and production of records.

(a) In any proceeding, compliance review, or investigation, the Associate Administrator may take testimony of a witness by deposition and may order the witness to produce records. If a witness refuses to be deposed or to produce records under this section, the

Associate Administrator may subpoena the witness to appear for a deposition, produce the records, or both.

(b) A deposition may be taken before a judge of a court of the United States, a United States magistrate, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding or investigation.

(c) Notice must be given in writing to the person being deposed in accordance with the Federal Rules of Civil Procedure. The notice shall state the name of the witness and the time and place of taking the deposition.

(d) The testimony of a person deposed under this section shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent, unless signature is waived.

(e) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Associate Administrator or agreed on by the parties by written stipulation filed with the Associate Administrator. The deposition shall be promptly filed with the Associate Administrator.

(f) Each witness summoned before the Associate Administrator or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

PART 362—SAFETY RATINGS

Sec.
362.101 Purpose.
362.102 Motor Carrier Identification Report.
362.103 Safety fitness—standards and factors.
362.104 Determination of safety fitness—safety ratings.
362.105 Unsatisfactory rated motor carrier—prohibition on transportation of hazardous materials and passengers; ineligibility for Federal contracts.
362.106 Notification of a safety rating.
362.107 Change to safety rating based on corrective actions.
362.108 Administrative review.
362.109 Temporary relief from rating.
362.110 Safety fitness information.

Appendix to Part 362—Form MCS–150, Motor Carrier Identification Report

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 31144, and 31502; 49 CFR 1.48.

§ 362.101 Purpose.

(a) This part establishes standards and procedures applicable to motor carrier identification, the determination of a motor carrier's safety fitness and the issuance of a safety rating by the FHWA. This part also notes the restrictions applicable to unsatisfactory rated motor carriers, provides for availability of safety fitness information, and includes procedures for administrative review of safety ratings.

(b) The procedures set forth in 49 CFR part 363, subpart C also apply to this part.

§ 362.102 Motor Carrier Identification Report.

(a) All motor carriers currently conducting operations in interstate or foreign commerce shall file a Motor Carrier Identification Report, Form MCS–150 (see appendix to this part), within 90 days after beginning operations.

(b) The Motor Carrier Identification Report, Form MCS–150, is available from all FHWA region and division motor carrier safety offices nationwide and from the FHWA Office of Motor Carrier Information and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

(c) The completed Motor Carrier Identification Report, Form MCS–150, shall be filed with the FHWA, Office of Information and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

§ 362.103 Safety fitness—standards and factors.

(a) To meet safety fitness standards, a motor carrier must demonstrate through its performance that it has adequate safety management controls in place to ensure compliance with applicable safety and hazardous materials regulations and to facilitate the safe movement of property and passengers by highway.

(b) The information obtained from reviews, investigations, roadside inspections, and other available performance data is used to assess a motor carrier's safety fitness in the context of the following factors:

(1) The adequacy of safety management controls. Safety management controls are those systems, programs, practices and procedures implemented by a motor carrier to ensure regulatory compliance and reduce the safety risks associated with:

(i) Commercial driver's license violations (49 CFR part 383), including controlled substances and alcohol testing violations (49 CFR part 382):

(ii) Inadequate levels of financial responsibility (49 CFR part 387);

(iii) The failure to record and track accidents and incidents. (49 CFR part 390).

(iv) The use of unqualified drivers (49 CFR part 391);

(v) Improper use and driving of motor vehicles (49 CFR part 392);

(vi) Unsafe vehicles operating on the highways (49 CFR part 393);

(vii) The use of fatigued drivers (49 CFR part 395);

(viii) Inadequate inspection, repair, and maintenance of vehicles (49 CFR part 396);

(ix) Transportation and routing of hazardous materials (49 CFR part 397); and

(x) Violations of hazardous materials regulations (49 CFR parts 107–177, 180).

(2) Frequency and severity of violations of applicable safety and hazardous materials regulations and orders, including violations of compatible state regulations and orders.

(3) Number and frequency of driver/vehicle violations resulting in driver/vehicle being placed out of service.

(4) Frequency of accidents and hazardous materials incidents, including: The recordable accident rate per million miles; the recordable preventable accident rate per million miles; other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

(c) In considering violations referred to in paragraph (b)(2) of this section, particular attention is given to violations of regulations that are *critical* or *acute*. These terms as used in this paragraph to denote the seriousness of regulatory requirements are defined as follows:

(1) Critical regulation—violations of which, if occurring in patterns, reflect a breakdown of management control directly related to essential safety functions. A pattern is evident when violations are occurring at a rate in excess of 10 percent. Examples of violations of critical regulations are using drivers to operate commercial motor vehicles after they have exceeded the allowable driving time or on-duty time.

(2) Acute regulation—violations of which are so severe as to require immediate correction, and by themselves reflect negatively on the motor carrier's ability to manage safety compliance, regardless of its overall safety posture. An example of a violation of an acute regulation is allowing a driver to operate after the drivers has tested positive for alcohol have exceeded the allowable driving time or on-duty time.

§ 362.104 Determination of safety fitness—safety ratings.

(a) Following a review of a motor carrier, the degree to which the

operations of the motor carrier are consistent with the safety fitness standards and factors set forth in § 362.103 determines whether the following rating will be assigned:

(1) Unsatisfactory—an unsatisfactory safety rating means a failure by a motor carrier to have adequate safety management controls in place to prevent involvement in crashes by its vehicles and drivers, evidenced by higher than normal accident rates, or to ensure compliance with the applicable safety standards, regulations and orders, as evidenced by inordinate ratios of violations detected in on-site reviews or roadside inspections associated with the factors listed in § 362.103(b).

(2) [Reserved]

(b) An otherwise unsatisfactory safety rating may be deferred, suspended or otherwise avoided if conditions imposed as a result of a review of a motor carrier's operation and performance are met, which would include compliance with specific provisions of the safety or hazardous materials regulations, the requirements of an order or notices to abate, or other commitments to improve compliance and performance. The conditions may be imposed in lieu of an unsatisfactory rating, and failure of the conditions may result in the immediate assignment of an unsatisfactory rating.

§ 362.105 Unsatisfactory rated motor carriers—prohibition on transportation of hazardous materials and passengers; ineligibility for Federal contracts.

(a) A motor carrier rated unsatisfactory is prohibited from operating a commercial motor vehicle to transport—

(1) Hazardous materials for which vehicle placarding is required pursuant to part 172 of Chapter I of this title; or

(2) More than 15 passengers, including the driver.

(b) A motor carrier subject to the provisions of paragraph (a) of this section is ineligible to contract or subcontract with any Federal agency for transportation of the property or passengers referred to in paragraphs (a)(1) and (a)(2) of this section.

(c) Penalties. When it is known that the carrier transports the property or passengers referred to in paragraphs (a)(1) and (a)(2) of this section, an order will be issued placing those operations out of service. Any motor carrier that operates commercial motor vehicles in violation of this section will be subject to the penalty provisions listed in part 364 of this chapter.

§ 362.106 Notification of a safety rating.

(a) Written notification of the safety rating will be provided to a motor carrier as soon as practicable after assignment of the rating.

(b) Before a safety rating of unsatisfactory is assigned to any motor carrier, the FHWA will issue a notice of proposed safety rating. The notice of proposed safety rating will list the deficiencies discovered during the review of the motor carrier's operations, for which corrective actions must be taken.

(c) A notice of a proposed safety rating of unsatisfactory will indicate that, if the unsatisfactory rating becomes final, the motor carrier will be subject to the provisions of § 362.105, which prohibit motor carriers rated unsatisfactory from transporting hazardous materials or passengers, and other consequences that may result from such rating.

(d) A proposed safety rating will not be made available to the public under § 362.110.

(e) Except as provided in § 362.107, a proposed safety rating issued pursuant to paragraph (b) of this section will become the motor carrier's final safety rating 45 days after the date the notice of proposed safety rating is received by the motor carrier.

§ 362.107 Change to safety rating based on corrective actions.

(a) Within the 45-day period specified in § 362.106(e), or at any time after a rating has become final, a motor carrier may request a change to a proposed or final safety rating based on evidence that corrective actions have been taken and that its operations currently meet the safety standards and factors specified in § 362.102.

(b) A request for a change to a safety rating must be made, in writing, to the Regional Director, Office of Motor Carriers, for the FHWA Region in which the carrier maintains its principal place of business, and must include a written description of corrective actions taken and other documentation that may be relied upon as a basis for the requested change to the proposed rating.

(c) The final determination on the request for change will be based upon the documentation submitted and any additional investigation deemed necessary.

(d) The filing of a request for change to a proposed rating under this section does not stay the 45-day period established in § 362.106(e), after which a proposed safety rating becomes final. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and a final determination cannot be made within the 45-day period, the period of the proposed safety rating may be extended for up to 10 days at the discretion of the Regional Director.

(e) If it is determined that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standards and factors specified in § 362.103, the motor carrier will be provided with written notification that the proposed unsatisfactory rating will not be assigned, or, if already assigned, rescinded.

(f) If it is determined that the motor carrier has not taken all the corrective actions required or that its operations still fail to meet the safety standards and factors specified in § 362.103, the motor carrier shall be provided with written notification that its request has been denied and that the proposed safety rating of unsatisfactory will become final pursuant to § 362.106(e), or that an unsatisfactory safety rating currently in effect will not be change.

(g) Any motor carrier whose request for change is denied pursuant to paragraph (f) of this section may petition for administrative review pursuant to § 362.108 within 45 days of the denial of the request for rating change. If the unsatisfactory rating has become final, it shall remain in effect during the period of any administrative review unless stayed by the reviewing official.

§ 362.108 Administrative review.

(a) Within the 45-day notice period provided in § 362.106(e), or within 45 days after denial of a request for a change in rating as provided in § 362.107(g), the motor carrier may petition the FHWA for administrative review of a proposed or final safety rating by submitting a written request to the Director, Office of Motor Carrier Field Operations, 400 Seventh Street, SW., Washington, DC 20590.

(b) The petition must state why the proposed safety rating is believed to be in error and list all factual and procedural issues in dispute. The petition may be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.

(c) The Director, Office of Motor Carrier Field Operations, may request the petitioner to submit additional data and attend a conference to discuss the safety rating. Failure to provide the information requested or attend the conference may result in dismissal of the petition.

(d) The petitioner shall be notified in writing of the decision on administrative review. The notification will occur within 30 days after receipt

of a petition from a hazardous materials or passenger motor carrier.

(e) If the decision on administrative review results in a final rating of unsatisfactory for a hazardous materials or passenger motor carrier, the decision shall be accompanied by an appropriate out-of-service order and provide for an expedited agency appeal of such decision pursuant to §§ 363.108 and 363.110 of this subchapter.

(f) All other decisions on administrative review of ratings constitute final agency action. Thereafter, improvement in the rating may be obtained under § 362.107.

§ 362.109 Temporary relief from rating.

(a) *Proposed rating.* At any time before a proposed unsatisfactory rating becomes final, the Regional Director in the region wherein the motor carrier maintains its principal place of business for safety purposes may temporarily suspend the proposed rating for a period up to 60 days; *provided*: the motor carrier consents in writing to an order directing compliance with conditions designed to assure that the safety fitness standard will be met and satisfactory performance will be achieved. The temporary suspension is discretionary with the Regional Director after consideration of circumstances satisfying that official that a good faith effort by the motor carrier will be made and that this effort is reasonably certain to bring about compliance. The consent order must contain a provision that the temporary recision will be withdrawn and the proposed unsatisfactory rating will become final upon a failure of one or more of the conditions in the order. If a satisfactory level of compliance is achieved after the period covered by the consent order, the Regional Director may withdraw the proposed unsatisfactory rating, which action may or may not be subject to prescribed conditions.

(b) Final rating. The Director of the Office of Field Operations, or other official designated by the Associate Administrator, may temporarily suspend a final rating of unsatisfactory under the same conditions set forth in paragraph (a) of this section.

§ 363.110 Safety fitness information.

(a) Final ratings will be made available to other Federal and State agencies in writing, telephonically or by remote computer access.

(b) The final safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FHWA with the motor carrier's name, principal office address, and, if known, the DOT number or the ICC docket number, if any.

(c) Requests shall be addressed to the Office of Motor Carrier Information Management and Analysis, HIA–1, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(d) Oral requests by telephone will be given an oral response.

Appendix to Part 362—Form MCS–150.Motor Carrier Identification Report

(Approved by OMB under control number 2125–0544)

BILLING CODE 4910–22–M

OMB No. 2125-0544

U.S. Department of Transportation
Federal Highway Administration

MOTOR CARRIER IDENTIFICATION REPORT

IF THE ABOVE LOCATION IS BLANK, INCORRECT, OR IS A DIVISION OR BRANCH, PLEASE IDENTIFY YOUR COMPANY'S PRINCIPAL OFFICE IN THE SPACE BELOW.

1. NAME OF MOTOR CARRIER/HM SHIPPER
2. DOING BUSINESS AS (DBA) NAME
3. PHYSICAL STREET ADDRESS/ROUTE NUMBER
4. MAILING P.O. BOX
5. CITY
6. MEXICAN NEIGHBORHOOD
7. CITY
8. MEXICAN NEIGHBORHOOD
9. COUNTY
10. STATE/PROVINCE
11. ZIP CODE +4
12. COUNTY
13. STATE/PROVINCE
14. ZIP CODE +4
15. PRINCIPAL PHONE NUMBER ( )
16. US DOT NO.
17. ICC NO.
18. IRS/TAX ID NO. EIN # SSN #

19. CARRIER OPERATION *(Circle One)*
A. Interstate B. Intrastate Only (Hazardous Materials) C. Intrastate Only (Non-Hazardous Materials)

20. SHIPPER OPERATION *(Circle One)*
A. Interstate B. Intrastate

21. CARRIER MILEAGE (Last Calendar Year)

22. OPERATION CLASSIFICATION
A. Authorized For-Hire
B. Exempt For-Hire
C. Private (Property)
D. Private Passengers (Business)
E. Private Passengers (Non-Business)
F. Migrant
G. U.S. Mail
H. Federal Government
I. State Government
J. Local Government
K. Indian Tribe
L. Other

23. CARGO CLASSIFICATIONS *(Please Circle **All** that Apply.)*
A. GENERAL FREIGHT
B. HOUSEHOLD GOODS
C. METAL: SHEETS, COILS, ROLLS
D. MOTOR VEHICLES
E. DRIVEAWAY/TOWAWAY
F. LOGS, POLES BEAMS, LUMBER
G. BUILDING MATERIALS
H. MOBILE HOMES
I. MACHINERY, LARGE OBJECTS
J. FRESH PRODUCE
K. LIQUIDS/GASES
L. INTERMODAL CONT.
M. PASSENGERS
N. OILFIELD EQUIPMENT
O. LIVESTOCK
P. GRAIN, FEED, HAY
Q. COAL/COKE
R. MEAT
S. GARBAGE, REFUSE, TRASH
T. U.S. MAIL
U. CHEMICALS
V. COMMODITIES DRY BULK
W. REFRIGERATED FOOD
X. BEVERAGES
Y. PAPER PRODUCTS
Z. OTHER *(Specify)*

24. HAZARDOUS MATERIALS CARRIED/SHIPPED *(Please Circle **All** that Apply.)* **T**–IN CARGO TANKS **P**–IN PACKAGES

C	S	A. DIVISION 1.1	T	P	C	S	J. CLASS 3	T	P	C	S	T. CLASS 7 (No Placards)	T	P
C	S	B. DIVISION 1.2	T	P	C	S	K. DIVISION 4.1	T	P	C	S	U. CLASS 8	T	P
C	S	C. DIVISION 1.3	T	P	C	S	L. DIVISION 4.2	T	P	C	S	V. CLASS 9	T	P
C	S	D. DIVISION 1.4	T	P	C	S	M. DIVISION 4.3	T	P	C	S	W. P.I.H.	T	P
C	S	E. DIVISION 1.5	T	P	C	S	N. DIVISION 5.1	T	P	C	S	X. COMBUSTIBLE LIQUID	T	P
C	S	F. DIVISION 1.6	T	P	C	S	O. DIVISION 5.2	T	P	C	S	Y. HAZARDOUS SUB. (RQ)	T	P
C	S	G. DIVISION 2.1	T	P	C	S	P. DIVISION 6.1 (Liq.)	T	P	C	S	Z. HAZARDOUS WASTE	T	P
C	S	H. DIVISION 2.2	T	P	C	S	Q. DIVISION 6.1 (Solid)	T	P	C	S	AA. ORM-D	T	P
C	S	I. DIVISION 2.3	T	P	C	S	R. DIVISION 6.2	T	P	C	S	BB. ELEVATED TEMP. MAT.	T	P
					C	S	S. CLASS 7 (Placards)	T	P	C	S	CC. MARINE POLLUTANTS	T	P

25. EQUIPMENT	*Straight Trucks*	*Truck Tractors*	*Trailers*	*HazMat Cargo Tank Trailers*	*HazMat Cargo Tank Trucks*	*PASSENGERS MotorCoach*	*School Bus*	*Mini-bus/Van*	*Limousine*
OWNED									
TERM LEASED									
TRIP LEASED									

26. DRIVERS SUBJECT TO FMCSR:

INTERSTATE	INTRASTATE	
100-Mile Radius	100-Mile Radius	TOTAL DRIVERS
Beyond 100-Mile Radius	Beyond 100-Mile Radius	TOTAL CDL DRIVERS

27. CERTIFICATION STATEMENT (to be completed by an authorized official)

I, _____ *(Please print Name)* certify that I am familiar with the Federal Motor Carrier Safety Regulations and/or the Federal Hazardous Materials Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct, and complete.

Signature _____ Date _____ Title _____

Form MCS-150 (Rev. 10-94) 103A MCS-150-Form Disk

BILLING CODE 4910–22–C

Notice

The Form MCS–150, Motor Carrier Identification Report, must be filed by all motor carriers operating in interstate or foreign commerce. A new motor carrier must file Form MCS–150 within 90 days after beginning operations. Exception: A motor carrier that has received written notification of a safety rating from the Federal Highway Administration (FHWA) need not file the report. To mail, fold the completed report so that the self-addressed postage paid panel is on the outside. This report is required by 49 CFR Part 385 and authorized by 49 U.S.C. 504 (1982 & Supp. III 1985).

The public reporting burden for this collection of information on the Form MCS–150 is estimated by the FHWA to average 20 minutes. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to the Office of Management and Budget and the FHWA at the following addresses:

Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503

and

Federal Highway Administration, OMC Field Operations, HFO–10, 400 7th Street, SW., Washington, DC 20590

Instructions for Completing the Motor Carrier Identification Report (MCS–150)

(Please Print or Type All Information)

1. Enter the legal name of the business entity (i.e., corporation, partnership, or individual) that owns/controls the motor carrier/shipper operation.

2. If the business entity is operating under a name other than that in Block 1, (i.e., ''trade name'') enter that name. Otherwise, leave blank.

3. Enter the principal place of business street address (where all safety records are maintained).

4. Enter mailing address if different from the physical address, otherwise leave bank. Also, applies to #7, #8, #12–#14.

5. Enter the city where the principal place of business is located.

6. If a Mexican motor carrier or shipper, enter the Mexican neighborhood or barrio where the principal place of business is located.

7. Enter the city corresponding with the mailing address.

8. If a Mexican motor carrier or shipper, enter the Mexican neighborhood or barrio corresponding with the mailing address.

9. Enter the name of the county in which the principal place of business is located.

10. Enter the two-letter postal abbreviation for the State, or the name of the Canadian Province or Mexican State, in which the principal place of business is located.

11. Enter the zip code number corresponding with the street address.

12. Enter the name of the county corresponding with the mailing address.

13. Enter the two-letter postal abbreviation for the State, or the name of the Canadian Province or Mexican State, corresponding with the mailing address.

14. Enter the ZIP code number corresponding with the mailing address.

15. Enter the telephone number, including area code, of the principal place of business.

16. Enter the identification number assigned to your motor carrier operation by the U.S. Department of Transportation, if known. Otherwise, enter ''N/A.''

17. Enter the motor carrier ''MC'' or ''MX'' number under which the Interstate Commerce Commission (ICC) issued your operating authority, if appropriate. Otherwise, enter ''N/A.''

18. Enter the employer identification number (EIN #) or social security number (SSN #) assigned to your motor carrier operation by the Internal Revenue Service.

19. Circle the appropriate type of carrier operation.

A. Interstate.
B. Intrastate, transporting hazardous materials (49 CFR 100–180).
C. Intrastate, NOT transporting hazardous materials.

Interstate—transportation of persons or property across State lines, including international boundaries, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Intrastate—transportation of persons or property wholly within one State.

20. Circle the appropriate type of shipper operation.

A. Interstate
B. Intrastate
Interstate & Intrastate—See #19 above.

21. Enter the carrier's total mileage for the past calendar year.

22. Circle appropriate classification. Circle all that apply. If ''L. Other'' is circled, enter the type of operation in the space provided.

A. Authorized For Hire
B. Exempt For Hire
C. Private (Property)
D. Private Passengers (Business)
E. Private Passengers (Non-Business)
F. Migrant
G. U.S. Mail
H. Federal Government
I. State Government
J. Local Government
K. Indian Tribe
L. Other

Authorized For Hire—transportation for compensation as a common or contract carrier of property, owned by others, or passengers under the provisions of the ICC.

Exempt For Hire—transportation for compensation of property or passengers exempt from the economic regulation by the ICC.

Private (Property)—means a person who provides transportation of property by commercial motor vehicle and is not a for-hire motor carrier.

Private Passengers (Business)—a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large (e.g., bands).

Private Passengers (Non-Business)—a private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business) (e.g., church buses).

Migrant—interstate transportation, including a contract carrier, but not a common carrier of 3 or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon.

U.S. Mail—transportation of U.S. Mail under contract with the U.S. Postal Service.

Federal Government—transportation of property or passengers by a U.S. Federal Government agency.

State Government—transportation of property or passengers by a U.S. State Government agency.

Local Government—transportation of property or passengers by a local municipality.

Indian Tribe—transportation of property or passengers by a Indian tribal government.

Other—transportation of property or passengers by some other operation classification not described by any of the above.

23. Circle all the letters of the types of cargo you usually transport. If ''Z. Other'' is circled, enter the name of the commodity in the space provided.

24. Circle all the letters of the types of hazardous materials (HM) you transport/ship. In the columns before the HM types, either circle C for carrier of HM or S for a shipper of HM. In the columns following the HM types, either circle T if the HM is transported in cargo tanks or P if the HM is transported in other packages (49 CFR 173.2).

25. Enter the total number of vehicles owned, term leased and trip leased, that are, or can be, operational the day this form is completed.

Motorcoach—a vehicle designed for long distance transportation of passengers, usually equipped with storage racks above the seats and a baggage hold beneath the cabin.

School Bus—a vehicle designed and/or equipped mainly to carry primary and secondary students to and from school, usually built on a medium or large truck chassis.

Mini-bus/Van—a multi-purpose passenger vehicle with a capacity of 10–24 people, typically built on a small truck chassis.

Limousine—a passenger vehicle usually built on a lengthened automobile chassis.

26. Enter the number of interstate/intrastate drivers used on an average work day. Part-time, casual, term leased, trip leased and company drivers are to be included. Also, enter the total number of drivers and the total number of drivers who have a Commercial Drivers License (CDL).

Interstate—driver transports people or property across State lines, including international boundaries, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Intrastate—driver transports people or property wholly within one State.

100-mile radius driver—driver operates only within a 100 air-mile radius of the normal work reporting location.

27. Print or type the name, in the space provided, of the individual authorized to sign

documents on behalf of the entity listed in Block 1. That individual must sign, date, and show his or her title in the spaces provided (Certification Statement, see 49 CFR 385.21 and 385.23).

PART 363—ENFORCEMENT PROCEEDINGS

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Subpart A—Civil Penalty Proceedings

§ 363.101 Nature of proceeding.

Civil penalty proceedings are proceedings pursuant to 5 U.S.C. 554 in which the agency makes a monetary claim or seeks an order against the respondent, based on violation of the FMCSRs or HMRs. Final agency orders that may result from civil penalty proceedings include one or more of the following:

(a) Monetary penalty;
(b) Settlement agreement;
(c) Out-of-service order;
(d) Notice to post;
(e) Notice of abate; and
(f) Any other order within the authority of the agency.

§ 363.102 Notice of violation (complaint).

(a) Civil penalty proceedings are commenced by the issuance of a notice of violation, which serves as the complaint in subsequent proceedings and represents the claim of the agency against respondent. Each notice shall contain the following:

(1) The provisions of law and regulation alleged to have been violated;

(2) A recitation, separately stated and numbered, of each alleged violation, including a brief statement of the material facts constituting each violation.

(3) The amount being claimed and the maximum amount authorized to be claimed under the statute, and the contents of any order sought to be imposed;

(4) A statement that failure to answer the notice within the prescribed time will constitute a waiver of the opportunity to contest the claim;

(5) A reply form to be completed and returned to the agency, except in the case of an out-of-service order; and

(6) The address and telefax number to which the reply form and/or full payment of the amount claimed may be sent, and the telephone number to call to discuss settlement.

(b) A notice may contain such other matters as the FHWA deems appropriate, including a notice to abate.

(c) A notice of violation is transmitted by the agency to the respondent using a method of delivery with a return receipt, such as, but not limited to, certified mail and personal delivery evidenced by a certificate of service.

§ 363.103 Form reply to notice of violation.

(a) *Time for reply*. The reply form included in the notice of violation must be served on the agency by the respondent within 15 days of respondent's receipt of the notice. The form reply may be sent to the agency by mail, personal delivery, or telefax. Although a return receipt is not required, the burden is on the respondent to prove it has made a timely answer.

(b) *Contents of reply form*. The respondent must provide the information requested on the reply form, and indicate, by checking the appropriate box, its response to the Notice of Violation. Respondent may select only one option on the reply form. The response options are:

(1) Pay the full amount claimed in the Notice of Violation (check included), and/or agree to comply with the order by signing where indicated;

(2) Enter into settlement negotiations (while preserving the right to contest the claim at a later date); and

(3) Contest the claim immediately through the institution of administrative adjudication.

(c) *Failure to reply*. If a completed reply on the form provided, or in a form containing the same information, is not served on the agency within 15 days of the respondent's receipt of the notice of violation, the notice of violation becomes the final agency order in the proceeding. Respondent's failure to reply constitutes an admission of all facts alleged in the notice of violation and a waiver of the respondent's opportunity to contest the claim.

§ 363.104 Special procedures for out-of-service orders.

(a) Whenever it is determined that a violation of the FMCSRs poses an imminent hazard to safety, the agency may order a vehicle or employee operating such vehicle out of service, or order a motor carrier to cease all or part of the employer's commercial motor vehicle operations. In making any such order, no restrictions shall be imposed on any employee or motor carrier beyond that required to abate the hazard.

(b) An out-of-service order must be personally served on the driver when a driver or vehicle is being placed out of service, and on a responsible representative of the motor carrier at its principal place of business or other location to which the order applies when all or part of a motor carrier's commercial motor vehicle operations are being placed out of service.

(c) A motor carrier or employee shall comply with the out-of-service order immediately upon its issuance. The penalty for violating an out-of-service order shall be specifically noted in the order. An out-of-service order shall not prevent vehicles of the motor carrier in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicles or drivers are specifically ordered out of service effective immediately. Vehicles and drivers proceeding to their immediate destination shall be subject to compliance with the order upon arrival.

(d) If the out-of-service order is contested, an administrative adjudication shall be made available on an expedited basis under procedures provided in § 363.110.

(e) For purposes of this section, the term *immediate destination* means the next scheduled stop of the vehicle

already in transit where the cargo on board can be safely secured, and the term *imminent hazard* means any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury of death if not discontinued immediately.

§ 363.105 Payment of the claim.

(a) Payment of the full amount claimed may be made at any time before issuance of a final order, with or without the reply form. After the issuance of a final order, claims are subject to interest, penalties, and administrative charges in accordance with 4 CFR part 103.

(b) If the full payment option is selected by the respondent on the reply form, but payment is not made on the agency within 15 days of the respondent's receipt of the notice of violation, the notice of violation becomes the final agency order in the proceeding.

(c) Unless otherwise provided in writing by the mutual consent of the parties, payment and/or compliance with the order constitutes an admission of all facts alleged in the notice of violation and a waiver of the respondent's opportunity to contest the claim, and results in the notice of violation becoming the final agency order.

§ 363.106 Settlement of civil penalty claims; generally.

(a) Settlement of disputed civil penalty claims may occur at any time before the issuance of a final order.

(b) Content of settlement agreements. When agreement is reached to resolve the claim, a settlement agreement constituting the final disposition of the proceeding shall be signed by the parties. The settlement agreement shall contain the following:

(1) The legal basis of the claim, including an admission of all jurisdictional facts;

(2) Unless otherwise provided, a finding of the facts constituting the violations committed;

(3) The amount due the FHWA and the terms of payment, and/or the terms of the order;

(4) An express waiver of the right to further procedural steps and of all rights to judicial review;

(5) A statement that the agreement is not binding on the agency until executed by the agency's authorized representative; and

(6) A statement that failure to pay other otherwise perform in accordance with the terms of the agreement will result in the notice of violation becoming the final agency order, and the amount claimed in the notice of violation becoming due and payable immediately.

(c) An executed settlement agreement is binding on the parties according to its terms. The respondent's signed, written consent to a settlement agreement may only be withdrawn, in writing, if the agency has not executed the agreement within 28 days after execution by respondent.

(d) The agency's acceptance of partial payment of a claim tendered unilaterally by a respondent does not constitute a settlement agreement. All settlement agreements must be in the form specified in paragraph (b) of this section.

(e) Settlement agreements reached during the course of an administrative adjudication need not be approved by the Administrative Law Judge or Associated Administrator unless specifically directed by those officials.

§ 363.107 Settlement negotiations.

This section establishes procedures when the settlement negotiations option is selected on the reply form.

(a) The parties should enter into negotiations expeditiously and in good faith, using all reasonable means.

(b) Opportunity for an administrative adjudication. Respondents electing on the reply form to engage in settlement negotiations retain the opportunity to contest the claim through an administrative adjudication if the negotiations do not result in a settlement agreement.

(c) Discontinuance of negotiations within 90 days. The agency may discontinue negotiations within 90 days of the notice of violation by sending the respondent a final notice of violation. The respondent may discontinue negotiations within the same period by requesting an administrative adjudication and sending the agency a written answer to the notice of violation.

(d) Failure to reach agreement after 90 days. If the parties do not reach a settlement agreement within 90 days, a final notice of violation shall be issued by the agency to the respondent.

(e) Final Notice of Violation. The final notice of violation represents the agency's final claim against the respondent. The final notice of violation may incorporate the notice of violation by reference, amend the notice of violation to reflect the settlement negotiations, or include some combination of both.

(1) A final notice of violation shall be transmitted to the respondent using a method of delivery within a return receipt, such as, but not limited to, certified mail and personal delivery evidenced by a certificate of service.

(2) The reply to the final notice of violation shall be completed in conformance with the requirements of § 363.108(c).

§ 363.108 Request for administrative adjudication.

The respondent may contest the claim by requesting an administrative adjudication and sending a written answer to the agency. An administrative adjudication is a process to resolve contested claims before the Associate Administrator or an Administrative Law Judge. Unless settled, the Associate Administrator shall decide the matter or refer it to an Administrative Law Judge expeditiously.

(a) *Time for answer.* Respondents who select administrative adjudication on the reply form to the notice of violation, or who receive a final notice of violation, must serve a written answer on the agency within 28 days of receipt of the applicable notice.

(b) *Form of answer.* The answer may be sent to the agency by mail, personal delivery, or telefax. Though a return receipt is not required, the burden is on the respondent to prove it has made a timely answer.

(c) *Contents of answer.* Generally, the answer must state the grounds for contesting the claim and any affirmative defenses that the respondent intends to assert. Specifically, the answer:

(1) Must admit or deny each separately stated and numbered allegation of violation in the claim. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the claim that is not specifically denied in the answer is deemed admitted. A general denial of the claim is grounds for a finding of default;

(2) Must include all affirmative defenses, including those relating to jurisdiction, limitations, and procedure;

(3) Must request referral to an Administrative Law Judge, if desired. Referral to an Administrative Law Judge is generally available only to resolve material issues of fact. Failure to request it results in a waiver of the right to an opportunity for referral; and

(4) May include a motion to dismiss, but a motion to dismiss is not a substitute for an answer.

(d) *Failure to answer.* If a written answer meeting the requirements of this section is not served on the agency by the respondent or representative of the respondent within 28 days, the notice of violation or final notice of violation,

whichever is applicable, becomes the final agency order in the proceeding. Merely selecting the adjudication option on the reply form, without submitting a written answer in accordance with this section, also results in the notice of violation becoming the final agency order in the proceeding. Respondent's failure to answer constitutes an admission of all facts alleged in the notice of violation and a waiver of the respondent's opportunity to contest the claim.

(e) *Default.* If an answer is not in the form required by paragraph (c) of this section the respondent may be found in default by the Associate Administrator or Administrative Law Judge and a final agency order issued in the proceeding. Default by respondent constitutes an admission of all facts alleged in the notice of violation and a waiver of the respondent's opportunity to contest the claim, and results in the Notice of Violation becoming the final agency order in the proceeding.

§ 363.109 Procedures in administrative adjudications.

(a) Associate Administrator. Contested claims shall be transmitted to the Associate Administrator for resolution by final order or for assignment to an Administrative Law Judge. The Associate Administrator determines if there are material factual issues in dispute, but may refer the matter to an administrative law judge to make the determination.

(b) Referral to an Administrative Law Judge. If there are material factual issues in dispute and respondent has requested referral to an Administrative Law Judge, the Associate Administrator shall assign the matter to an Administrative Law Judge. The Associate Administrator may, in his or her discretion, refer other matters to an Administrative Law Judge.

(c) Decision. If there are no material factual issues in dispute or the matter has not been referred to an Administrative Law Judge, the Associate Administrator may resolve the Matter and issue a final order.

(d) Except as otherwise provided in these rules, in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, or by the Associate Administrator or Administrative Law Judge, the Federal Rules of Civil Procedure and the Federal Rules of Evidence shall apply in all administrative adjudications.

(e) Motions. An application for an order or ruling in an administrative adjudication shall be by motion. Unless made during an oral hearing, motions shall be made in writing, shall state with particularity the grounds for relief sought, and shall be accompanied by any relevant affidavits or other evidence. Any party may file a response to a written motion within 7 days, or within such other time provided by the Associate Administrator or the Administrative Law Judge. Failure to respond to a motion may constitute grounds for granting it. Oral argument or briefs on a motion may be ordered by the Administrative Law Judge or by the Associate Administrator.

(f) The Associate Administrator and the Administrative Law Judge have the discretion to conduct an oral hearing on the record, decide the matter on the pleadings, or employ any other appropriate process.

(g) The Associate Administrator and the Administrative Law Judge may conduct or permit forms of alternative dispute resolution upon the consent of the parties.

(h) Appearance. Any party to an administrative proceeding may appear personally and be represented by an attorney or other person. A representative must serve a notice of appearance on all parties, including the name of the respondent or title of the matter, as well as the representative's name, address, and telephone number, before participating in the proceeding.

(i) Withdrawal. At any time after a request for an administrative adjudication, but prior to the issuance of a decision by the Administrative Law Judge or Associate Administrator, any party may, in writing, withdraw a request for an administrative adjudication or the agency may withdraw the notice of violation. If a proceeding before an Administrative Law Judge is so withdrawn, the assignment of the Administrative Law Judge is terminated and the Administrative Law Judge shall dismiss the proceeding with prejudice. A withdrawal by the respondent constitutes and irrevocable waiver of the respondent's right to an administrative adjudication on the matter presented in the notice of violation.

§ 363.110 Expedited review by the Associate Administrator.

(a) Decisions to order a motor carrier's operations out of service is whole or in part are subject to review by the Associate Administrator in accordance with 5 U.S.C. 554, except that such review must be provided within 10 days from the date of the out-of-service order; provided a written request for review is received by the Associate Administrator within 5 days from the date of the notice. Written requests received after the 5th day but within 10 days of the effective date of the out-of-service order or final unsatisfactory rating resulting in an out-of-service order will be reviewed within 10 days from the date of the request.

(b) Any petition for review received more than 10 days after the date of an out-of-service order will be treated as a request for administrative adjudication under § 363.108 of this part, unless the Associate Administrator, in his or her discretion, provides otherwise.

(c) Any requests for review submitted pursuant to this section must be in writing and particularly address the matters which are disputed, the grounds for the dispute, and the reasons why expedited review is required.

(d) The Associate Administrator may refer the matter for a hearing before and Administrative Law Judge within the same time prescribed for expedited review. The procedures in § 363.109, except for time periods, shall apply to the hearing.

(e) The Associate Administrator or Administrative Law Judge may stay any order or safety rating during the pendency of the expedited review. Thereafter, the matter may be administered pursuant to § 363.109.

(f) Unless a stay is granted under paragraph (e) of this section or the period extended by mutual consent of the parties, the decision on an expedited review shall be issued within the time prescribed for such expedited review.

(g) The decision of the Administrative Law Judge on referral from the Associate Administrator shall become the final agency order after 24 hours unless amended or vacated by the Associate Administrator.

§ 363.111 Administrative Law Judge decision.

(a) After considering the evidence and arguments of the parties, the Administrative Law Judge shall issue a decision. The decision shall be sent to the parties and to the Associate Administrator. The Administrative Law Judge may issue an oral decision in the presence of the parties, which will be entered in the record of the proceedings.

(b) Finality. Except for expedited review under § 363.110, the decision of the Administrative Law Judge becomes the final decision of the agency 45 days after it is issued, unless a petition for review is filed under § 363.112 within that period, or the Associate Administrator, on his own motion, reviews or vacates the decision.

§ 363.112 Review of Administrative Law Judge decision.

(a) All petitions to review administrative adjudication decisions of the Administrative Law Judge must be accompanied by a statement of the

grounds for review. Each petition must set out in detail objections to the decision and refer to any evidence in the record which is relied upon to support the petition. It shall also state the relief requested. Failure to object to any error in the decision constitutes a waiver of the right to allege such error in subsequent proceedings.

(b) A party may petition for review of a decision of the Administrative Law Judge on only the following three grounds:

(1) A finding of fact is not supported by substantial evidence;

(2) A conclusion of law is not made in accordance with applicable law, precedent, or public policy; and

(3) The Administrative Law Judge committed prejudicial error in applying the governing procedural rules.

(c) Reply briefs may be filed within 35 days after the petition for review is filed. Further pleadings may be filed by a party only if expressly allowed by the Associate Administrator.

(d) Copies of the petition for review and all motions and briefs must be served on all parties.

(e) Oral argument will be permitted only if expressly allowed by the Associate Administrator.

§ 363.113 Decision on review.

(a) The Associate Administrator may adopt, modify, or reverse the Administrative Law Judge's decision and may make any necessary findings of law or fact. The Associate Administrator may also remand the matter to the Administrative Law Judge with instructions for further proceedings. If the matter is not remanded, the Associate Administrator shall issue a final order disposing of the proceedings and serve it on all parties.

(b) Finality. Unless otherwise stated, an order of the Associate Administrator on review becomes the final order of the agency upon issuance.

§ 363.114 Reconsideration.

Within 21 days of a decision by the Associate Administrator, any party may petition for reconsideration. The filing of a petition for reconsideration does not stay the effectiveness of a final order unless so ordered by the Associate Administrator.

§ 363.115 Judicial review.

(a) Any aggrieved person, who, after an administrative adjudication, is adversely affected by a final order issued may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred, or where the violator has its principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit.

(b) Judicial review shall be based on a determination of whether or not the findings and conclusions in the final order were supported by substantial evidence or otherwise in accordance with law. No objection that has not been urged before the agency must be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of the final order of the agency.

§ 363.116 Failure to comply with final order.

If, within 30 days of receipt of a final agency order issued under this part, the respondent does not pay a civil penalty assessed, take any other action required by the order, or file a petition under §§ 363.114 or 363.115, the case may be referred to the Attorney General with a request that an action be brought in the appropriate United States District Court to enforce the terms of the order or collect the civil penalty.

Subpart B—Driver Qualification Proceedings

§ 363.201 Nature of proceeding.

Driver qualification proceedings are the means by which the agency resolves challenges to or disputes involving a determination of a driver's medical qualification to operate a commercial motor vehicle or challenges to disqualification by the Federal Highway Administration of a driver following convictions for certain driving offenses.

§ 363.202 Commencement of proceedings.

(a) Driver qualification proceedings are commenced by the issuance to a driver or motor carrier of:

(1) A notice of determination by the agency (the determination may be issued unilaterally by the agency or in resolution of a conflict of medical evaluations pursuant to § 363.204); or

(2) A letter of disqualification issued by the agency, based upon a conviction for a disqualifying offense or other cause listed in § 383.51 or 391.15 of this subchapter.

(b) Each notice of determination or letter of disqualification shall contain the following:

(1) A statement of the provisions of the regulations under which the action is being taken;

(2) A copy of all documentary evidence relied on or considered in taking such action, or, in the case of voluminous evidence, a summary of such evidence;

(3) Notice that the determination or disqualification may be contested, and that failure to answer will constitute a waiver of the opportunity to contest the determination or disqualification; and

(4) Notice that the burden of proof will be on the applicant in cases arising under § 363.204.

(c) In a medical qualification proceeding, the notice of determination must be transmitted to the driver involved. In cases arising under § 363.204, the notice of determination shall also be transmitted to the motor carrier and any other parties involved in the resolution of a conflict of medical evaluations. Any party may respond. In a disqualification proceeding, the letter of disqualification must be transmitted both to the driver and to the employing motor carrier, if the latter is known.

(d) The notice or letter commencing the proceeding is transmitted by the agency to any respondent or necessary party using a method of delivery with a return receipt, such as, but not limited to, certified mail and personal delivery evidenced by a certificate of service.

§ 363.203 Answer to medical qualification determination or letter of disqualification.

(a) *Time to answer.* An answer to the notice of determination or letter of disqualification must be completed by the respondent and served on the agency within 2 months of respondent's receipt of the notice of determination. The answer may be sent to the agency by mail or telefax. Though a return receipt is not required, the burden is on the respondent to prove it has made a timely answer.

(b) *Contents of the answer.* The answer must contain the following:

(1) The grounds for contesting the determination;

(2) Copies of all evidence upon which petitioner relies.

(3) A request for referral to an Administrative Law Judge, if one is desired, which must set forth material factual issues believed to be in dispute.

(c) *Supporting evidence.* All written evidence shall be submitted in the following forms:

(1) An affidavit of a person having personal knowledge of the facts alleged;

(2) Documentary evidence in the form of exhibits attached to an affidavit identifying the exhibit and giving its source;

(3) A medical report (or reports) prepared by a medical examiner or authorized representative of a medical institution; and

(4) An official record of a government agency.

(d) *Failure to answer.* If a written answer contesting the notice or letter is

not received by the agency within 2 months, the notice of determination or letter of disqualification becomes the final agency order in the proceeding. Respondent's failure to answer constitutes and admission of all facts alleged in the letter or notice and a waiver of the respondent's opportunity to contest the determination of disqualification.

(e) *Letter of Disqualification.* In proceedings based on convictions for disqualifying offenses, the only relevant defenses are that:

(1) The respondent driver was not convicted as alleged;

(2) The alleged conviction was overturned, vacated, remanded, or otherwise voided on appeal;

(3) The violation for which the conviction was entered is not a disqualifying offense; or

(4) The term of the disqualification period has already been served in whole or in part because of State action.

§ 363.204 Special procedures for resolution of conflicts of medical evaluation.

(a) *Applications.* An application for determination of a driver's medical qualifications under standards in part 391 of this chapter will only be accepted if they conform to the requirements of this section.

(b) *Conditions.* Each applicant must meet the following conditions.

(1) The application must be in writing and contain the name and address of the driver, motor carrier, and all physicians involved in the conflict.

(2) The applicant must provide documentary evidence that there is disagreement between the physician for the driver and the physician for the motor carrier concerning the driver's medical qualifications.

(3) The applicant must submit a written opinion and report from an independent medical specialist in the field in which the conflict arose, together with the results of all tests performed by that independent specialist. The independent medical specialist should be one agreed to by the motor carrier and the driver.

(4) If no agreement to select an independent specialist can be reached, the applicant must demonstrate it agreed and the other party refused to submit the matter to a specialist. If possible, the applicant must then submit the report of an independent specialist selected by the applicant. The report should be based on personal examination or, if that is not possible, on an evaluation of the reports of the two examining physicians in conflict.

(5) The independent medical specialist must be provided with a copy of the regulations in part 391 of this subchapter, and this part, a medical history of the driver, and a detailed statement of the work the driver performs or is to perform, which must be noted in the specialist's report.

(6) The applicant must submit all medical records, statements and reports of all physicians known to have provided opinions as to the driver's qualifications.

(7) The applicant must submit any other documentary evidence which may reflect on the driver's qualifications.

(8) The application must allege that the driver intends to drive or is intended to be used as driver in interstate commerce.

(9) The application and all supporting documents must be submitted in triplicate to the Director, Office of Motor Carrier Research and Standards, Federal Highway Administration, Washington DC 20590.

(c) *Initiation.* Upon receipt of a satisfactory application, the Director will issue a notice to all parties that an application for resolution of a medical conflict has been received with respect to the identified driver, and may require additional information from the parties.

(d) *Reply.* Any party may submit a reply to the notice within 30 days after service. The reply must be accompanied by all evidence the party desires to be considered by the Director in making a determination.

(e) *Parties.* For purposes of this section, the parties are the driver, the motor carrier, and any other person whom the Director designates as such.

(f) *Determination.* After considering all the medical evidence submitted by the parties and the opinions of medical experts to whom any matter under consideration may have been referred, the Director shall issue a Determination of Qualification deciding whether the drive is qualified under part 391 of this subchapter.

(g) *Petitions for review.* A driver or motor carrier adversely affected by the Director's determination may within 60 days petition for review to the Associate Administrator under this part.

§ 363.205 Driver's qualification status pending determinations and proceedings.

(a) In proceedings which are unilaterally commenced by the agency, the driver shall be deemed qualified unless and until a final order is issued disqualifying the driver.

(b) In proceedings arising under § 363.204:

(1) If the driver is not yet employed by the motor carrier with which the conflict of medical qualification arises, the driver shall be deemed unqualified as a driver only with respect to that motor carrier.

(2) If the conflict arises from a biennial or other medical examination conducted after the driver was previously found qualified and employed as a driver by the motor carrier with which the conflict exists, the driver shall be deemed qualified only with respect to that motor carrier unless and until a final determination by the Director, Office of Motor Standards is issued finding the driver unqualified, or unless the Associate Administrator otherwise provides.

(c) During the pendency of a proceeding on a petition for review of the Determination of Qualification issued by the Director under § 363.204, the driver's status will remain as decided in that Determination, unless otherwise provided by the Associate Administrator.

§ 363.206 Administrative adjudication.

(a) *Referral to an Administrative Law Judge.* If there are material factual issues in dispute and respondent has requested referral to an Administrative Law Judge, the Associate Administrator may assign the matter to an Administrative Law Judge.

(b) *Decision.* If there are not material factual issues in dispute or respondent has not requested referral, the Associate Administrator may resolve the matter and issue a final order.

(c) *Procedures.* Administrative adjudication and any agency review are conducted in accordance with §§ 363.109 and 363.111–363.115.

Subpart C—General Provisions

§ 363.301 Applicability.

The general provisions in this subpart apply to part 362 of this subchapter and this part 363.

§ 363.302 Computation of time.

(a) Generally, in computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday, in which case the time period shall run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period shall be counted.

(b) Date of entry of orders. In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is served.

§ 363.303 Service.

(a) *Definition.*

Service means the delivery of documents to necessary entities in the context of an administrative proceeding. Service by mail is complete upon mailing.

(b) *Certificate of service.* A certificate of service shall accompany all documents served in an administrative proceeding, except the notice of violation on § 363.102, the reply form in § 363.103, and the notice of determination and letter of disqualification in § 363.202. It shall consist of a certificate of personal delivery or a certificate of mailing, executed by the person making the personal delivery or mailing the document.

(c) *Service list.* The initial notice or other document of the agency in an administrative proceeding shall have attached a list of persons to be served. This service list shall be updated by the agency as necessary. Copies of all documents must be served on the persons, and in the number of copies, indicated on the service list.

(d) *Form of delivery.* All service required by these rules shall be made by mail or personal delivery, unless otherwise prescribed.

§ 363.304 Extension of time.

(a) Unless directed otherwise by the Associate Administrator or Administrative Law Judge before whom a matter is pending, the parties may stipulate to reasonable extensions of time by filing such stipulation in the official docket and serving copies on all parties on the service list.

(b) All requests for extensions of time shall be filed with the office in the agency to which the answer is to be sent, or, if the matter is an administrative adjudication, with the Administrative Law Judge or the Associate Administrator, whichever is appropriate. All requests must state the reasons for the request. Only those requests showing good cause or upon the mutual consent of the parties may be granted by the appropriate official. No motion for continuance or postponement of a hearing date filed within 7 days of the date set for a hearing will be granted unless it is accompanied by an affidavit showing that extraordinary circumstances warrant a continuance.

§ 363.305 Administrative Law Judge.

(a) *Powers of an Administrative Law Judge.* In accordance with the rules in this subchapter, an Administrative Law Judge may:

(1) Give notice of and hold prehearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the administrative adjudication in accordance with the rules of this subchapter;

(7) Hold conferences to settle or simplify the issues by the consent of the parties;

(8) Dispose of procedural motions and requests;

(9) Make findings of fact and conclusions of law, and issue decisions.

(b) *Limitations on the power of the Administrative Law Judge.* The Administrative Law Judge is bound by the procedural requirements of this part and the precedent opinions of the agency as recorded in written opinions of the Associate Administrator or in opinions adopted by the Associate Administrator. If the Administrative Law Judge imposes any sanction not specified in this subchapter, a party may file an interlocutory appeal of right with the Associate Administrator pursuant to § 363.307. This section does not preclude an Administrative Law Judge from barring a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that proceeding.

(c) *Disqualification.* The Administrative Law Judge may disqualify himself or herself at any time, either at the request of any party or upon his or her own initiative. Assignments of Administrative Law Judges are made by the Chief Administrative Law Judge upon the request of the Associate Administrator. Any request for a change in such assignment, including disqualification, will be considered only for good cause which would unduly prejudice the proceeding.

§ 363.306 Certification of documents.

(a) *Signature required.* The attorney of record, the party, or the party's representative shall sign each document tendered for filing with the hearing docket clerk, the Administrative Law Judge, the Associate Administrator, or served on a party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney, the party, or the party's representative has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If the attorney of record, the party, or the party's representative signs a document in violation of this section, the Administrative Law Judge or the Associate Administrator may:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the petition for review of the Administrative Law Judge's decision to the Associate Administrator.

§ 363.307 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the Administrative Law Judge to the Associate Administrator until the Administrative Law Judge's decision has been entered on the record. A decision or order of the Associate Administrator on the interlocutory appeal does not constitute a final order for the purposes of judicial review under § 363.115.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the Administrative Law Judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the Administrative Law Judge issues a decision on the request. If the Administrative Law Judge grants the request, the proceedings are stayed until the Associate Administrator issues a decision on the interlocutory appeal. The Administrative Law Judge shall grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the Administrative Law

Judge of an interlocutory appeal of right, the proceedings shall be stayed until the Associate Administrator issues a decision on the interlocutory appeal. A party may file an interlocutory appeal with the Associate Administrator, without the consent of the Administrative Law Judge, before the Administrative Law Judge has made a decision, in the following situations:

(1) A ruling or order by the Administrative Law Judge barring a person from the proceedings;

(2) Failure of the Administrative Law Judge to dismiss the proceedings in accordance with § 363.109(i);

(3) A ruling or order by the Administrative Law Judge in violation of § 363.305(b); and

(4) Denial by the Administrative Law Judge of a motion to disqualify under § 363.305(c).

(d) Procedure. A party must file a notice of interlocutory appeal, with any supporting documents, with the Associate Administrator, and serve copies on each party and the Administrative Law Judge, not later than 10 days after the Administrative Law Judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the Administrative Law Judge's decision granting an interlocutory appeal for cause, whichever is appropriate. A party must file a reply brief, if any, with the Associate Administrator and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The Associate Administrator shall render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) The Associate Administrator may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

PART 364—VIOLATIONS, PENALTIES, AND COLLECTIONS

Subpart A—General

Sec.

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Subpart B—Civil Penalties

364.201 Types of violations and maximum monetary penalties.
364.202 Civil penalty assessment factors.

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364.301 Criminal penalties.
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Subpart D—Monetary Penalty Collection

364.401 Payment.
364.402 Collections.

Authority: 49 U.S.C. Chapters 5, 51, 311, 313 and 315.

Subpart A—General

§ 364.101 Purpose.

The purposes of this part are to define the various types of violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs), and orders authorized to be issued thereunder; to describe the range of penalties that may be imposed for such violations and how those penalties are assessed; and to identify the means that may be employed to collect those penalties once it has been finally decided by the agency that they are due.

§ 364.102 Policy.

(a) Penalties are assessed administratively by the agency for violations of the FMCSRs, HMRs, and administrative orders at levels sufficient to bring about satisfactory compliance. Criminal penalties are also authorized to be sought in U.S. District Court under certain circumstances.

(b) The maximum amounts of civil penalties that can be assessed for regulatory violations subject to the proceedings in this subchapter are established in the statutes granting enforcement powers. The determination of the actual civil penalties assessed in each proceeding is based on those defined limits and consideration of information available at the time the claim is made concerning the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In adjudicating the claims and orders under the administrative procedures in this subchapter, additional information may be developed regarding these factors that may affect the final amount of the claim.

(c) When assessing penalties for violations of notices and orders or settling claims based on these assessments, consideration will be given to good faith efforts to achieve compliance with the terms of the notices and orders.

(d) Criminal penalties may be sought against a motor carrier, its officers or agents, a driver, or other persons when it can be established that violations were deliberate or resulted from a willful disregard for the regulations. Criminal penalties may be sought against an employee only when a causative link can be established between a knowing and willful violation and an accident or hazardous materials incident or the risk thereof.

(e) If a State, political subdivision of a State, foreign nation, or other governmental entity imposes any civil or criminal penalty for acts constituting violations of the regulations covered by this part, and those penalties are determined by the Associate Administrator to be appropriate for such violations, no further penalties will be assessed by the Federal Highway Administration.

Subpart B—Civil Penalties

§ 364.201 Types of violations and maximum monetary penalties.

(a) Violations of parts 350–399 of the FMCS are divided into three categories, each of which carries a maximum penalty as noted below. Unless otherwise noted, a separate violation occurs for each day the violation continues:

(1) Recordkeeping—violations which involve knowing failure to prepare or maintain a record required by the regulations, or knowing preparation or maintenance of a required record which is incomplete, inaccurate or false. Maximum penalty: $500 per violation, which may be increased by $500 for each day the violation continues up to $2,500. Actual or constructive possession of the means with which to verify the existence or accuracy of the record is presumptive evidence that the person responsible for maintaining such record committed a knowing violation when such record is incomplete, inaccurate, or false.

(2) Serious pattern of safety violations—no civil penalties are assessed for isolated violations of non-recordkeeping provisions of the regulations. The term ''serious patterns of violations'' describes a middle range of violations between those of recordkeeping noncompliance and willful disregard of the regulations. These types of violations are not the isolated human errors, but are tolerated patterns of equipment violations or operating conduct that any responsible business entity could detect and correct if it wanted to meet its full safety responsibility to the public. A pattern may be established by single violations

of more than one regulation, as well as by multiple violations of a single regulation. No set number of acts are required. All that is needed is a basis to infer that the acts are not isolated or sporadic. More than one pattern may be alleged in a single claim. For example, in one notice of violations, patterns of hours-of-service violations, use of unsafe equipment, and employment of unqualified drivers may be alleged and supported with separately counted violations in each category. The area of noncompliance may be further broken down if patterns are discernible to that extent. In the same notice, for instance, it may be alleged that each driver used by a carrier constitutes a separate pattern and further that each such driver may account for separate patterns of violations of the 10-hour driving rule (49 CFR 395.3(a)(1)), the 15-hour on-duty rule (§ 395.3(a)(2)), and the 70-hours in 8 days on-duty rule (§ 395.3(b)(2)), each of which presents a separate pattern. When serious patterns of violation are detected, civil penalties not to exceed $1,000 for each violation within a pattern up to a maximum of $10,000 for each pattern may be assessed.

(3) Substantial Health and Safety Violations. This category applies to violations which could reasonably lead to, or have resulted in, serious personal injury or death. These are violations that are serious in their nature and have been allowed to occur or continue by the motor carrier who knew or should have known of their existence. Illustrative of such violations are vehicles that are dispatched or continued in a condition which would result in an out-of-service order; drivers who are dispatched or continued in use when they are unqualified, disqualified, or have tested positive for drugs; and drivers who are dispatched or continue in an unsafe or fatigued condition. Penalties up to $10,000 may be assessed for each violation.

(4) Limitation on employee non-recordkeeping violations. Except for recordkeeping violations, no civil penalty may be assessed against an employee of a motor carrier unless it is determined that the employee's actions amounted to gross negligence or reckless disregard for safety. When that can be shown, the maximum civil penalty is $1,000.

(i) Owner operators. For purposes of this section, an owner-operator while in the course of personally operating a commercial motor vehicle is considered an employee. When that same owner-operator is not acting in a driving capacity, he or she shall be treated as a motor carrier or employer.

(ii) Gross negligence is an act or omission of an aggravated nature regarding a legal duty, as opposed to a mere failure to exercise ordinary care. It amounts to indifference to or utter disregard of a legal duty so far as other persons may be affected. Reckless disregard for safety is conduct evincing indifference to consequences under circumstances involving danger to life or safety of others even though no harm was intended.

(b) Violations pertaining to commercial drivers licenses (CDL). Violations with respect to the operations of commercial motor vehicles (CMV) for which a CDL is required under part 383 of this chapter are subject to civil penalties up to a maximum of $2,500 per violation. These violations include the operation of a CMV by a driver who has not obtained a CDL or has more than one driver's license; failure to make required notifications of traffic violations, license suspensions or previous employment; and operating a CMV after the driver or the CMV was placed out-of-service by a duly authorized enforcement official.

(c) Violations pertaining to minimum levels of Financial Responsibility.

(1) Failure by a motor carrier to maintain the prescribed levels of financial responsibility pursuant to Part 387 of this chapter constitutes a violation for which a civil penalty of up to $10,000 may be assessed for each violation. Each time a motor carrier dispatches a commercial motor vehicle without the required level of Financial Responsibility may be counted as a separate violation with no overall limitation.

(2) Failure to produce the required proof of Financial Responsibility (MCS–90 or MCS–82) is presumptive evidence of failure to maintain the required levels of Financial Responsibility. The presumption may be rebutted by presentation of the required proof of Financial Responsibility covering the applicable period of time within 10 days of demand.

(3) Failure to maintain the required proof of Financial Responsibility upon demand is a separate offense for which a civil penalty of up to $500 may be assessed. A separate civil penalty of $500 may be assessed for each day such record is not produced after demand has been made.

(d) Violations of the Hazardous Materials Regulations. The violations in this subsection apply to motor carriers, drivers, and shippers when the transportation is by highway in commercial motor vehicles.

(1) All violations of the Hazardous Materials Transportation Act (HMTA), as amended, or orders or regulations issued under the authority of that Act applicable to the transporting of hazardous materials by highway or the causing of them to be transported by highway are subject to a civil penalty of not more than $25,000 and not less than $250 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(2) All violations of the HMTA, as amended, or orders, regulations, or exemptions issued under the authority of that Act applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of a packaging or container which is represented, marked, certified or sold as being qualified for use in the transportation of hazardous materials by highway are subject to a civil penalty of not more than $25,000 and not less than $250 for each violation.

(3) Whenever regulations issued under the authority of the HMTA, as amended, require compliance with another set of regulations, e.g., the Federal Motor Carrier Safety Regulations, while transporting hazardous materials, any such violation of the latter regulations will be considered a violation of the HMR and subject to a civil penalty of not more than $25,000 and not less than $250.

(4) Transporting hazardous materials requiring the display of placards or transporting more than 15 passengers by a motor carrier during any period in which such motor carrier has a final safety rating of unsatisfactory is considered a violation of the MHTA and subject to a civil penalty of not more than $25,000 and not less then $250, and each transportation movement by such carrier is considered a separate violation.

(e) Violations of Notices and Orders. Additional civil penalties pursuant to 49 U.S.C. 521(b) are chargeable for violations of notices and orders which are issued in proceedings under part 306, as follows:

(1) Notice to Abate.

(i) Failure to cease violations of the safety regulations in the time prescribed in the notice may subject the motor carrier to reinstatement of any deferred assessment or payment of a penalty or portion thereof. (The time within which to comply with a notice to abate shall not begin with respect to contested violations until such time as the violations are established.)

(ii) Failure to comply with specific actions prescribed in an order (other than to cease violations of the regulations), which were determined to be essential to abatement of future

violations is subject to a civil penalty of $1,000 per violation per day up to a maximum of $10,000 per violation.

(2) Notice to Post. Failure to post the notice of violation as directed is subject to a civil penalty of $500 for each such failure.

(3) Final Order. Failure to pay the penalty assessed in a final order within the time prescribed in the order will result in an automatic waiver of any reduction in the original claim found to be valid and immediate restoration to the full amount assessed in the notice of violation.

(4) Out-of-Service Order.

(i) Operation of a commercial motor vehicle by a driver during the period the driver was placed out of service subjects the driver to civil penalty of $1,000 to $2,500 per violation. (For purposes of this violation, the term ''driver'' includes an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

(ii) Requiring or Permitting a driver to operate a commercial motor vehicle during the period the driver was placed out of service subjects the motor carrier to a civil penalty of $2,500 to $10,000 per violation.

(iii) Operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made subjects the driver to a civil penalty of $1,000 to $2,500 each time the vehicle is so operated. (This violation applies to drivers as defined in paragraph (e)(4)(i) of this section.)

(iv) Requiring or Permitting the operation of a commercial motor vehicle after the vehicle was placed out of service and before the required repairs were made subjects the motor carrier to a civil penalty of $2,500 to $10,000 each time the vehicle is so operated after notice of the defect is received. (This violation applies to motor carriers, including independent contractors who are not ''drivers'' as defined in paragraph (e)(4)(i) of this section).

(v) Failure to return written certification of correction as required by the out-of-service order is subject to a civil penalty of up to $500 per violation.

(vi) Knowingly falsifying written certification of correction required by the out-of-service order is considered the same as operating or requiring or permitting a driver to operate an out-of-service vehicle and is subject to the same civil penalties provided in paragraph (e)(4)(iii) and (iv) of this section. Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

(vii) Operating or causing to operate in violation of an order to cease all or part of the motor carrier's commercial motor vehicle operations, i.e., failure to cease operations as ordered, is subject to a civil penalty of up to $10,000 per day after the effective date and time of the order to cease.

§ 364.202 Civil penalty assessment factors.

(a) The nature, circumstances, extent, and gravity of the violations listed in § 364.201 may serve as mitigating or aggravating factors affecting the amount of the penalty assessed. These factors relate to the violations per se, i.e., their magnitude, blatancy, frequency and potential for immediate consequences. They could be determinative in charging substantial health and safety violations or patterns of safety violations, as well as assessing a high, medium, or low penalty. In evaluating a motor carrier's safety fitness, the terms acute and critical are used in reference to particular regulations of which violations are noted. Violations of these regulations, therefore, are by their nature serious, and this will be considered in assessing penalties. Similarly, when the circumstances in which violations occur are so obvious that any responsible motor carrier could easily correct them, the continuation of such violations is an aggravating factor to be considered in assessing the level of civil penalty. When violations are so numerous, frequent or longstanding as to indicate habitual noncompliance, the extent of the violations is a consideration. Finally, the gravity of the violation relates to the likelihood of immediate and harmful consequences. When violations have resulted in death or serious injuries, the level of civil penalty is likely to be higher. Similarly, the occurrence of death or serious injury in other instances resulting from the same type of violation increases the gravity of the offense.

(b) Violator factors. The following factors relate to the disposition or conduct of the violator for consideration in the assessment of civil penalties.

(1) Degree of culpability. This factor requires an evaluation of blameworthiness on the part of the violator. It will range from the low end, where a motor carrier may have had various knowledge of violations but little actual involvement, to the high end, where the motor carrier had actual knowledge and disregarded or even promoted noncompliance.

(2) History of prior offenses. Persistent noncompliance reflects a disregard for safety which, in turn, increases the prospect for imminently hazardous conditions leading to accidents. Timely correction of violation patterns should prevent imminent hazards from developing and reduce the likelihood of accidents. Consequently, this factor is a major indicator of a motor carrier's knowledge of its responsibility and disposition toward compliance. Evaluation of this factor will range from a low end, where there is no history of previous violation, to a history of previous noncompliance with the regulations generally, to prior violations of similar regulations, to recent violations of the same regulations, to the high end of repeated and persistent violations of the same regulations.

(3) Ability to pay. The violator's size, gross revenues, resources, and the standards in 4 CFR part 103 (Standards for Compromise of Claims: Inability to Pay) should be taken into consideration in making a determination whether to charge the total potential assessment. This consideration may affect the decision as to the number of violations to cite as well as the level of the penalty to be assessed for each violation. The violator may submit evidence of its ability to pay at any time, and it will be considered in mitigation of the amount claimed. However, this evidence may not be given much weight when the other factors in this paragraph (b) indicate a high assessment is warranted.

(4) Effect on ability to continue to do business. Insofar as this factor is distinguishable from paragraph (b)(3) of this section, it relates to the timeliness of payment and abatement of violations. Evidence that immediate payment of even a mitigated civil penalty will effectively terminate a motor carrier's or shipper's business will be considered in determining whether to defer payment or to allow installment payments of the civil penalty assessed.

(5) Other matters as justice and public safety may require. Matters other than those specifically included in the factors listed in this section may also be either aggravating or mitigating in the interest of justice or public safety. These may include such factors as cooperation or lack thereof; general attitude toward compliance; institution or revision of a safety program; hiring or assignment of personnel with specifically defined safety responsibilities; comprehensiveness of corrective actions; and effectiveness and speed of compliance.

(c) The preponderance of aggravating factors may also indicate the need for more intensive enforcement in the form of other orders, revocations of operating authority, out-of-service, injunctions, or criminal prosecutions.

Subpart C—Criminal Penalties and Other Sanctions

§ 364.301 Criminal penalties.

(a) Except as provided in paragraph (b) of this section, any person who knowingly and willfully violates any provision of the FMCS shall, upon conviction, be subject for each offense to a fine not to exceed $25,000 or imprisonment for a term not to exceed one year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led to or could have led to death or serious injury, in which case the violator shall be liable upon conviction, for a fine not to exceed $2,500.

(b) Any person who knowingly and willfully violates sections 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31302, 31303, 31304, 31305(b), or 31310(g)(2)), or regulations issued under such sections, shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.

(c) Any person who knowingly violates 49 U.S.C. 5104(b), or any person who knowingly and willfully violates any provision of the HMTA, as amended, or any regulation issued thereunder, shall be fined under title 18 of the United States Code, imprisoned for 5 years, or both.

(d) Additional criminal penalties appear in 49 U.S.C. 522–526.

(e) If the agency becomes aware of any willful act for which a criminal penalty may be imposed as noted in this section, the facts and circumstances of such violation may be reported to the Department of Justice for criminal prosecution of the offender.

§ 364.302 Injunctions.

(a) The Associate Administrator may file a civil action to enforce or redress a violation of a commercial motor vehicle safety regulation or order of the FHWA under 49 U.S.C. chapters 5, 51, 311 (except sections 31138 and 31139), and 315, in an appropriate district court of the United States. The court may grant such relief as is necessary or appropriate, including injunctive and equitable relief and punitive damages.

(b) Imminent Hazard—Hazardous Materials Regulations. The Associate Administrator may file a civil action to suspend or restrict the transportation of hazardous material responsible for an imminent hazard or to eliminate or ameliorate such a hazard, in an appropriate district court of the United States. The court may grant such relief as is necessary or appropriate, including injunctive and equitable relief and punitive damages. ''Imminent hazard'' means that there is substantial likelihood that death, serious illness, or severe personal injury will result from the transportation by motor vehicle of a particular hazardous material before an administrative proceeding to abate the risk of harm can be completed.

(c) Imminent Hazard—Federal Motor Carrier Safety Regulations. Whenever it is determined that a violation of the FMCS poses an imminent hazard, the Associate Administrator or the authorized delegate of that official shall order a commercial motor vehicle or the operator of a commercial motor vehicle out of service, or order an employer to cease all or part of its commercial motor vehicle operations until such time as the violations creating the imminently hazardous condition are satisfactorily abated. ''Imminent hazard'' means any condition of commercial motor vehicle, driver or commercial motor vehicle operations which is likely to result in serious personal injury or death if not discontinued immediately.

(d) The employer or driver shall comply immediately upon the issuance of an order under paragraph (c) of this section. Opportunity for review shall be provided in accordance with § 363.110 of this subchapter. An order to an employer to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered out of service forthwith. Vehicles and drivers proceeding to their immediate destinations shall be subject to full compliance with the order upon arrival.

(e) For purposes of paragraph (d), the term *immediate destination* means the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

§ 364.303 Disqualifications.

In addition to any civil or criminal penalties provided for in this part, operators of commercial motor vehicles who are convicted of certain offenses may also be disqualified for periods from 60 days to lifetime, as follows:

(a) Serious traffic violations.

(1) Two serious traffic violations in a 3-year period—sixty days.

(2) Three serious traffic violations in a 3-year period—one hundred twenty days.

(b) Violations of out-of-service orders.

(1) First violation of operating a commercial motor vehicle during the period that the operator, operation, or vehicle are placed out of service—ninety days.

(2) Second violation in a ten-year period of operating a commercial motor vehicle during the period that the operator, operation, or vehicle are placed out of service—one to five years.

(3) Third violation or more in a ten-year period of operating a commercial motor vehicle during the period that the operator, operation, or vehicle are placed out of service—three to five years.

(4) First violation of operating a commercial motor vehicle transporting hazardous materials or passengers during the period that the operator, operation, or vehicle are placed out of service—180 days.

(5) Second violation or more of operating a commercial motor vehicle transporting hazardous materials or passengers during the period that the operator, operation, or vehicle are placed out of service—three to five years.

(c) First violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance—at least one year.

(d) First violation of leaving the scene of an accident involving a commercial motor vehicle operated by the violator—at least one year.

(e) Using a commercial motor vehicle in the commission of a felony (except a felony described in paragraph (i) of this section—at least one year.

(f) Second or further violations described in paragraphs (c) and (d) of this section—lifetime.

(g) Using a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes—lifetime.

(h) Any combination of violations described in paragraphs (c) through (f) of this section—lifetime.

(i) Using a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession in a commercial motor vehicle with intent to manufacture, distribute, or dispense a controlled substance—lifetime.

Subpart D—Monetary Penalty Collection

§ 364.401 Payment.

All monetary penalties are due and payable as provided in the final agency order or settlement agreement disposing of the notice of violation or claim. Interest will accrue from the date payment was due and payable after issuance of a final order, and will be added to all outstanding balances not timely paid.

§ 364.402 Collections.

Unpaid monetary penalties or balances will be pursued aggressively under the Federal Standards for the Administrative Collection of Claims at 4 CFR part 102, as adopted by the Department of Transportation and delegated to the Federal Highway Administration in 49 CFR part 89. Penalties may be recovered in an action on behalf of the United States in the appropriate U.S. District Court.

PARTS 385 AND 386 AND § 391.47—[REMOVED AND RESERVED]

2. Chapter III of title 49, CFR, is amended by removing and reserving parts 385 and 386 and § 391.47.

[FR Doc. 96–10125 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–22–M

federal register

Monday
April 29, 1996

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 361, et al.

Rules of Practice for Motor Carrier Proceedings, Investigations, Disqualifications and Penalties; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 361, 362, 363, 364, 385, 386 and 391

[FHWA Docket No. MC–96–18]

RIN 2125–AD64

Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its rules of practice for motor carrier safety, hazardous materials, and other enforcement proceedings, motor carrier safety rating procedures, driver qualification proceedings, and its schedule of penalties for violations of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. The FHWA further proposes to add provisions on investigative authority and procedures and general motor carrier responsibilities. These rules would increase the efficiency of the practices, consolidate existing administrative review procedures, enhance due process and the awareness of the public and regulated community, and accommodate recent programmatic changes. The rules would apply to all motor carriers, other business entities, and individuals involved in motor carrier safety and hazardous materials administrative actions and proceedings with the FHWA after the effective date of the final rule.

DATES: Comments must be received on or before July 29, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–96–18, FHWA, Office of the Chief Counsel, HCC–10, Room 4232, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Paul Brennan, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Introduction

This rulemaking includes the first comprehensive rewrite of the FHWA's rules of practice for motor carrier administrative proceedings since 1985. It is the forerunner of a comprehensive revision of the Federal Motor Carrier Safety Regulations (FMCSR) anticipated to follow the completion of a zero-based review of those regulations presently underway in the agency. These proposed regulations would appear in previously unused chapters of that portion of the Code of Federal Regulations reserved for the FMCSR, thus leaving ample room for the future revisions. The current rules of practice for safety enforcement and driver qualification proceedings, found in 49 CFR part 386 and in § 391.47, would be replaced by new part 363. New part 361 restates, explains and expands upon statutory authority, administrative enforcement powers, and general responsibilities. New part 364 is the first general treatment of penalties for violations of safety rules provided in regulatory form. The amendments embodied in these three proposed parts are based on the FHWA's experience enforcing the motor carrier safety regulations through part 386. It is intended that the new procedures would make administrative actions and proceedings more efficient while enhancing the guarantee of due process to carriers, individuals, and other entities by substantially increasing awareness of the consequences of noncompliance with commercial motor vehicle safety and hazardous materials regulations.

New part 362 would replace current part 385, which provides administrative review procedures within the safety ratings process. Safety ratings continue to gain in relative importance in the entire safety program in response to legislative mandate, as a part of agency programmatic changes, and in the significance attached to the ratings by the industry itself. Updated procedures will allow for better accommodation of these interests. Parts 385 and 386 would be deleted and reserved for future use.

This rulemaking preamble will first briefly discuss the current statutory background. Each proposed part is then analyzed by describing some of the antecedents of any corresponding current procedures, followed by a section-by-section analysis of the proposed rules. Finally, the proposed rules themselves appear.

Statutory Background

Congress has delegated certain powers to regulate interstate commerce to the Department of Transportation in numerous pieces of legislation, most notably in the Department of Transportation Act (DOT Act), section 6, Pub. L. 85–670, 80 Stat. 931 (1966). Section 55 of the DOT Act transferred the authority of the Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce to the Federal Highway Administration (the agency), an operating administration of the DOT. 49 U.S.C. 104. This authority, first granted to the ICC in the Motor Carrier Act of 1935, Pub. L. 74–255, 49 Stat. 543, now appears in 49 U.S.C. Chapter 315. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations (FMCSRs), appearing generally at 49 CFR parts 390–399. The administrative powers to enforce Chapter 315 were also transferred from the ICC to the DOT in 1966, and appear in 49 U.S.C. Chapter 5.

The Motor Carrier Safety Act of 1984 (1984 Act), Pub. L. 98–554, 98 Stat. 2832, restated, for the first time, the interstate safety authority in terms of particular classes of commercial motor vehicles (CMV). These statutory classes coincided identically with the definition of CMV adopted by the agency in the existing FMCSRs issued under the Motor Carrier Act of 1935. The 1984 Act is codified at 49 U.S.C. Chapter 311, Subchapter III. These two largely overlapping statutes, i.e., Chapters 311 and 315, serve as parallel and complementary authorities for issuance of safety regulations for motor carriers and commercial motor vehicles operating in interstate commerce.

It should be noted that both chapters define interstate commerce as trade, traffic, or transportation in the United States which is between a place in a state and a place outside of such state or is between two places in the same state through another state or place outside the state. The DOT and the ICC interpret as within this jurisdiction transportation wholly within a state which is part of a continuing through movement of property or passengers across state lines. This ''crossing state lines'' definition represents a delegation of less than the full power possessed by Congress to regulate interstate commerce. A more complete delegation is found in other laws in which all trade, traffic, and transportation affecting interstate commerce is deemed

interstate commerce regardless of its direct connection with a movement of goods across state lines.

For example, the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Pub. L. 99–570, 100 Stat. 3 207–170, 49 U.S.C. chapter 313) applies to trade, traffic, and transportation on public highways wholly within a state as affecting interstate commerce because such trade, traffic and transportation intermingles with cross-border movements and therefore affects interstate commerce. The CMVSA established a national commercial driver's license program (CDL) for all drivers of CMVs, which were defined to exclude certain smaller vehicles covered under the 1984 Act and longstanding FHWA regulations, unless the agency determined that it was appropriate to include them. The FHWA did restrict the CDL program to larger vehicles. At the same time, the CMVSA extended jurisdictional coverage to drivers in commerce that had previously been considered entirely intrastate and thus beyond the jurisdictional reaches of the earlier acts. This was a major departure from the traditional, ICC-inherited zone of jurisdiction based on the origin and destination of the cargo being transported. The distinction can be seen most readily in drug testing requirements, which were initially issued by DOT 1989 under its parallel general safety authority in sections 31502 and 31136. Congress enacted specific drug and alcohol testing statutory requirements in 1991 by amending the CMVSA (49 U.S.C. 31306). This action had the effect of expanding the reach of testing from drivers of vehicles carrying interstate cargo to drivers of any vehicles meeting the definition of ''commercial motor vehicle'' provided in the CMVSA, which, by their very nature, affect interstate commerce.

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) Pub. L. 101–615, 104 Stat. 3244, replacing the Hazardous Materials Transportation Act (HMTA), Pub. L. 93–633, 88 Stat. 2156 (1975) required the DOT to issue regulations for the safe transportation of hazardous materials in inter- and intrastate commerce. 49 U.S.C. Chapter 51. The Research and Special Programs Administration (RSPA) of DOT issues the Hazardous Materials Regulations (HMR), which provide standards on the classification, packaging, handling, and registration of hazardous materials. The FHWA enforces the HMR in relation to the transportation of hazardous materials by highway.

The Motor Carrier Act of 1980, Pub. L. 96–296, 94 Stat. 793, and the Bus Regulatory Reform Act of 1982, Pub. L. 97–261, 96 Stat. 1121, established requirements for minimum levels of insurance for for-hire interstate motor carriers and all carriers of certain hazardous materials in inter- and intrastate commerce. 49 U.S.C. 31138–31139.

The Intermodal Safe Container Act of 1992, Pub.L. 102–548, 106 Stat. 3646, established weight certification requirements for tenderors and carriers of intermodal containers. 49 U.S.C. Chapter 59.

The various acts authorize the enforcement of the FMCSRs and HMRs and provide both civil and criminal penalties for violations. In practice, when circumstances dictate that an enforcement action be instituted, civil penalties are more commonly sought than criminal sanctions. The administrative rules proposed in this rulemaking apply, among other things, to the administrative adjudication of civil penalties assessed for violations of the FMCSR and the HMR.

Analysis

Part 361: Administrative

As proposed, this part sets forth the authority granted to the agency to enforce the commercial motor vehicle safety regulations—the FMCSRs and HMRs. It also describes the practices followed by the agency in exercising this authority and prescribes certain responsibilities imposed by these authorities upon motor carriers and others subject to these acts.

Background

Except for a somewhat obscure provision in appendix B to chapter III, subchapter B of the CFR, the authority for the agency's inspection and other administrative powers appears only in statute (see, e.g., 49 U.S.C. 501–525, 31133, and 5121). Standards and practices for the agency's training materials, policy guidance, and internal manuals which are available to the public, but only upon request. Including these standards and practices in the regulations would provide one convenient and authoritative reference source for all regulatees and put them on notice of what may be expected from Federal enforcement officials as well as what is expected of the regulated community.

Detailed intra-agency delegations of motor carrier safety-related functions at one time appeared in 49 CFR 301.60, but were removed in 1988 following a significant reorganization of the motor carrier safety functions and anticipated republication of the regulations under new authority. 53 FR 2035 (January 26, 1988). Specific delegations of authority from the Administrator to the Office of Motor Carriers now appear only in FHWA organizational documents.

Section-by-Section Analysis

Section 361.101 Purpose

This part would spell out the authority and procedures used by the FHWA to conduct investigations and other enforcement activities related to commercial motor vehicle safety, and the corresponding obligations of the regulated industry. Its purpose is to inform the public of the agency's role, to increase awareness of and compliance with the safety regulations, and to facilitate public contact with FHWA officials enforcing the regulations.

361.102 Authority and Delegations

The first sentence of paragraph (a) would list the chapters of title 49, U.S. Code, in which Congress has conferred on the Secretary of Transportation the authority to regulate commercial motor vehicle safety. Many sections of these chapters are cited throughout this document. One statutory provision which is not mentioned again is 42 U.S.C. 4917, which gives the Secretary the authority to enforce Environmental Protection Agency standards for the limitation of noise emissions resulting from the operation of motor carriers engaged in interstate commerce. The regulations implementing this provision appear in part 325, and would not be amended in this rulemaking.

The second sentence of paragraph (a) would specify the administrative powers the FHWA may employ in carrying out its regulatory authority. The intention of this sentence would be to allow application of all of these powers in the enforcement of each relevant regulatory chapter (i.e., 49 U.S.C. chs. 51, 59, 311, 313, and 315). The powers specified are virtually identical to those listed in title 49 U.S.C. 5121 and 31133, which are to be used in the enforcement of chapters 51 and 311, respectively. The administrative powers to enforce chapter 315 are provided in chapter 5 (see 49 U.S.C. 501(b)). Because the jurisdiction of chapters 311 and 315 are identical as applied by the FHWA, with 49 U.S.C. 31136 and 31502 routinely cited as parallel authority for safety regulations, the administrative powers available to enforce chapter 315 may also be said to be coextensive with those under chapter 311.

The authority to investigate violations of chapter 313, the commercial driver's license program, including drug and alcohol testing, appears in 49 U.S.C. 322 and 31317. (See 12018(a) of the CMVSA of 1986, in which the FHWA is granted the power to issue such regulations as may be necessary to carry out the chapter). It is under this authority that the administrative powers in 49 U.S.C. 31133 and chapter 5 would be applied in this rule to enforcement of chapter 313. Similar authority to enforce chapter 59 may be found in 49 U.S.C. 5907.

Paragraphs (b) and (c) would restate the delegation of these authorities within the Department of Transportation from the Secretary to FHWA officials in the field who routinely contact motor carriers. The delegations are broad in order to allow flexibility. The term ''agency'' is used wherever possible when referring to FHWA officials. The exact delegations from the Secretary of Transportation which have been made to the Federal Highway Administration appear in 49 CFR 1.48. Further delegations within the FHWA appear in FHWA organizational documents (generally FHWA Order 1–1) available for review at FHWA regional offices. See 49 CFR part 301. All of these subdelegations of powers delegated to the Secretary of Transportation are within the agency's discretion and are carefully designed to comport with principles of fairness, due process, and efficiency.

Paragraph (d) would restate the delegation of authority to the States which is provided in 49 U.S.C. 31134. Because States are partners with the Federal Government in enforcing motor carrier safety laws, it is important to reemphasize that nothing in this part would preempt States from enforcing State law. Other parts of the regulations do, however, provide standards for the preemption of State laws. See 49 CFR part 355; part 397, subpart E; and § 382.109.

Section 361.103 Inspection and Investigation

With the exception of paragraph (e), this section would detail the scope of the FHWA power to conduct on-site inspections or, as they are more commonly called, compliance reviews, one of the administrative powers listed in the previous section. It would be reemphasized in paragraph (a) that this power applies in carrying out all of the listed commercial motor vehicle safety chapters of the U.S. Code. The language on the conduct of on-site inspection and copying of records and equipment is taken from 49 U.S.C. 504(c) and 5121(c), with the added proviso that such inspections take place at reasonable times, a fundamental requirement of the law relating to administrative searches. Reasonable times would be further explained in paragraph (c) as the regular working hours of the carrier and certain other times in particular circumstances.

Consistent with 49 U.S.C. 504, the on-site inspection powers would apply only to motor carriers and other regulated entities, such as hazardous materials shippers and tenderors of intermodal containers. The term ''motor carrier'' is broadly defined in 49 CFR 390.5 as including a carrier's agents, officers, and representatives. In contrast, the other investigatory administrative powers, such as the power to issue subpoenas, require production of records, and take depositions, would apply to any entity so long as the administrative action is related to an authorized safety investigation. Thus, an entity perhaps not directly regulated by the FHWA, such as a trucking service company, a non-hazardous materials shipper, or a medical examiner, which possesses information related to an investigation of a violation of the safety regulations by a motor carrier would be required to produce records of that information upon request, enforceable through administrative subpoena and subsequent court order.

No distinction among regulated and other entities in application of any of the administrative powers, including on-site inspections, appears in 49 U.S.C. 31133(a). The proposed regulatory approach, however, is consistent with 49 U.S.C. 502 and 504 and the long-standing practice of the FHWA.

Proposed paragraph (b) restates two general principles of administrative law regarding the scope of investigations, questions about which have arisen in the past during the course of inspections. First, any records related to an investigation may be inspected, regardless of whether or not the FHWA requires the records to be maintained under its regulatory authority. Second, as part of an inspection and investigation, FHWA officials may question carrier officials and employees.

The last sentence of paragraph (b) would incorporate the carrier's right of accompaniment during an inspection, as provided in 49 U.S.C. 31133(b). This means the carrier or its representative must be given the opportunity to accompany the investigator during the inspection of records and equipment. The invitation does not have to be accepted, but it must be offered. Paragraph (d) is modeled on provisions in other agencies' regulations. It is proposed that an employer's consent to allow entry on its business premises of an agency official for purposes of conducting an investigation may not be conditioned on the outcome of the investigation or any resulting enforcement actions.

An agency official denied entry by an employer would not attempt to force entry. The right of access for inspection of records and equipment and administrative subpoenas are enforceable through a civil action in U.S. District Court for an appropriate order and such other relief as may be necessary and proper under the circumstances pursuant to proposed § 304.302 (derived from 49 U.S.C. 507).

Paragraph (e) would restate 49 U.S.C. 505(a) and would be included because it is related to the scope of investigations. Given the fluid nature of the motor carrier industry, reviewing lease arrangements may be essential in determining legal responsibility for compliance with the safety regulations. Paragraph (f) would detail the confidentiality of investigatory reports.

Section 361.104 Definitions

To avoid repetition, the definitions provided in § 390.5 are also applicable to this rule. The few additional definitions necessary for this rule are provided.

Section 361.105 Employer Obligations

Paragraph (a) would simply restate the responsibility of motor carriers and other persons to comply with applicable safety regulations. 49 U.S.C. 31135. Paragraph (b) would establish the duty of persons to post notices of violations when required by the FHWA. See 49 U.S.C. 521(b)(3). In addition, reasonable standards for posting such notices are proposed. Paragraph (c) would inform the public that safety regulations published in the Federal Register are available for review in FHWA offices.

Paragraph (c) also proposes to require that employers maintain a copy of applicable safety regulations and make it available to employees upon request. It has long been a requirement that employers assure compliance by their employees of the safety regulations (see 49 CFR 390.11). This obligation could not be met without ready access to the governing regulations. 49 U.S.C. 31502 authorizes the Secretary to prescribe requirements for the ''safety of operation and the equipment'' of motor carriers and the practical mandate to maintain an accessible source of knowledge of the requirements is clearly within this authority. The FHWA does not consider this an increased paperwork burden because printed copies of the regulations are readily available from a number of sources in addition to the

Government Printing Office at little or no cost.

Paragraphs (d) through (e) would reiterate the on-site inspection process from the point of view of the person being investigated.

Section 361.106 Vehicle Inspection

Although the FHWA does not generally focus its enforcement efforts on safety equipment inspections of CMVs on the roadside, this section would mirror 49 U.S.C. 31142, which provides the authority to conduct such inspections. Vehicles may also be inspected at a motor carrier's terminal. See 49 U.S.C. 504(c).

Section 361.107 Complaints

Little in this proposed section goes beyond the statutory language. Paragraphs (a) through (e) would be a mixture of 49 U.S.C. 506(b) and 31143(a), which set forth the FHWA's procedure and obligations in responding to complaints of violations of the safety regulations lodged by members of the public. The only addition to the statutes is the second sentence of paragraph (b), which would clarify what constitutes a nonfrivolous complaint. Proposed paragraphs (f) through (g) repeat the prohibitions in 49 U.S.C. 31105(a) on retaliation against employees who file complaints alleging violations of the safety regulations. Because of the numerous questions which the FHWA regularly receives in this area, paragraph (h) would inform the public that the prohibitions are enforced by the Department of Labor and cites the relevant regulations.

Section 361.108 Administrative Subpoenas

The administrative subpoena power would be elaborated, as authorized in 49 U.S.C. 502(d).

Section 361.109 Depositions and Production of Records

Two more administrative powers would be elaborated, as authorized in 49 U.S.C. 502 (e) and (f).

Part 362: Safety Ratings

This part would set forth the standards and procedures applicable to the determination of a motor carrier's safety fitness and the issuance of a safety rating by the FHWA.

Background

Section 215 of the 1984 Act, enacted on October 30, 1984 (now codified at 49 U.S.C. 31144), required the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles in interstate commerce. Even before the statutory mandate, the FHWA had been providing safety fitness information to the Interstate Commerce Commission since 1967, and had developed a rating system for motor carriers. Following the 1984 Act, the FHWA published an NPRM on June 25, 1986 (51 FR 23088), and issued a final rule on December 19, 1988, with an effective date of January 18, 1989 (53 FR 50961). The regulations are codified at 49 CFR part 385. The regulations were amended by the interim final rule published on August 16, 1991 (56 FR 40801) to implement the provisions of the Motor Carrier Safety Act of 1990 (MCSA of 1990) (section 15 of the Sanitary Food Transportation Act of 1990, Pub. L. 101–500, 104 Stat. 1218) which prohibits a motor carrier that receives an ''unsatisfactory'' safety rating from operating commercial motor vehicles to transport certain hazardous materials or more than 15 passengers.

The regulations established a ''safety fitness standard'' which the FHWA uses for assigning motor carrier safety ratings of ''satisfactory,'' ''conditional,'' or ''unsatisfactory.'' The safety ratings are used to prioritize motor carriers for review and focus enforcement resources on carriers with the most serious compliance problems. The safety ratings had routinely been made available to the ICC for consideration of operating authority applications and self-insurance, and have been available to the Department of Defense in the selection of carriers to transport hazardous materials and passengers, to other governmental and private industry shippers for carrier selection purposes, to insurance companies to assist in risk determinations and to the public upon request.

The current rule also prescribes procedures for administrative review of the rating based on factual disputes, and for requested changes in safety ratings based upon evidence that corrective actions have been taken to bring the motor carrier into compliance with the safety fitness standard.

Since the adoption of the safety rating regulations, the process has been the subject of occasional dispute. To some, the method used in determining a safety rating is abstract and confusing, especially when determined at the same time as, but not necessarily in conjunction with, the decision whether or not to initiate enforcement actions. The existence of both ''unsatisfactory'' and ''conditional'' ratings, moreover, has resulted in unintended significance being given to the ''conditional'' rating. Since it is less than a ''satisfactory'' rating, some shippers and others comparing the performance of various carriers may give the ''conditional'' ratings an overlay negative connotation not intended by the agency. Some motor carriers, on the other hand, equate the satisfactory rating with a level of excellence unintended by the agency and inconsistent with the general meaning of the term ''satisfactory,'' i.e., adequate.

Other motor carriers have argued that a rating may be based on alleged violations of the regulations discovered during on-site audits but not fully documented. It may then become difficult to contest these violations in an administrative proceeding challenging the rating. In practice, the FHWA has addressed this concern by taking a second investigative look at disputed violations.

Although the FHWA believes that current procedures satisfy the due process provisions of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, there is room for improvement and greater efficiency. The situation took on added significance with the enactment of the Motor Carrier Safety Act of 1990 and its requirement that motor carriers that receive an ''unsatisfactory'' safety rating be prohibited from operating commercial motor vehicles to transport hazardous materials and passengers. This prohibition, which becomes effective 45 days after receipt of an ''unsatisfactory'' safety rating, would clearly affect a motor carrier's ability to stay in business. In light of these concerns, and to improve the objectivity of the information on which ratings are based, the FHWA has already made several adjustments to the safety rating methodology and has heightened its responsiveness to carriers exposed to serious consequences following ratings.

Full compliance with all of the safety and hazardous materials regulations should certainly be the objective of all responsible motor carriers. At a minimum, however, a motor carrier must have managerial control over the critical functions of its operations that reflect on safety, i.e., it must have an effective system to assure compliance with the regulations. A negative rating is, of course avoided through full compliance. It is also avoided by adopting reliable measures to assure that the motor carrier's employees know what is required by the regulations, have the opportunity to achieve full compliance, and do not violate those regulations.

In reviewing a motor carrier's operations for rating purposes, the FHWA places more emphasis on compliance with those regulations that have the greatest immediate and direct

impact on safety. In evaluating the several factors that comprise the rating, violations of those regulations will have a greater effect on the overall rating. The FHWA has been using the concepts of ''acute'' and ''critical'' regulations to carry out this purpose. The term ''acute'' refers to regulatory requirements the violations of which would create an immediate risk to persons or property, e.g., using a driver after he has tested positive for alcohol. The term critical refers to those regulatory requirements the violation of which, if occurring in patterns, would indicate a breakdown in effective control over essential safety functions, e.g., using drivers beyond their allowable driving or duty hours. These concepts would now be codified if this proposal becomes final.

It is also being proposed that the safety ratings be reduced to only one category, eliminating both the ''satisfactory'' and ''conditional'' safety rating categories. Conditions may be attached to the avoidance of an ''unsatisfactory'' rating, but they would not place the motor carrier in a rating category from which negative assumptions may be drawn. This raises some additional questions to be resolved in the final rule, e.g., whether and how best to describe those carriers which are not rated ''unsatisfactory'' and what should be done with the ratings of those carriers currently rated ''conditional.''

The FHWA believes that Congress has expressed its will in the MCSA of 1990 (49 U.S.C. 5113) and in subsequent oversight reports that severe consequences should attach to an ''unsatisfactory'' rating. Although the language in that provision employs the terms ''satisfactory'' and ''conditional,'' no particular significance is attributed to those terms other than they are an improvement from the ''unsatisfactory'' classification. This proposal reflects the FHWA's continuing intention to focus on the ''unsatisfactory'' category and assure that before carriers are assigned such a rating, it is indeed a reflection of demonstrably poor compliance or performance. If the unsatisfactory safety rating is to be considered tantamount to a determination that the carrier assigned such a rating should not to be operating commercial motor vehicles in interstate commerce without appropriate corrective measures, then such a carrier should be well below average and the percentage of carriers earning such a rating ought to be relatively small. The information used to assign such a rating should be put to a more strenuous test before consequences attach.

The FHWA is, therefore, also proposing to give motor carriers advance notice of unsatisfactory ratings so that any challenges to the ratings can be resolved before the rating takes effect. In addition, expedited procedures for the review of unsatisfactory ratings are proposed for carriers when their ability to stay in business might be affected by such a rating. Finally, the FHWA is also proposing to recognize a practice that has been evolving over the last few years by affording some discretionary relief to motor carriers adversely affected by ratings that are able to demonstrate a willingness to comply and accept conditions designed to improve their safety management systems and practices.

It must be recognized that the FHWA will never be able to complete an individual on-premises compliance review of every motor carrier in existence. More and more, the information obtained from State accident reports and reports generated by the 2 million roadside inspections conducted each year is being used to identify carriers that may be experiencing safety or compliance problems and therefore pose potential safety risks. (As prescribed in current regulations, this information is also factored into a carrier's rating.) Complaints are also indications of the possible existence of compliance problems, and there is a statutory duty to investigate nonfrivolous complaints. As the amount and reliability of external information grows, the absence of negative indicators becomes a more reliable premise for refraining from individual, on-site compliance reviews. Moreover, a ''satisfactory'' rating produced by a compliance review is only a current assessment of a motor carrier's level of compliance, and its significance obviously diminishes with time.

In a one-category rating system, therefore, an ''unsatisfactory'' rating is definitely a negative finding, which is likely to have adverse impacts on the motor carrier's business opportunities. The remaining group of carriers that are not rated ''unsatisfactory'' would be comprised of those carriers with existing ''satisfactory'' or ''conditional'' ratings (which may be dated) and other carriers that are not rated (this would be the largest group). The latter subgroup of unrated carriers would be comprised both of carriers that survive future compliance reviews without receiving an ''unsatisfactory'' rating and those that have not been subject to on-premises compliance reviews. In this proposal, we would not use any terminology to describe carriers that are not rated ''unsatisfactory,'' so that no connotation, positive or negative, would attach. If readers are particularly opposed to this approach, the FHWA is interested in receiving comments on the use of categories and the proper terminology to be applied to them.

In this proposal, the FHWA would be prescribing the immediate termination of ''satisfactory'' and ''conditional'' ratings. This would have no impact on carriers presently holding such ratings as they would not be grouped in the unsatisfactory category. The FHWA is also particularly interested in comments on this issue.

In recent times, the FHWA has considered programs that would provide incentives to those carriers that demonstrate exceptional performance and compliance. Nothing in this proposal should be interpreted to mean that we have abandoned such concepts. The agency will continue to work with other organizations and associations, such as the Commercial Vehicle Safety Alliance, to develop the potential of using positive incentives to promote compliance.

Finally, the safety rating is only one means of promoting compliance with the safety regulations. The FHWA will continue to employ selective compliance and enforcement measures in the form of inspections, investigations, civil penalty assessments and criminal prosecutions. These will be driven, for the most part, by performance indicators and complaints. We will also continue to rely heavily on the partnership developed with State safety enforcement agencies through the Motor Carrier Safety Assistance Program. Enforcement actions are considered an effective tool to promote compliance and penalties will be imposed for violations of the safety regulations when circumstances warrant, regardless of the carrier's rating. This recognizes that many otherwise satisfactory motor carriers will tolerate violations of the regulations from time to time, or will get careless in their management practices designed to detect and eliminate violations. Enforcement is appropriate in such situations without necessarily affecting a carrier's overall rating.

This following section-by-section analysis explains these changes in more detail.

Section-by-Section Analysis

Section 362.101 Purpose

This section would identify the scope and purpose of the part. The definitions section of part 385 would be removed as unnecessary.

Section 362.102 Motor Carrier Identification Report

This requirement is presently found at § 385.21, and provides that interstate and foreign carriers must file a Motor Carrier Identification Report, Form MCS–150 (copy provided in the appendix), within 90 days of beginning operations. This is essential to an accurate motor carrier census and relates to the assignment of a DOT identification number. It also assists the FHWA in scheduling reviews of unrated motor carriers. Since this is a continuing requirement, the provision in the current rule requiring the filing of the report within 90 days of the effective date of the rule has been eliminated.

Section 362.103 Safety Fitness—Standard and Factors

The safety fitness standard in the current § 385.5 and the factors in § 385.7 would be clarified, simplified and combined into one section. This proposal also elaborates on the factors used to determine the rating and codifies the practice of placing special emphasis on compliance with ''acute'' and ''critical'' regulations.

Section 362.104 Determination of Safety Fitness—Safety Ratings

The current 49 CFR 385.9 would be amended to define the one safety rating that may be issued by the FHWA (''unsatisfactory''), and to describe what constitutes such rating. For example, a carrier would be issued an unsatisfactory rating if it is determined that the carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standards and factors prescribed in proposed § 362.103, and which has resulted in one or more of the specific occurrences listed in § 362.103(b)(1) (i) through (x). In addition, this section provides that an ''unsatisfactory'' safety rating may be avoided based on conditions, such as compliance with specific provisions of the safety or hazardous materials regulations, the requirements of a compliance order or settlement agreement, or notices to abate, which may be imposed at the time the proposed safety rating is issued.

This requirement is not intended to replace the current ''conditional'' safety rating. Rather, it is intended to provide the agency with flexibility to promote compliance with the regulations by obtaining the correction of deficiencies in specific areas of a carrier's operations without calling the motor carrier's entire safety fitness into question. The conditions upon which it would avoid ''unsatisfactory'' would be known by the motor carrier and the agency. No separate status would attach to the rating, nor would the existence or the nature of the conditions be routinely available to the public under § 362.110. The motor carrier could correct deficiencies without having its ability to stay in business negatively affected, as is generally the case with the current ''conditional'' safety rating.

Section 362.105 Unsatisfactory Rated Motor Carriers—Prohibition on Transportation of Hazardous Materials and Passengers; Ineligibility for Federal Contracts

This section would incorporate and clarify the existing prohibitions and penalties listed in section 49 CFR 385.13 that are applicable to motor carriers that receive a safety rating of unsatisfactory. The listing of applicable penalty statutes would be replaced with a reference to the penalty provisions listed in appendix A to part 386 of this chapter (Part 364 in this proposal). Finally, the references to the 45-day period during which a motor carrier must improve the safety rating would be removed and incorporated into the procedures for obtaining review of the rating (new § 362.108, see description below).

Section 362.106 Notification of a Safety Rating

This section would clarify and incorporate the rating notification requirements of the current § 385.11, and establish the concept of a proposed safety rating of unsatisfactory. A proposed safety rating of unsatisfactory would become the motor carrier's final safety rating 45 days after the date the notice of proposed safety rating is received by the motor carrier, unless the carrier petitions for a review or obtains relief pursuant to proposed § 362.108 (see below). This proposed rating incorporates the requirement in the MCSA of 1990 that a motor carrier receiving an unsatisfactory safety rating be given 45 days to improve its rating before the Act's prohibition of hazardous materials and passengers transportation takes effect. It would also eliminate a distinction between carriers based on type of operation by applying the concept of the proposed rating to all unsatisfactory findings and would afford all carriers the opportunity to be heard during that period and to improve the rating before consequences attach. This section also would provide that a proposed safety rating would not be made routinely available to the public until it becomes final. This would ensure that a proposed safety rating of unsatisfactory will not affect a motor carrier's business before the carrier is given the opportunity to improve or challenge its proposed rating.

The FHWA recognizes that the assignment of a negative safety rating often has graver consequences for the rated motor carrier than any civil penalties that might be sought for individual violations considered in the compilation of the rating. Several prohibitions attach to the assignment of an unsatisfactory rating and decisions are made daily by shippers and insurers on the basis of safety ratings. This is a primary purpose of the rating as conceived by Congress and implemented by the agency. For this reason, the agency treats the rating as a valuable compliance and enforcement measure and provides an administrative proceeding to afford the ratee with the opportunity to be heard before the rating is made known. The FHWA believes that withholding information about a proposed rating from the public is consistent with the Freedom of Information Act, which provides an exemption from required release of information compiled for law enforcement purposes (Exemption 7). The exemption applies because (a) a law enforcement proceeding would be pending, i.e. the determination of the motor carrier's safety fitness; and (b) the premature release of a proposed rating could reasonably be expected to cause harm in that the consequences would attach before a final decision was made. Since the purpose of providing the administrative proceeding is to prevent unintended consequences from inchoate determinations, release of proposed ratings to shippers and insurers who may very well act on the information could easily frustrate that purpose. It could also increase demand for expedited adjudication which could adversely impact an orderly consideration of all relevant issues. Moreover, the length of time between a proposed rating and a final rating is finite and would rarely exceed 45 days. The FHWA also recognizes that release of a proposed rating may be unavoidable under some circumstances, but it would be the agency's intent that routine release under § 362.110 would not occur.

Section 362.107 Change to Safety Rating Based on Corrective Actions

This section would continue the remedy presently available in § 385.17 by allowing for a change in an unsatisfactory rating to be requested both within the 45 days the rating remains in a proposed status and at any time after the rating becomes final. The

filing of a petition for change of a proposed rating would not stay this 45-day period, but if the FHWA cannot make a determination within the 45-day period and the motor carrier has submitted evidence that corrective actions have been taken, the period may be extended for up to an additional 10 days. This would allow the agency to prioritize requests based on the consequences a particular carrier may face from an adverse rating. This section would also provide for a higher level agency review of a denial of a request for a rating change. In cases where the resulting unsatisfactory rating causes an out-of-service order to be issued, an expedited review by the Associate Administrator would also be available.

Section 362.108 Administrative Review

This section would consolidate, clarify, and revise the existing procedures in §§ 385.15 and 385.17 dealing with petitions for review of safety ratings. The section would establish a single procedure applicable to reviews of proposed safety ratings of unsatisfactory and of denials of requests for changes in ratings under § 362.106. Petitions for reviews of safety ratings of unsatisfactory under this section would be similar to the procedures in the present § 385.15 applicable to reviews by the Director, Office of Motor Carrier Field Operations, in cases where there are factual or procedural disputes to be resolved. A motor carrier receiving notice of a proposed safety rating of unsatisfactory would still have the option of requesting a change in the rating based on corrective actions taken. This section would provide a carrier selecting that action with the additional opportunity to petition for review if it believes the rating or the denial of a change was based on errors of procedure or fact.

The existing 90-day filing deadline for petitions under this section would be reduced to 45 days for consistency and finality. When the procedure applies to proposed safety ratings of unsatisfactory, the request for review must be submitted during the 45-day period before the proposed rating becomes final. This section would maintain the current statutory requirement that the FHWA complete the review within 30 days in cases where the petition is filed by a motor carrier subject to the hazardous materials and passenger prohibition in § 362.105.

The petitioner would be required to submit with its petition all arguments and information it desires to be considered on review. In most cases, the Director, Office of Field Operations, will complete the review and render a decision on the basis of the written submission. The Director would have the discretion to request additional information or to call a conference. If it is determined that the motor carrier operations still fail to meet the safety fitness standard, the motor carrier would be provided with written notification that its petition has been denied and that the proposed safety rating of unsatisfactory is final. Except as provided below, the decision of the Director, Office of Motor Carrier Field Operations, would become the final agency action. Because the unsatisfactory rating generates an out-of-service order for a passenger or hazardous materials carrier, such motor carrier would have the right to an expedited administrative review of this decision by the Associate Administrator for Motor Carriers in accordance with 5 U.S.C. 554 and corresponding procedures are proposed in part 363. This is a new review procedure proposed to better guarantee due process of law. The expedited review, if timely requested, would be provided within 10 days from the date of the notice of denial of the initial review petition. The Associate Administrator may refer the petition for review for a hearing before an Administrator Law Judge (ALJ). The Associate Administrator or ALJ may stay any safety rating during the pendency of the expedited administrative review.

Section 362.109 Temporary Relief From Rating

This section would provide a means to grant temporary relief to a motor carrier from dire consequences of an unsatisfactory rating upon a showing of willingness to adopt necessary changes in safety management polices and practices and to make good faith efforts to improve safety performance. The temporary relief would be entirely discretionary on the part of the Regional Director, in the case of a petition for change in the rating, and the Director of the Office of Field Operations, in the case of an initial administrative review. The exercise of discretion by these officials is not reviewable as every carrier affected by a proposed rating or final rating is provided with ample opportunity for administrative review in this Part. This provision merely institutionalizes a practice that has been growing in the recent past whereby a rating is ''conditionally rescinded,'' to allow a motor carrier to demonstrate its improved practices in order to earn a better rating. If a motor carrier is forced to cease operating because of an unsatisfactory rating, it presumably would be unable to gather any experience with improved systems that would convince a reviewer that it had indeed committed itself to safety compliance. The proposed procedure would require the motor carrier to operate under a consent order for a period not to exceed 60 days at the conclusion of which a final rating would be assigned.

Section 362.110 Safety Fitness Information

This section would incorporate the requirements of the current § 385.19. The section has been clarified to make clear that the information would also be made available to State agencies.

Part 363: Enforcement Proceedings

The goal of this proposal is to improve the current rules of procedure for motor carrier enforcement proceedings. Mindful that this must also have been the goal each of the numerous times the rules have been amended since their inception in 1969, the task has been approached deliberately. To open the process to new ideas, various external sources have been consulted, notably the Model Adjudication Rules of the Administrative Conference of the United States (December 1993) and various procedural rules of other Federal agencies. On the other hand, in recognition of the importance of the historical context of the rules, the predecessors of the current rules, and their extensive amendments, were reviewed in hopes of identifying shortcomings and determining the underlying rationale for certain provisions which may now seem unnecessary, unclear, or unavailing.

This review reveals that even the first incarnation of motor carrier procedural rules by the FHWA, spare though they may have been, were not created in a vacuum, but were largely based on practices and procedures of the Interstate Commerce Commission from whence the FHWA inherited its motor carrier safety functions. Each subsequent amendment was believed to be necessary to address programmatic or statutory changes or to increase efficiency and fairness. And each amendment or wholesale revision was built on the foundation of previous rules. This effort is no different, notwithstanding the recourse to model rules.

Because of the importance of past practice in understanding both the current system and needed changes, and because such a history has not been compiled elsewhere, a fairly extensive examination of previous rules is offered.

The proposed rules will then be explained in this context.

Background

The current rules are the legacy of two distinct strains of administrative procedures of the ICC. Until 1966, the ICC had the sole responsibility on the Federal level for regulating motor carrier safety. In addition to its pervasive regulation of interstate routes, rates and services through a comprehensive system of certificates of authority to operate, the ICC also established standards for the safety of operation of motor carriers. Interstate Commerce Act, sec. 104, 24 Stat. 379, (1887); added ch. 498, 49 Stat. 546 (1935). Most of the safety standards were enforced through a rather onerous process involving numerous formal steps—opening an investigation, investigation, record production and depositions, proceedings before the full Commission, compliance orders, and, if it came to that, the withdrawal of operating authority.

In addition, the ICC had limited authority under section 222(h) of the Interstate Commerce Act to levy civil, monetary penalties against carriers for failure to keep records, file reports, or respond to questions posed by the ICC, so-called recordkeeping violations. Acts of fraud, misrepresentation, false statements, and intentional violations of nonrecordkeeping requirements in the FMCSRs were punishable solely as criminal offenses in Federal court, or through the formal process relating to operating authority. The section 222(h) recordkeeping violations subject to monetary penalties were enforced by the ICC in civil actions in the United States District Courts in the event informal administrative procedures to resolve such actions were unsuccessful.

The two separate enforcement tracks were carried over to the FHWA after the ICC's safety functions were transferred to DOT. In 1969, the FHWA issued rules of practice for motor carrier proceedings which crystallized the dichotomy. 34 FR 936 (January 22, 1969). Part 385 of title 49 CFR was entitled ''Collection and Compromise of Claims for Forfeiture under Section 222(h) of the Interstate Commerce Act.'' Part 386 provided ''The Rules of Practice for Motor Carrier Safety Proceedings under section 204(c) of the Interstate Commerce Act.''

Part 385 was very brief, providing requirements for claim notices and settlement agreements. Respondents were instructed that they should respond to the claim and should state whether they wished to discuss payment. A response was not mandatory. Section 222(h) claims that did not result in a settlement or to which there was no response were enforced through litigation in U.S. District Court. Mirroring the ICC situation, no administrative procedure was provided to resolve the claims.

As the FHWA's version of the ICC's formal process, part 386 was considerably more involved than part 385 and established the framework for the current rules of procedures.

All proceedings under part 386 alleging safety violations began with issuance of a notice of investigation (NOI) to a motor carrier, a procedural relic of the cumbersome ICC process. Under 49 U.S.C. 506, an order to compel compliance could not be issued without an NOI and an ''opportunity for a proceeding.'' The Federal Highway Administrator assigned to a hearing examiner all NOIs properly contested by the carrier in the form provided in the rule. After a hearing, the hearing examiner issued an order disposing of the proceedings, which was reviewable by the Administrator on his/her own motion or that of a party. The proceedings could also be disposed of by issuance of a consent order pursuant to the agreement of the parties. Improperly contested or unanswered NOIs could result in unilateral issuance of a final order by the Administrator. For the most part, the orders directed the carrier to comply with the safety regulations it was already duty bound to follow.

For enforcement of orders against regulated carriers, the FHWA had to petition the ICC to open its own investigation into the carrier's operating authority, thus bringing the matter back to that cumbersome process. Moreover, a revocation proceeding by the ICC would generally not be commenced without a showing that an FHWA order had been violated.

In 1977, the FHWA made the first extensive revisions to these procedural rules. 42 FR 18076 (April 5, 1977). Part 385 was repealed and its settlement procedures incorporated into part 386. The respondent's statement of desire to discuss payment of the amount of the claim became mandatory and an occasional source of confusion or, at least, an excuse not to file a proper response. It is not difficult to see that a statement expressing a willingness to settle could be seen by the uninitiated as a quasi admission of culpability at odds with a statement contesting the allegations of the claim. Some respondents merely stated they wished to discuss settlement and failed to file a reply consistent with the rules, thereby risking waiver of the right to contest the claim, waiver of the right to a hearing, or worse, default. This situation was exacerbated by regulatory changes in action taken by the FHWA upon a failure to reply.

In the interest of uniformity, the scope of Part 386 was expanded in 1977 to include monetary penalty actions arising under section 222(h) of the ICC Act (formerly processed under part 385) and the HMTA and to include driver qualification determinations. Unfortunately for uniformity, the standards for these proceedings varied in particulars. For example, the commencement of proceedings was trifurcated into issuances of claim letters for civil penalties, letters of disqualification or determinations for driver qualifications, and NOIs for violations of other safety rules. Significantly, monetary penalty assessments were now, for the first time, subject to an extensive administrative process.

In terms of procedures, no longer would all properly contested matters result in a hearing. Instead, ''to expedite the decisionmaking process and to reduce the number of unnecessary hearings,'' the Associate Administrator (AA) for Safety, rather than the Federal Highway Administrator, would only assign matters with material factual issues in dispute to a hearing officer. If no hearing was requested in the reply, the AA could simply issue a final order based on the evidence and arguments submitted.

When no reply was received at all, the outcome varied by the type of proceeding. If a driver failed to reply in accordance with the rules to a letter or determination of disqualification in a driver qualification proceeding, the letter or determination automatically became the final order of the Associate Administrator 30 days later. In contrast, no such automatic procedure existed when no reply at all was made to claim letters or NOIs. The AA still had to issue a final order, although it could be done *sua sponte.*

Also added to part 386 were pre-trial procedures on discovery and motion practice designed to expedite the proceedings and clarify procedural points which had arisen under the 1969 rules.

Minor revisions were made to the rules later in 1977, based on comments received from the public and six months of practice. 42 FR 53965 (October 4, 1977). Most significant among the changes, a motion by a party was required before the AA could issue a final order where no reply was made to the NOI or claim letter. In addition, discovery and amendment of pleadings were expanded to situations in which a

matter was not assigned for a hearing but decided by the AA based on the pleadings. Finally, for matters under the HMTA only, an option was added whereby a respondent could reply to a claim or NOI with a notice to submit evidence, rather than request a hearing, and then submit the evidence at a later date.

In 1985, the rules were again comprehensively amended. 50 FR 40304 (October 2, 1985). The precipitating factors were again statutory changes and internal reorganization. Pursuant to the Motor Carrier Safety Act of 1984 and amendments to the HMTA, the rule contained provisions for the FHWA to seek to enjoin in U.S. District Court carrier actions in violation of the FMCSRs and HMRs and to order out-of-service all carrier operations constituting an imminent hazard to safety.

A section on judicial appeal of final orders was also added to the rule consistent with the 1984 Act. This became important because the 1984 Act authorized the FHWA, for the first time, to assess civil, monetary penalties for non-recordkeeping violations of the FMCSRs. Prior to the 1984 Act, monetary penalties could only be assessed for violations of the HMRs and recordkeeping requirements in section 222(h) of the ICC Act and the FMCSR. The 1984 Act expressly made all penalty assessments subject to the notice and hearing requirements of the Administrative Procedure Act. Thus, the reach and depth of the FHWA's civil penalty authority was greatly expanded, and the procedural rules were amended to reflect this new authority and responsibility.

In terms of procedure, however, the basic trichotomy of the 1977 rules was continued—driver qualification, civil penalty, and NOI proceedings. Despite the sudden predominance of civil penalties in terms of the safety program generally, and, specifically, of the relative number of administrative proceedings, the civil penalty procedures were little changed from the 1977 rules, which, in turn, were largely based on the old ICC NOI procedures. Although these procedures met the requirement in the 1984 Act to comply with the Administrative Procedure Act, they perhaps did not offer the clearest and most efficient method of resolving the new influx of cases.

The civil penalty procedures were amended, however, in several minor ways relevant to this discussion. First, similar to the earlier provisions for driver qualification proceedings, the failure to reply to a claim letter automatically resulted in the letter becoming the final order of the Associate Administrator for the newly organized Office of Motor Carriers (AA) without a separate order having to be issued upon the motion of a party. Unlike the qualification section, however, this seemingly applied only to a complete failure to reply, and not merely a failure to reply in the form provided in the rule. For NOIs, nothing changed in this regard. Final orders continued to be issued by the AA only upon motion of a party. Second, the procedure for notice of intent to submit evidence without a hearing was extended from hazardous materials cases to all civil penalty proceedings. Third, Administrative Law Judges formally replaced hearing officers as arbiters, although this had been the practice for some time. Fourth, the discovery and hearing procedure sections were made more detailed to closer approximate the Federal Rules of Civil Procedure (title 28, U.S.C.).

The important results of the 1985 amendments were the expansion of civil penalty authority and the addition of out-of-service order authority. These two developments further marginalized the venerable NOI process. In practice, civil penalty proceedings came to greatly overshadow the cumbersome NOI proceedings. Instead of having to endure a long administrative process possibly resulting in an order to comply with regulations with which a carrier was already bound to comply, and which could only be enforced through intervention in ICC proceedings, another long process, direct administrative action could be taken against the carrier in the form of financial penalty. If a carrier persisted in a state of noncompliance, it could now be directly ordered out of service as an imminent hazard. An NOI-based order to comply with the regulations paled in comparison with these new powers.

The next revision of the rules made only technical amendments. 53 FR 2035 (January 26, 1988). Added to the authorities and scope sections in part 386 were references to the CMVSA of 1986 (49 U.S.C. Chapter 313), in order to implement the CMVSA-based civil and criminal penalties added to 49 U.S.C. 521(b). The Administrative Law Judge's power to dismiss matters referred by the AA for a hearing was made explicit. And the rather detailed delegations of authority from the Administrator to various positions within the Office of Motor Carriers were removed from the regulations and placed in the FHWA Organization Manual,[1] consistent with an agency-wide trend to maximize flexibility.

A small change was made to the rules on December 19, 1988 (53 FR 50961). The FHWA clarified that an out-of-service order designed to eliminate an imminent hazard applied immediately, pending an opportunity for review within 10 days.

More extensive amendments were made in 1991. 56 FR 10183 (March 11, 1991); NPRM, 55 FR 11224 (March 27, 1990). A new subpart G spelled out the statutory civil penalty assessment criteria and specified the four types of FHWA orders the violation of which could lead to additional penalties. The four types of orders were notice to abate, notice to post, final order, and out-of-service order. New appendix A to part 386 established a penalty schedule ranging from $500 to $10,000 for violations of such orders. These amendments implemented a provision of the 1984 Act (49 U.S.C. 521(b)(7)).

Another 1991 amendment added a ''new'' order to the AA's enforcement arsenal—the compliance order, last heard from in ICC proceedings predating the formation of the DOT. See § 386.21. The compliance order attempted to give meaning to the largely moribund NOI process, the procedures for which nevertheless remained in the regulations. The compliance order became the name of the final order issued by the AA in an NOI proceeding in which a consent order could not be achieved. A compliance order could go beyond the NOI in that it could direct a carrier to ''take reasonable measures beyond the requirements of the regulations, in the time and manner specified, to assure future compliance.'' The order warned that failure to take those measures would constitute a violation of a final order of the AA, subjecting the carrier to the additional penalties of appendix A and an out-of-service order if the carrier's operations constituted an imminent hazard to safety. In practice, it is not common for a compliance order to be issued directing a carrier to take compliance measures beyond those required in the safety regulations, but such measures may be dictated by the circumstances. The rule allows challenges to the reasonableness of these measures. In order to expedite the use of NOIs, the NOI and civil penalty procedures were merged into § 386.14, though the differences in default standards, discussed above, remained. The combination of NOIs and civil penalty

[1] FHWA Orders 1–1, Part I, Chapter 7, Motor Carrier Safety, is available for inspection and copying as provided at 49 CFR part 7, appendix D.

claims into a single administrative proceeding has been permitted since the 1985 rules.

In practice, it is common for NOIs and notices of claims to be both combined or issued separately at the same time in parallel proceedings, on those occasions when NOIs are used. The primary use of the NOI is as a warning that further violations of the same regulations could constitute an imminent hazard and lead to an out-of-service order, as provided in § 386.21(c).

The 1991 rulemaking made two further amendments worth mentioning. First, settlement agreements were amended to require a statement that failure to pay in accordance with the agreement resulted in the original claim amount becoming due and payable immediately. Second, a provision was added to the out-of-service procedure allowing a vehicle in transit at the time it is ordered out of service to proceed to its immediate destination. Both of these concepts are incorporated in the proposed rules.

Section-by-Section Analysis

Subpart A—Civil Penalty Proceedings

Section 363.101 Nature of Proceeding

Civil penalty proceedings would be defined broadly as administrative proceedings in which the FHWA seeks payment of a fine or orders a motor carrier, individual, or other regulated entity, the ''respondent,'' to take some action. Civil penalty proceedings are based on violations of the FMCSRs or HMRs, which must be established administratively by final order of the agency. Civil penalty proceedings would include all motor carrier safety, hazardous materials and intermodal container administrative enforcement proceedings by the FHWA, other than those involving driver qualification and safety ratings. For example, proceedings resulting from issuance of an out-of-service order are civil penalty proceedings.

Driver qualification procedures are proposed in subpart B of this part. Safety ratings are issued and may generally be contested in accordance with proposed part 302. However, when the safety rating has the effect of placing a carrier out of service, the carrier is offered the same opportunity for an expedited hearing as is available to a carrier subject to a direct out-of-service order.

The notice of investigation (NOI) procedure, the resurfaced, ICC-originated process which allows for a finding of violations but provides no penalties, would finally be laid to rest. Any orders, findings, notices, or warnings the NOI procedure may have allowed would be incorporated into the civil penalty process. The use of one set of procedures for all claims arising from a single set of violations should result in clearer standards and greater efficiency, and would eliminate parallel proceedings arising from an NOI and a monetary claim based on a single set of violations.

The procedures are designed to comport with the Administrative Procedure Act and principles of due process. The proposed rules ensure that persons are adequately notified of the violations they are alleged to have committed and of their right to the opportunity to be heard by the agency, and, in the appropriate circumstances, to a hearing before an Administrative Law Judge.

Section 363.102 Notice of Violation (Complaint)

A Notice of Violation setting forth the allegations of the claim of the agency against the respondent would begin a proceeding. Paragraphs (a) and (b) propose the minimum information to be included in the notice. The only item which is not a restatement of part 386 is the reply form at paragraph (a)(5), which will be discussed below. To ensure that respondents are notified of the agency's claim, paragraph (c) would specify as the form of service to be used in issuing the notice one which utilizes a return receipt. This requirement is consistent with current practice.

Section 363.103 Form Reply to Notice of Violation

It is proposed to include with each notice of violation a reply form on which the respondent is asked to check off its intended response to the claim. The respondent may check only one option on the reply form. The choices are to: (1) Pay the penalty, (2) discuss settlement, and (3) contest the claim. If (2) is chosen, respondent retains the right to contest the claim or pay the penalty at a later date, as detailed below. For the first time, replies may be sent by telefax, although respondent retains the burden to prove it has made a timely reply. If no reply form (or payment or answer to the claim) is served on the agency within 15 days, the notice of violation becomes the final order, the violations are established as alleged, and the respondent waives the right to contest the claim.

The intent of these provisions is to increase the efficiency of the notice of claim process currently provided in part 386. Providing one or two time periods in which to respond to claims and disqualification determinations would be simpler than the 3 or 4 periods currently provided in part 386. Though it adds a step, the reply form is designed to provide a clear starting point to the process and to obtain a clear and simple statement from the respondent of its intentions with regard to the claim. Cases involving respondents that do not reply can be processed expeditiously.

On the other hand, the reply form would add flexibility. The agency can easily amend the claim to reflect any changed circumstances discovered as a result of settlement negotiations. Respondents would avoid generating perhaps lengthy and involved replies on the record, only to resolve the matter later outside formal channels.

Because of the immediate severity of an out-of-service order, and the consequent reduction in the time period to resolve contested issues, no reply form is sent along with an out-of-service order. See § 363.110.

Section 363.104 Special Procedures for Out-of-Service Orders

This section is largely a restatement of what presently appears in § 386.72(b)(1), but would add a requirement for personal service, a reference to the penalty for noncompliance, and a provision for expedited adjudication under proposed § 363.110. The authority summarily to order a motor carrier to cease all or parts of its operations because violations of the FMCS are creating an imminent hazard is found at 49 U.S.C. 521(b)(5)(A).

Section 363.105 Payment of the Claim

This is the first, and obviously simplest, resolution to a notice of violation assessing a monetary penalty. Because payment terminates the proceeding, it may be made with or without filing the reply form. However, if payment is chosen on the reply form, but is not made to the agency within the time to reply, the notice becomes the final agency order as if the respondent failed to reply. Paragraph (a) would provide that payment may be made at any time in the course of the proceeding before issuance of a final order. If it takes the form of a settlement agreement, however, it must be done in accordance with § 363.106. Of course, payment of the monetary claim might not terminate the proceeding if some other order is also being sought.

Paragraph (c) makes it clear that payment of the claim is tantamount to a final order finding the facts of the violations as alleged in the notice, unless the parties expressly agree in writing to treat the violations otherwise. This is important because certain future agency enforcement actions may be

based on, and certain consequences may flow from, prior and continued violations of the safety regulations.

Section 363.106 Settlement of Civil Penalty Claims; Generally

Settlement may occur at any time in the process including after the termination of negotiations under § 363.107 and during a hearing. Settlement procedures have been a key feature of the FHWA civil penalty process since their inception in 1969. Settlement of alleged violations before resort to a final formal adjudication is efficient and promotes the partnership of the FHWA and its regulated entities directed toward safer commercial motor vehicle transportation.

The content of settlement agreements would not be substantively altered from that required in part 386. As civil penalty proceedings are not limited in this proposed rule to monetary claims, so may settlement agreements resolve the terms of other orders sought against respondent by the agency. Thus, the consent order procedure in part 386, which provided for issuance by the agency of such other orders, and which could include settlement agreements resolving monetary claims anyway, is no longer necessary.

It should be noted that settlement agreements will contain a finding that certain violations did, in fact, occur. Settlement agreements should not be necessary in cases in which full payment of the claim is made and no other orders are sought or terms placed on respondent. Full payment automatically results in a finding of the violations as alleged in the notice.

Paragraph (d) involves the situation in which partial payment is made by a respondent, with or without an accompanying unilateral expression of the respondent's intent in offering the payment. The FHWA's acceptance of partial payment, as indicated by cashing a check, for instance, in no way should be interpreted as settlement of the claim or as forgiving the remainder of the claim. All settlement agreements must be in the form provided in paragraph (b).

Paragraph (e) would allow execution of settlement agreement during the course of administrative proceedings, upon the consent of parties and without the approval of the AA.

Section 363.107 Settlement Negotiations

In contrast to the general requirements in the preceding section applying in all instances of settlements, this section would establish procedures when the settlement negotiations option is chosen by the respondent on the form reply. Respondents would retain the opportunity to convert the proceeding into a contested claim at any point in the negotiation process. They could do this by requesting an administrative adjudication and filing an answer to the notice of violation. For its part, the agency could discontinue negotiations it feels are not proving fruitful by sending the respondent a final notice of violation.

Paragraph (d) proposes a 90-day limit on this initial negotiation process. If a settlement agreement is not reached within 90 days, the agency may issue a final notice of violation to the respondent. The purpose of this provision is to keep the administrative case moving toward resolution. As justice delayed is justice denied, so does a delayed penalty reduce its effectiveness. Under current practice, some cases in which a respondent has indicated a willingness to settle have a tendency to languish when agreement cannot be readily reached. This provision should help to avoid consequent case backlogs and should actually promote settlement as it pushes the case along the track toward resolution. In accordance with § 363.106, a settlement may be reached at any point in the civil penalty process, including in contested claims being administratively adjudicated.

Paragraph (e) would establish the procedures when a final notice of violation is sent to a respondent after negotiations have been expressly terminated by one of the parties or 90 days have passed without settlement. For flexibility, the final notice may simply incorporate the original notice of violation. For efficiency, if the negotiations have revealed, for example, that one of the claimed violations did not occur, the final notice may be amended deleting that charge. The procedures for replying to the final notice similarly would incorporate those for immediately contesting the original claim. At this point, after negotiations have indicated that the parties cannot agree on resolution of the claim and that it is indeed contested, the respondent would have no choice but to answer the notice in writing.

Section 363.108 Request for an Administrative Adjudication

This section proposes procedures for contested claims. The procedures would apply when the ''contest the claim'' option is chosen on the reply form or when the settlement option is chosen but settlement is not reached. A contested claim would be resolved in an administrative proceeding adjudicated by a neutral third party provided by the agency. Depending on the choice of the respondent and the existence of material factual issues in dispute, the third party may be the Associate Administrator (AA) or an Administrative Law Judge (ALJ). The AA would decide whether or not a case will be referred to an ALJ.

Paragraph (a) would provide a respondent 28 days from receipt of the notice of violation to serve a written answer on the agency contesting the claim. If the answer is responding to an original notice of violation this means that the respondent would be required to send the agency the reply form in 15 days and the written answer within another 13 days after that. Of course, respondent may choose to file an answer within 15 days of the notice of violation, in which case a reply form would be unnecessary. As with the reply form, the answer may be served on the agency by telefax.

The content of the answer in paragraph (c) would be similar to that currently required in replies under Part 386. Paragraph (c)(3) would clarify that referral to an ALJ may not be available in all instances where it is requested, but only where there are factual issues in dispute. Part 386 presently states this concept in terms of an oral hearing, i.e., an oral hearing is only available for cases with factual issues. Questions sometimes arise when contested claims without factual issues are decided by the AA without referral to an ALJ, much less an oral hearing, even though a hearing was requested. Though § 386.16(b) clearly gives the AA this power, as provided by the 1977 amendments, the section on content of replies does not reflect it. The proposed rule clearly states the agency's intent that the opportunity for a hearing does not mean that all contested matters are referred to an ALJ for a hearing. Finally, consistent with the standard in Part 386, failure to request referral to an ALJ would result in a waiver of the right to opportunity for it.

The provision in part 386 allowing the respondent to file a notice of intent to submit evidence without an oral hearing, with its own array of deadlines, would be eliminated as unnecessary. Paragraph (c)(3) would simply give the respondent the option of requesting referral to an ALJ or not. For tactical or efficiency reasons, a respondent may very well wish the AA, instead of an ALJ, to resolve its contested claim, even where factual issues are present. (See, however, discussion under § 363.109).

If the respondent fails to answer the claim, paragraph (d) would provide that the notice of violation becomes the final agency order in the same manner as

when the reply form was not served on the agency. Moreover, merely choosing an administrative adjudication on the reply form without filing an answer would also be deemed a failure to answer.

If the notice is answered, but not in the form provided in this section, the respondent may be found in default in the discretion of the AA or ALJ. Default would have the same effect as a failure to answer. In both situations, the ALJ or AA would issue a final order without inquiry as to the charged violations.

These provisions would clearly assign the power to determine the adequacy of the answer in various situations. Findings of default and failure to answer, and resulting Final Order finding of the violations as alleged, would support any subsequent collection actions taken by the agency.

Section 363.109 Procedures in Administrative Adjudications

All contested claims would be transmitted to the AA to either decide or refer to an ALJ for decision. Only the AA could determine whether or not there are factual issues in dispute and assign an ALJ to resolve a contested claim, unless the AA expressly requests the ALJ to make that determination. Assigning to an ALJ only those cases with apparent or potential factual issues has been a feature of the rules since 1977, and has been upheld in litigation on numerous occasions as complying both with the Administrative Procedure Act and due process principles. Issues of efficiency and adjudicative economy dictate that this standard continue in effect.

The first sentence of subsection (b) proposes that if there are facts in dispute and respondent has requested referral, the AA must refer the matter to an ALJ. Subsection (c) proposes to provide the AA with the discretion to decide the matter in two circumstances: (1) Where referral is requested but there are no factual issues, and (2) where referral is not requested.

There may be another situation between these two poles, however. If respondent has not requested referral, but the AA nevertheless believes referral would be beneficial to resolve a factual or other issue, should the AA have such discretion? May respondents be required to participate in possibly costly adjudication even though respondent is comfortable with potentially ''lesser'' process? The second sentence of subsection (b) would allow referral in those instances in the discretion of the AA. The FHWA requests comments on this issue.

Subsections (d) and (e) would accomplish in two short statements and one reference what the procedures have attempted over the years to do by detail. The Federal Rules of Civil Procedure, the approximation of which served as justification for the ever expanding standards in part 386 on discovery and motion practice, are incorporated into the civil penalty process, thereby eliminating the need for virtually all of subpart D to part 386. The AA and ALJ may suspend or adapt the Federal rules as appropriate, in conformance with the Administrative Procedure Act.

Subsections (f) and (g) would authorize the ALJ to employ appropriate process, including alternative dispute resolution. Subsection (h) would set minimal standards for appearance of representatives of respondents in administrative proceedings.

Subsection (i) would provide that the parties in an administrative adjudication may withdraw the matter under certain circumstances. Withdrawal by a party, or by the consent of the parties, would terminate the jurisdiction of the ALJ.

Section 363.110 Expedited Review by Associate Administrator

This section proposes expedited procedures for administrative review of out-of-service orders or unsatisfactory safety ratings after review by the Director of the Office of Field Operations. Subsection (c) would reduce the time to conduct an entire administrative adjudication to 10 days because subsection (b) provides that the out-of-service order shall remain in effect pending resolution of the contested claim. This last provision has been a part of the regulations since the 1985 amendments added the out-of-service procedure. The FHWA believes that it complies with intent of Congress in the 1984 Act. The rest of subsection (b) would restate the ''immediate destination'' exception which was added to part 386 in the 1991 amendments. In the interest of uniformity, subsection (d) would incorporate the procedures in § 363.109.

Sections 363.111 Through 363.116

With few exceptions, these sections would incorporate the provisions of subpart E of part 386, on decisions and appeals, into the new rule without substantive change. Section 386.66, which set a one year period before considering motions for modification of orders, would not be carried over. There would be no minimum time for an order to be in effect before it may be rescinded or modified by order of the AA or ALJ. Any such motions may be made pursuant to § 363.109(e).

For the sake of clarity, § 363.114 would add a sentence to what is now in § 386.67, liberally interpreting 49 U.S.C. 521(b)(8) to allow judicial review for contested claims resulting in a final agency order, but not for those claims that are resolved through settlement agreement or in which respondent failed to answer or defaulted. The statute provides that judicial review is only available after a hearing. The FHWA believes its interpretation is appropriate because these proposed rules provide for resolution of contested claims in an administrative adjudication without a formal reply. Of course, ultimately the courts must interpret the statute to determine their scope of review.

The grounds for review of an ALJ's decision by the Associate Administrator would be explained in somewhat greater detail in 49 CFR 363.111(b) than current 49 CFR 386.62.

Subpart B—Driver Qualification Proceedings

Section 363.201 Nature of the Proceeding

Driver qualification (DQ) proceedings are the means by which the agency adjudicates challenges to its determinations concerning a driver's qualifications to operate a CMW.

Section 363.202 Commencement of Proceedings

DQ proceedings would begin with a notice of determination or letter of disqualification, which may be sent to a driver unilaterally by the agency, in resolution of a conflict of medical evaluations under § 363.204 (formerly § 391.47), or to notify the driver of the consequences of a conviction for certain driving offenses.

Section 363.203 Answer

The content of an answer is proposed. A failure to answer would result in the notice of determination or letter of disqualification becoming the final order of the agency automatically in the same manner as a failure to answer a notice of violation in a civil penalty proceeding. Thus, the three different standards for failure to reply under Part 386 are condensed into one under this proposed rule.

Section 363.204 Special Proceeding for Resolution of Conflicts of Medical Evaluation

This section, because it is entirely procedural in nature, would be moved from its present location in § 391.47 and remain relatively unchanged. A change is proposed as to the status of drivers

during the pendency of this special proceeding and is discussed under § 363.205, below.

Section 363.205 Driver's Qualification Status Pending Proceedings

Two different statuses are possible under current provisions. A driver is either physically qualified or unqualified. This section would clarify the driver's status during proceedings based on the circumstances that brought about the proceedings. It would also change current § 391.47, which requires that a driver be considered unqualified while any conflict of medical opinion is being resolved. Although the agency operated in the past on a presumption that, in the interest of safety, the driver was unqualified, such a result is not required in all cases. It is likely, moreover, that this presumption inhibited drivers from seeking resolution through the FHWA, which has primary authority to make qualification determinations for drivers in interstate commerce.

After consultations with the Department of Labor and the Equal Employment Opportunity Commission, which have responsibilities for implementing the anti-discrimination provisions of the Rehabilitation Act, 29 U.S.C. 701 *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, respectively, the change in status is being proposed. The changes would allow the driver's status, supported by at least one medical opinion, to remain qualified during the pendency of driver qualification proceedings with respect to the driver's employer if the conflict arose during the term of employment. However, if a driver involved in a conflict is not currently employed, e.g., an applicant, the driver, would be deemed unqualified with respect to a potential employer with which the driver's status is in conflict.

Section 363.206 Administrative Adjudication

The procedures for agency action on answers to notices of determination would track those for administrative adjudication of contested civil penalty claims. The civil penalty administrative procedures would be incorporated by reference.

Subpart C—General Provisions

Section 363.301 Applicability

These general provisions would apply to this part and part 362 on safety ratings.

Section 363.302 Computation of Time

The time computation standards would be largely unchanged from § 386.32 (a) and (b). Those provisions in that section which currently allow the addition of five days to specified time periods to account for use of the U.S. Postal Service in serving documents, § 386.32(c) (1) and (3), would not be carried over to the proposed rule. Instead, the proposed rule would provide that service is complete upon mailing so that the date of the postmark would control.

Section 363.303 Service

A general definition of service would be added to the regulations. A certificate of service would be required to accompany all documents served in an administrative proceeding, except the agency's notice and the respondent's form reply, which occur before a matter is contested. A service list will be provided in the agency's notice, which will establish the persons who must be served with documents. Whereas § 386.31 states these certificate and list requirements in terms of pleadings and motions, this section would make it clear that service requirements apply early in administrative proceedings, before any assignment of an ALJ.

Section 363.304 Extension of Time

This section would be carried over from part 386, with the added provision that an extension of time may be effected pursuant to mutual consent of the parties.

Section 363.305 Administrative Law Judge

This section would enumerate the powers of the ALJs, as well as the limitations on that power. It would also provide for the disqualification of ALJs. The provisions on limitations and disqualification are modeled after the procedural regulations of the Federal Aviation Administration. See 14 CFR 13.205 (b) and (c).

Section 363.306 Certification of Documents

This section would provide good faith standards for the filing of documents in administrative proceedings. Sanctions are also proposed for the ALJ or AA to impose if the standards are not met. This section is based on 14 CFR 13.207.

Section 363.307 Interlocutory Appeals

This section, based on 14 CFR 13.219, would provide standards and procedures for interlocutory appeals to the AA of matters before the ALJ.

Part 364: Violations, Penalties, and Collections

Background

Much of the penalty information in this part appears in the U.S. Code and, until now, has not appeared in published regulations. One exception is appendix A to part 386 on penalties for violations of agency notices and orders, which was published in 1991. Other exceptions are the driver disqualification periods in 49 CFR 383.51 and 391.15 and the special penalties for violations of out-of-service orders in § 383.53, all of which were required to be published by the CMVSA of 1986 and subsequent amendments.

Section-by-Section Analysis

Subpart A—General

Section 364.101 Purpose

The purpose of this proposed subpart is to inform the public of the standards for assessment and collection of penalties for violations of the FMCSRs and HMRs.

Section 364.102 Policy

This section would serve as a general summary of the part. Subsection (a) would state the general policy that penalties serve as a tool to obtain compliance with the regulations. Generally, the enforcement program is but a part, albeit significant, of the mission of the Office of Motor Carriers to reduce highway accidents and injuries by increasing compliance with safety regulations. Most carriers, drivers, and other entities choose to comply with the regulations willingly. Various educational and other compliance programs are available to assist them. For those carriers who intentionally refuse to comply with or carelessly ignore the regulations, however, enforcement may become necessary.

Subsection (b) would list the statutory penalty criteria used by the FHWA to assess penalty amounts. These factors would be explained in depth in § 364.104. The last sentence would inform respondents that information developed in an administrative adjudication may affect the amount of penalty ultimately ordered. Subsection (c) would express the notion that good faith efforts to achieve compliance will be taken into account in assessing penalties or settling claims. Subsection (e) would apply concepts of comity and resource allocation in stating that it is within the discretion of the agency not to act to enforce violations of the safety regulations when another governmental entity has already imposed appropriate penalties for the same violations.

Subpart B—Civil Penalties

Section 364.201 Types of Violation and Maximum Monetary Penalties

The penalty amounts in this section would be listed by the type of violation and would track the structures of the relevant statues.

Subsection (a) would refer to violations of parts 382 and 390–399 of the FMCSRs and is based on the penalty structure in 49 U.S.C. 521(b)(2)(A), part of the 1984 Act. The penalty structure is incorporated into the enforcement scheme for violations of Part 382 drug and alcohol testing requirements in 49 CFR 382.507, as authorized by 49 U.S.C. 31306, 31317, and 322(a).

The statutory description of violation types would be augmented in places by language from the legislative history of the 1984 Act, especially the description in proposed § 364.201(a)(2) of what constitutes a serious pattern of violations. See S. Rep. No. 424, 98th Cong., 2d Sess. 10–13 (1984). The definition of a serious pattern would be further elucidated by the agency's interpretation. The interpretation in § 364.201(a)(1) of a ''knowing'' recordkeeping violation as including violations occurring where the means to verify the incorrect records existed is based on published decisions of ALJs in civil penalty proceedings. See *In the Matter of Trinity Transportation, Inc.*, 55 FR 43291 (October 26, 1990); for other decisions, see Federal Register notices beginning at 55 FR 43264; 55 FR 2924 (January 29, 1990); 57 FR 29710 (June 26, 1992); 58 FR 16916 (March 31, 1993); 58 FR 62450 (November 26, 1993). Various examples of types of violations are also proposed in the section.

Subsection (b) would list violations and amounts pertaining to commercial driver's licenses and is based on 49 U.S.C. 521(b)(2)(B).

Paragraph (1) of subsection (c), on the penalty amount for failing to maintain minimum levels of financial responsibility, is based on 49 U.S.C. 31138–31139. Paragraph (2) would state the rebuttable presumption that lack of proof of insurance indicates lack of insurance. It also states the current enforcement practice which allows rebuttal of that presumption upon presentation of proof within 10 days. Though the statute makes no distinction in penalties, allowing a $10,000 maximum for all violations, paragraph (3) would provide that mere failure to present proof of insurance, where the insurance actually exists, is a separate recordkeeping offense, subject to a much smaller penalty than the failure to have the insurance.

Proposed subsection (d), on violations of the HMRs, is based on 49 U.S.C. 5123. Subsection (e) would represent the current appendix A to part 386, on violations of notices and orders.

Section 364.202 Civil Penalty Assessment Factors

This section would further explain the penalty assessment criteria listed in § 364.102(b). The criteria are statutory and found in 49 U.S.C. 5123(c) and 521(b)(2)(C). The criteria would be categorized as involving either the violation or the violator. The proposed explanation of each factor is based on the agency's reasonable interpretation of the statute in light of current agency practice. Particular attention should be paid to the factor proposed in paragraph (2) of subsection (b), history of prior offenses, which may be used by the agency to determine if a carrier's operations constitute an imminent hazard to safety subject to an out-of-service order. Proposed subsection (c) is a reminder that the application of the factors in a particular case may be used in a decision to pursue means of enforcement other than monetary penalties.

Subpart C—Criminal Penalties and Other Sanctions

Section 364.301 Criminal Penalties

Criminal penalties are rarely pursued by the Federal government of violations of commercial motor vehicle safety regulations. Since passage of the 1984 Act, the object of the great majority of safety enforcement cases has been compliance with the regulations through the assessment of monetary penalties. Other civil penalties, such as out-of-service orders, have also gained in importance since 1984. The commercial motor vehicle safety program is administrative in the first instance. Generally, commercial motor vehicle transportation is a highly regulated industry, with safety as an important part of the overall regulatory scheme. *International Brotherhood of Teamsters* v. *U.S. DOT*, 932 F.2d 1292, 1300 (9th Cir. 1991). The FHWA's regulatory program is not converted into a criminal law enforcement scheme merely because the government also retains certain parallel criminal penalty authority.

The advantage to this structure is that the agency can take direct administrative action against violators, when necessary, supported by the authority to enforce agency orders in court. Before the 1984 Act, the agency had only limited civil and criminal penalty authority which could not be enforced directly by the agency in Federal court. In practice, these cases generally did not receive very high priority in the hierarchy of demands placed upon many United States Attorneys and the courts. This regrettable situation was largely ameliorated with the expanded civil penalty authority of the 1984 Act. This section would serve as notice, however, that the criminal penalty authority still exists. In fact it was enhanced in the 1984 Act. Subsection (e) would notify the public that willful violations may be referred to the Department of Justice for possible criminal enforcement.

Section 364.302 Injunctions

This proposed section is intended to notify the public of the authority of the FHWA to bring civil actions in U.S. District Court to enforce many of its safety regulations and orders, and, in the case of the transportation of hazardous materials, to eliminate an imminent hazard to safety. It is based on 49 U.S.C. 507 and 5122. In practice, the form of relief sought is usually injunctive, typically an order to a motor carrier to cease operations, although the statutes allow all appropriate or necessary relief, including punitive damages.

It is important to note that the regulations and orders which may be enforced in this way are somewhat limited, and do not include all of the safety regulations which have been discussed in this document. Hazardous materials regulations and orders may be enforced, and imminent hazards eliminated, pursuant to 49 U.S.C. 5122. For most, but not all, CMV safety violations not involving hazardous materials, 49 U.S.C. 507 authorizes enforcement actions. But 49 U.S.C. 507 specifically excepts violations of the financial responsibility requirements for motor carriers, found in 49 U.S.C. 31138 and 31139, from the authority to enforce directly through civil action. This is unlike the statutory section authorizing the use of administrative powers (49 U.S.C. 31133), which contains no such exclusion and thus does apply to enforcement of financial responsibility requirements.

Neither chapter 313, on the CDL program, nor chapter 59, on Intermodal Safe Container Transportation, contain any express provisions for injunctive relief, nor are those chapters mentioned at all in 49 U.S.C. 507. Therefore, those chapters are not included in this section articulating the statutory authority for injunctive relief.

Finally, the authority to seek an injunction directly in court (49 U.S.C. 507) should be distinguished from the

authority to administratively order a vehicle, employee, or employer to cease operations which pose an imminent hazard to safety (49 U.S.C. 521(b)(5)(A)). The latter process contemplates an administrative proceeding before any attempts at enforcement in court. This ''out-of-service order'' procedure is discussed in subsections (c) and (d), and may be used to enforce CDL and intermodal container violations.

Section 364.303 Driver Disqualifications

This section would be a restatement of disqualification periods applicable to drivers who commit certain violations. These disqualification sanctions also appear in §§ 383.51 and 391.15. Drivers are also unqualified for any period in which they fail to meet the qualification requirements of part 391.

Subpart D—Monetary Penalty Collections

Section 364.401 Payment

Payment is demanded upon issuance of a final order imposing a monetary penalty and generally due and payable within 30 days thereafter. Unless judicial review is sought, the penalty amount is subject to the accrual of interest after the date specified in the final order.

Section 364.402 Collections

This section would provide that monies due and payable will be collected pursuant to the Federal debt collection regulations. If administrative actions fail to result in payment, the matter will be referred to the Department of Justice for collection in a civil action filed in U.S. District Court. 49 U.S.C. 521(b)(4), 5123(d), 31138(d)(4), 31139(f)(4).

Removal of Parts 385 and 386

Because this rulemaking is a comprehensive revision of safety ratings and enforcement case procedures, it is proposed to remove and reserve parts 385 and 386 from the Code of Federal Regulations.

Removal and Reservation of Section 391.47

Because the procedure for resolution of medical conflicts would be revised and relocated in subpart B of part 303, it is proposed to remove and reserve § 391.47 of 49 CFR part 391.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

FHWA has 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. The proposals contained in this document would not result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. This proposal would augment, replace or amend existing procedures and practices. Any economic consequences flowing from the procedures in the proposal are primarily mandated by statute. A regulatory evaluation is not required because of the ministerial nature of this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the agency has evaluated the effects of this NPRM on small entities. No economic impacts of this rulemaking are foreseen as the rule would impose no additional substantive burdens that are not already required by the regulations to which these procedural rules would serve as the adjective law. Therefore, the FHWA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The rules proposed herein in no way preempt State authority or jurisdiction, nor do they establish any conflicts with existing State role in the regulation and enforcement of commercial motor vehicle safety. It has therefore been determined that the NPRM does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

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

National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that the proposed rule would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 49 CFR Parts 361, 362, 363, 364, 385, 386, and 391

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Highway safety, Motor carriers.

Issued on: April 18, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, CFR, subtitle B, chapter III, by removing and reserving parts 385 and 386, and by adding parts 361, 362, 363, and 364 as set forth below:

1. Chapter III is amended by adding parts 361, 362, 363, and 364 to read as follows:

PART 361—ADMINISTRATIVE ENFORCEMENT

Sec.

361.101 Purpose.
361.102 Authority and delegation.
361.103 Inspection and investigation.
361.104 Definitions.
361.105 Employer obligations.
361.106 Vehicle/driver inspection.
361.107 Complaints.
361.108 Administrative subpoenas.
361.109 Depositions and production of records.

Authority: 49 U.S.C. 104, 307, chapters 5, 51, 59, 311, 313, and 315.

§ 361.101 Purpose.

This part:

(a) Restates the authority of the Department of Transportation (DOT) to regulate and investigate persons, property, equipment, and records relating to commercial motor vehicle transportation, intermodal safe container transportation, and the highway transportation of hazardous materials;

(b) Describes certain obligations and rights of motor carriers and other entities subject to DOT regulations; and

(c) Identifies the DOT officials authorized to enforce motor carrier and hazardous materials regulations.

§ 361.102 Authority and delegation.

(a) The authority of the Secretary of Transportation to regulate and investigate commercial motor vehicle safety, including motor carriers, commercial motor vehicles and drivers, and the highway transportation of hazardous materials, is codified in 49 U.S.C. Chapters 5, 51, 59, 311, 313, and 315, and 42 U.S.C. 4917. In carrying out the provisions of these chapters, the Secretary may conduct inspections and investigations, compile statistics, make reports, issue subpoenas, require the production of records and property, take depositions, hold hearings, prescribe recordkeeping and reporting requirements, conduct or make contracts for studies, development, testing evaluation and training, and perform other acts the Secretary considers appropriate.

(b) The authority of the Secretary listed in paragraph (a) of this section has been delegated to the Federal Highway Administrator (49 U.S.C. 104(c); 49 CFR 1.48), and is codified in 49 CFR part 325 (Noise Control), the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR Parts 350–399) and relevant portions of the Hazardous Materials Regulations (HMRs) (primarily 49 CFR Parts 171–173, 177–178, and 180). The Federal Highway Administrator has delegated the authority to enforce the FMCSRs and the HMRs to the Associate Administrator for Motor Carriers.

(c) The Associate Administrator for Motor Carriers has retained the authority to approve operating procedures for investigations under this part, including inspections, and has delegated to subordinate managers, supervisors, and field personnel, hereinafter ''special agents,'' the authority to perform such investigations.

(d) The Administrator may delegate to a State which is receiving a grant under 49 U.S.C. 31102 such functions respecting the enforcement (including investigations) of the provisions of this subchapter and regulations issued herein as the Administrator determines appropriate. Nothing in this part shall preempt the authority of any State to conduct investigations, initiate enforcement proceedings, or otherwise implement applicable provisions of State law with respect to motor carrier safety.

§ 361.103 Inspection and investigation.

The FHWA may begin an investigation on its own initiative or on a complaint.

(a) Upon a display of official DOT credentials, special agents may enter without delay at reasonable times any place of business, property, equipment, or commercial motor vehicle of a person subject to the provisions of 49 U.S.C. Chapters 5, 51, 59, 311, 313, and 315, and 42 U.S.C. 4917. Special agents may take the following actions:

(1) Inspect the equipment and property of a motor carrier or other person on the premises of the motor carrier, or the equipment of the motor carrier at any other location, and inspect any commercial motor vehicle of the motor carrier whether or not in operation; and

(2) Inspect and copy any record of—

(i) A carrier, lessor, association, or other person subject to the provisions of 49 U.S.C. Chapters 5, 51, 59, 311, 313, and 315, and 42 U.S.C. 4917; and

(ii) A person controlling, controlled by, or under common control with a carrier, if the agent considers inspection relevant to that person's relation to, or transaction with, that carrier.

(3) Inspect and copy records, property, and equipment related to manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a package or a container for use by a person transporting hazardous material by commercial motor vehicle, and to the highway transportation of hazardous materials.

(b) Special agents may inspect and copy any record related to an investigation, whether or not it is required to be maintained by Federal Highway Administration (FHWA) regulations or orders. Special agents may ask any employer, owner, operator, agent, employee, or other person for information necessary to carry out their statutory and regulatory functions. Special agents shall offer the employer or other person subject to the investigation a right of accompaniment during an inspection and shall notify the person of the general purpose for which the information is sought.

(c) Reasonable times for inspections are the regular working hours of the motor carrier or other person, or other times agreed to by the carrier or other person, required by exigent circumstances, or authorized by any court of the United States. If the person operates twenty-four hours per day, reasonable time means whenever authorized agents can obtain access to records necessary to conduct an inspection, and a representative of the person can exercise the right of accompaniment.

(d) The right of a special agent to enter upon the premises of any person, inspect vehicles, examine records, or interview any person shall not imply or be conditioned upon a waiver of any cause of action, claim, order or penalty.

(e) The Associate Administrator may require a motor carrier to file with the FHWA a copy of any lease agreement or other business arrangement that is related to transportation safety.

(f) Information received in an investigation, including the identity of the person investigated and any other person who provides information during the investigation, may be kept confidential under the investigatory file exception, or other appropriate exception, to the public disclosure requirements of 5 U.S.C. 552.

§ 361.104 Definitions.

Words or phrases defined in 49 CFR 383.5 and 390.5 of this subchapter apply in parts 361–364. In addition—

Abate or abatement means to discontinue regulatory violations by refraining from or taking actions, identified in a notice, to correct noncompliance.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Associate Administrator means the Associate Administrator for Motor Carriers or an authorized delegate of that official.

Federal Motor Carrier Safety Regulations (FMCSRs) means safety regulations issued by the Federal Highway Administration under the authority provided in 49 U.S.C. 104(c) or delegated by the Secretary of Transportation in 49 CFR 1.48, and set forth in subchapter B of this chapter.

Hazardous Materials Regulations (HMR) means safety regulations issued by the Research and Special Programs Administration under authority delegated by the Secretary of Transportation in 49 CFR 1.53, and set forth in subchapter C of chapter I of this title.

Respondent means a party against whom relief is sought or claim is made.

Special agent means an individual employed by the Federal Highway Administration and empowered by the Secretary through delegations of authority to perform the activities referred to in § 361.103.

§ 361.105 Employer obligations.

(a) An employer, employee, and other person shall comply with applicable commercial motor vehicle safety regulations.

(b) A violator shall post all notices of violation which have become final, as required by any notice issued by a special agent. Such notices shall be posted by the employer in each motor carrier's places of employment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall insure that such notices are not altered, defaced, or covered by other materials.

(c) All regulations on commercial motor vehicle safety and hazardous materials safety are published in the Federal Register, codified in the Code of Federal Regulations, and available for review and copying at the Regional Offices of the Federal Highway Administration. An employer shall maintain current copies of applicable regulations, and shall make them available for inspection to any employee upon request.

(d) After proper identification of a special agent through the display of credentials, and an explanation of the purpose of the investigation, a person shall, upon the request of the special agent, provide access to:

(1) The records requested to be reviewed;

(2) Employees of the person to be interviewed; and

(3) Any equipment or property used in the transportation of persons or property or to ensure compliance with the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

(e) The request for the production of records or access to employees or equipment may be made at the initiation of the investigation or at any time thereafter.

§ 361.106 Vehicle/driver inspection.

Upon the instruction of a duly authorized Federal, State or local enforcement official, each commercial motor vehicle used in interstate commerce shall be subject to an inspection of all safety equipment and operating conditions required under the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations. Each driver of such vehicle shall also be subject to an inspection by such enforcement officials of all documents required to be maintained by that driver under those regulations.

§ 361.107 Complaints.

(a) A person, including a governmental authority, may file with the Associate Administrator a complaint concerning an alleged violation of this chapter. The complaint must state the facts that are alleged to constitute a violation. Any office of the FHWA's Office of Motor Carriers will accept a written complaint. For a listing of FHWA Regional Offices see § 390.27 of this subchapter. There are also Office of Motor Carrier facilities located in each State and listed in local telephone directories.

(b) The Associate Administrator shall timely investigate any nonfrivolous written complaint alleging that a substantial violation of any regulation issued under this chapter is occurring or has occurred within the preceding 60 days. Nonfrivolous written complaints are allegations of violations of applicable safety regulations containing sufficient descriptive detail and knowledge of events to create a reasonable suspicion that the violations occurred or are occurring. Substantial violation in this context means the same as a pattern of serious violations or a substantial health and safety violation, as those terms are defined in part 364 of this subchapter, or patterns of record falsification that evidences an intent to avoid detection of such violations.

(c) The Associate Administrator may dismiss a complaint determined not to state reasonable grounds for investigation and need not conduct separate investigations of duplicative complaints.

(d) The complainant shall be timely notified of findings resulting from an investigation or of dismissal of a complaint.

(e) The agency shall not disclose the identity of complainants without their consent unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Associate Administrator shall take every practical measure within his authority to assure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

(f) No motor carrier or other employer subject to the regulations in this chapter shall discharge, discipline, or in any manner discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because such employee (or any person acting pursuant to a request of such employee) has filed any complaint or instituted or caused to be instituted any proceeding relating to a violation of a commercial motor vehicle safety rule, regulation, standard, or order, or has testified or is about to testify in any such proceeding.

(g) No motor carrier or other employer subject to the regulations in this chapter shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety or health, or because of the employee's reasonable apprehension of serious injury to himself or the public due to the unsafe condition of such equipment. The unsafe conditions causing the employee's apprehension of injury must be of such nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a bona fide danger of an accident, injury, or serious impairment of health, resulting from the unsafe condition. In order to qualify for protection under this section, the employee must have sought from his employer, and have been unable to obtain, correction of the unsafe condition.

(h) Violations of paragraphs (f) and (g) of this section are subject to enforcement by the Occupational Safety and Health Administration (OSHA) of the Department of Labor. The proper steps for an employee to follow when pursuing their rights under these paragraphs are found in 49 U.S.C. 31105(b) and 29 CFR part 1978.

§ 361.108 Administrative subpoenas.

(a) The Associate Administrator may subpoena witnesses and records related to a proceeding or investigation from a place in the United States to the designated place of the proceeding or investigation.

(b) If a person fails to comply with a subpoena, the Associate Administrator may file a civil action in the district court of the United States in which the proceeding or investigation is being conducted to enforce the subpoena. The court may punish a refusal to obey an order of the court to comply with a subpoena.

(c) A motor carrier not complying with a subpoena of the Associate Administrator to appear, testify, or produce records is subject to a fine of at least $100 but not more than $5,000, and imprisonment of not more than one year.

§ 361.109 Depositions and production of records.

(a) In any proceeding, compliance review, or investigation, the Associate Administrator may take testimony of a witness by deposition and may order the witness to produce records. If a witness refuses to be deposed or to produce records under this section, the

Associate Administrator may subpoena the witness to appear for a deposition, produce the records, or both.

(b) A deposition may be taken before a judge of a court of the United States, a United States magistrate, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding or investigation.

(c) Notice must be given in writing to the person being deposed in accordance with the Federal Rules of Civil Procedure. The notice shall state the name of the witness and the time and place of taking the deposition.

(d) The testimony of a person deposed under this section shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent, unless signature is waived.

(e) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Associate Administrator or agreed on by the parties by written stipulation filed with the Associate Administrator. The deposition shall be promptly filed with the Associate Administrator.

(f) Each witness summoned before the Associate Administrator or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

PART 362—SAFETY RATINGS

Sec.
362.101 Purpose.
362.102 Motor Carrier Identification Report.
362.103 Safety fitness—standards and factors.
362.104 Determination of safety fitness—safety ratings.
362.105 Unsatisfactory rated motor carrier—prohibition on transportation of hazardous materials and passengers; ineligibility for Federal contracts.
362.106 Notification of a safety rating.
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362.108 Administrative review.
362.109 Temporary relief from rating.
362.110 Safety fitness information.

Appendix to Part 362—Form MCS–150, Motor Carrier Identification Report

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 31144, and 31502; 49 CFR 1.48.

§ 362.101 Purpose.

(a) This part establishes standards and procedures applicable to motor carrier identification, the determination of a motor carrier's safety fitness and the issuance of a safety rating by the FHWA. This part also notes the restrictions applicable to unsatisfactory rated motor carriers, provides for availability of safety fitness information, and includes procedures for administrative review of safety ratings.

(b) The procedures set forth in 49 CFR part 363, subpart C also apply to this part.

§ 362.102 Motor Carrier Identification Report.

(a) All motor carriers currently conducting operations in interstate or foreign commerce shall file a Motor Carrier Identification Report, Form MCS–150 (see appendix to this part), within 90 days after beginning operations.

(b) The Motor Carrier Identification Report, Form MCS–150, is available from all FHWA region and division motor carrier safety offices nationwide and from the FHWA Office of Motor Carrier Information and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

(c) The completed Motor Carrier Identification Report, Form MCS–150, shall be filed with the FHWA, Office of Information and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

§ 362.103 Safety fitness—standards and factors.

(a) To meet safety fitness standards, a motor carrier must demonstrate through its performance that it has adequate safety management controls in place to ensure compliance with applicable safety and hazardous materials regulations and to facilitate the safe movement of property and passengers by highway.

(b) The information obtained from reviews, investigations, roadside inspections, and other available performance data is used to assess a motor carrier's safety fitness in the context of the following factors:

(1) The adequacy of safety management controls. Safety management controls are those systems, programs, practices and procedures implemented by a motor carrier to ensure regulatory compliance and reduce the safety risks associated with:

(i) Commercial driver's license violations (49 CFR part 383), including controlled substances and alcohol testing violations (49 CFR part 382):

(ii) Inadequate levels of financial responsibility (49 CFR part 387);

(iii) The failure to record and track accidents and incidents. (49 CFR part 390).

(iv) The use of unqualified drivers (49 CFR part 391);

(v) Improper use and driving of motor vehicles (49 CFR part 392);

(vi) Unsafe vehicles operating on the highways (49 CFR part 393);

(vii) The use of fatigued drivers (49 CFR part 395);

(viii) Inadequate inspection, repair, and maintenance of vehicles (49 CFR part 396);

(ix) Transportation and routing of hazardous materials (49 CFR part 397); and

(x) Violations of hazardous materials regulations (49 CFR parts 107–177, 180).

(2) Frequency and severity of violations of applicable safety and hazardous materials regulations and orders, including violations of compatible state regulations and orders.

(3) Number and frequency of driver/vehicle violations resulting in driver/vehicle being placed out of service.

(4) Frequency of accidents and hazardous materials incidents, including: The recordable accident rate per million miles; the recordable preventable accident rate per million miles; other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

(c) In considering violations referred to in paragraph (b)(2) of this section, particular attention is given to violations of regulations that are *critical* or *acute*. These terms as used in this paragraph to denote the seriousness of regulatory requirements are defined as follows:

(1) Critical regulation—violations of which, if occurring in patterns, reflect a breakdown of management control directly related to essential safety functions. A pattern is evident when violations are occurring at a rate in excess of 10 percent. Examples of violations of critical regulations are using drivers to operate commercial motor vehicles after they have exceeded the allowable driving time or on-duty time.

(2) Acute regulation—violations of which are so severe as to require immediate correction, and by themselves reflect negatively on the motor carrier's ability to manage safety compliance, regardless of its overall safety posture. An example of a violation of an acute regulation is allowing a driver to operate after the drivers has tested positive for alcohol have exceeded the allowable driving time or on-duty time.

§ 362.104 Determination of safety fitness—safety ratings.

(a) Following a review of a motor carrier, the degree to which the

operations of the motor carrier are consistent with the safety fitness standards and factors set forth in § 362.103 determines whether the following rating will be assigned:

(1) Unsatisfactory—an unsatisfactory safety rating means a failure by a motor carrier to have adequate safety management controls in place to prevent involvement in crashes by its vehicles and drivers, evidenced by higher than normal accident rates, or to ensure compliance with the applicable safety standards, regulations and orders, as evidenced by inordinate ratios of violations detected in on-site reviews or roadside inspections associated with the factors listed in § 362.103(b).

(2) [Reserved]

(b) An otherwise unsatisfactory safety rating may be deferred, suspended or otherwise avoided if conditions imposed as a result of a review of a motor carrier's operation and performance are met, which would include compliance with specific provisions of the safety or hazardous materials regulations, the requirements of an order or notices to abate, or other commitments to improve compliance and performance. The conditions may be imposed in lieu of an unsatisfactory rating, and failure of the conditions may result in the immediate assignment of an unsatisfactory rating.

§ 362.105 Unsatisfactory rated motor carriers—prohibition on transportation of hazardous materials and passengers; ineligibility for Federal contracts.

(a) A motor carrier rated unsatisfactory is prohibited from operating a commercial motor vehicle to transport—

(1) Hazardous materials for which vehicle placarding is required pursuant to part 172 of Chapter I of this title; or

(2) More than 15 passengers, including the driver.

(b) A motor carrier subject to the provisions of paragraph (a) of this section is ineligible to contract or subcontract with any Federal agency for transportation of the property or passengers referred to in paragraphs (a)(1) and (a)(2) of this section.

(c) Penalties. When it is known that the carrier transports the property or passengers referred to in paragraphs (a)(1) and (a)(2) of this section, an order will be issued placing those operations out of service. Any motor carrier that operates commercial motor vehicles in violation of this section will be subject to the penalty provisions listed in part 364 of this chapter.

§ 362.106 Notification of a safety rating.

(a) Written notification of the safety rating will be provided to a motor carrier as soon as practicable after assignment of the rating.

(b) Before a safety rating of unsatisfactory is assigned to any motor carrier, the FHWA will issue a notice of proposed safety rating. The notice of proposed safety rating will list the deficiencies discovered during the review of the motor carrier's operations, for which corrective actions must be taken.

(c) A notice of a proposed safety rating of unsatisfactory will indicate that, if the unsatisfactory rating becomes final, the motor carrier will be subject to the provisions of § 362.105, which prohibit motor carriers rated unsatisfactory from transporting hazardous materials or passengers, and other consequences that may result from such rating.

(d) A proposed safety rating will not be made available to the public under § 362.110.

(e) Except as provided in § 362.107, a proposed safety rating issued pursuant to paragraph (b) of this section will become the motor carrier's final safety rating 45 days after the date the notice of proposed safety rating is received by the motor carrier.

§ 362.107 Change to safety rating based on corrective actions.

(a) Within the 45-day period specified in § 362.106(e), or at any time after a rating has become final, a motor carrier may request a change to a proposed or final safety rating based on evidence that corrective actions have been taken and that its operations currently meet the safety standards and factors specified in § 362.102.

(b) A request for a change to a safety rating must be made, in writing, to the Regional Director, Office of Motor Carriers, for the FHWA Region in which the carrier maintains its principal place of business, and must include a written description of corrective actions taken and other documentation that may be relied upon as a basis for the requested change to the proposed rating.

(c) The final determination on the request for change will be based upon the documentation submitted and any additional investigation deemed necessary.

(d) The filing of a request for change to a proposed rating under this section does not stay the 45-day period established in § 362.106(e), after which a proposed safety rating becomes final. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and a final determination cannot be made within the 45-day period, the period of the proposed safety rating may be extended for up to 10 days at the discretion of the Regional Director.

(e) If it is determined that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standards and factors specified in § 362.103, the motor carrier will be provided with written notification that the proposed unsatisfactory rating will not be assigned, or, if already assigned, rescinded.

(f) If it is determined that the motor carrier has not taken all the corrective actions required or that its operations still fail to meet the safety standards and factors specified in § 362.103, the motor carrier shall be provided with written notification that its request has been denied and that the proposed safety rating of unsatisfactory will become final pursuant to § 362.106(e), or that an unsatisfactory safety rating currently in effect will not be change.

(g) Any motor carrier whose request for change is denied pursuant to paragraph (f) of this section may petition for administrative review pursuant to § 362.108 within 45 days of the denial of the request for rating change. If the unsatisfactory rating has become final, it shall remain in effect during the period of any administrative review unless stayed by the reviewing official.

§ 362.108 Administrative review.

(a) Within the 45-day notice period provided in § 362.106(e), or within 45 days after denial of a request for a change in rating as provided in § 362.107(g), the motor carrier may petition the FHWA for administrative review of a proposed or final safety rating by submitting a written request to the Director, Office of Motor Carrier Field Operations, 400 Seventh Street, SW., Washington, DC 20590.

(b) The petition must state why the proposed safety rating is believed to be in error and list all factual and procedural issues in dispute. The petition may be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.

(c) The Director, Office of Motor Carrier Field Operations, may request the petitioner to submit additional data and attend a conference to discuss the safety rating. Failure to provide the information requested or attend the conference may result in dismissal of the petition.

(d) The petitioner shall be notified in writing of the decision on administrative review. The notification will occur within 30 days after receipt

of a petition from a hazardous materials or passenger motor carrier.

(e) If the decision on administrative review results in a final rating of unsatisfactory for a hazardous materials or passenger motor carrier, the decision shall be accompanied by an appropriate out-of-service order and provide for an expedited agency appeal of such decision pursuant to §§ 363.108 and 363.110 of this subchapter.

(f) All other decisions on administrative review of ratings constitute final agency action. Thereafter, improvement in the rating may be obtained under § 362.107.

§ 362.109 Temporary relief from rating.

(a) *Proposed rating.* At any time before a proposed unsatisfactory rating becomes final, the Regional Director in the region wherein the motor carrier maintains its principal place of business for safety purposes may temporarily suspend the proposed rating for a period up to 60 days; *provided*: the motor carrier consents in writing to an order directing compliance with conditions designed to assure that the safety fitness standard will be met and satisfactory performance will be achieved. The temporary suspension is discretionary with the Regional Director after consideration of circumstances satisfying that official that a good faith effort by the motor carrier will be made and that this effort is reasonably certain to bring about compliance. The consent order must contain a provision that the temporary recision will be withdrawn and the proposed unsatisfactory rating will become final upon a failure of one or more of the conditions in the order. If a satisfactory level of compliance is achieved after the period covered by the consent order, the Regional Director may withdraw the proposed unsatisfactory rating, which action may or may not be subject to prescribed conditions.

(b) Final rating. The Director of the Office of Field Operations, or other official designated by the Associate Administrator, may temporarily suspend a final rating of unsatisfactory under the same conditions set forth in paragraph (a) of this section.

§ 363.110 Safety fitness information.

(a) Final ratings will be made available to other Federal and State agencies in writing, telephonically or by remote computer access.

(b) The final safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FHWA with the motor carrier's name, principal office address, and, if known, the DOT number or the ICC docket number, if any.

(c) Requests shall be addressed to the Office of Motor Carrier Information Management and Analysis, HIA–1, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(d) Oral requests by telephone will be given an oral response.

Appendix to Part 362—Form MCS–150.Motor Carrier Identification Report

(Approved by OMB under control number 2125–0544)

BILLING CODE 4910–22–M

OMB No. 2125-0544

U.S. Department of Transportation
Federal Highway Administration

MOTOR CARRIER IDENTIFICATION REPORT

IF THE ABOVE LOCATION IS BLANK, INCORRECT, OR IS A DIVISION OR BRANCH, PLEASE IDENTIFY YOUR COMPANY'S PRINCIPAL OFFICE IN THE SPACE BELOW.

1. NAME OF MOTOR CARRIER/HM SHIPPER
2. DOING BUSINESS AS (DBA) NAME
3. PHYSICAL STREET ADDRESS/ROUTE NUMBER
4. MAILING P.O. BOX
5. CITY
6. MEXICAN NEIGHBORHOOD
7. CITY
8. MEXICAN NEIGHBORHOOD
9. COUNTY
10. STATE/PROVINCE
11. ZIP CODE +4
12. COUNTY
13. STATE/PROVINCE
14. ZIP CODE +4
15. PRINCIPAL PHONE NUMBER ( )
16. US DOT NO.
17. ICC NO.
18. IRS/TAX ID NO. EIN # SSN #

19. CARRIER OPERATION *(Circle One)*
A. Interstate B. Intrastate Only (Hazardous Materials) C. Intrastate Only (Non-Hazardous Materials)

20. SHIPPER OPERATION *(Circle One)*
A. Interstate B. Intrastate

21. CARRIER MILEAGE (Last Calendar Year)

22. OPERATION CLASSIFICATION
A. Authorized For-Hire
B. Exempt For-Hire
C. Private (Property)
D. Private Passengers (Business)
E. Private Passengers (Non-Business)
F. Migrant
G. U.S. Mail
H. Federal Government
I. State Government
J. Local Government
K. Indian Tribe
L. Other

23. CARGO CLASSIFICATIONS *(Please Circle **All** that Apply.)*
A. GENERAL FREIGHT
B. HOUSEHOLD GOODS
C. METAL: SHEETS, COILS, ROLLS
D. MOTOR VEHICLES
E. DRIVEAWAY/TOWAWAY
F. LOGS, POLES BEAMS, LUMBER
G. BUILDING MATERIALS
H. MOBILE HOMES
I. MACHINERY, LARGE OBJECTS
J. FRESH PRODUCE
K. LIQUIDS/GASES
L. INTERMODAL CONT.
M. PASSENGERS
N. OILFIELD EQUIPMENT
O. LIVESTOCK
P. GRAIN, FEED, HAY
Q. COAL/COKE
R. MEAT
S. GARBAGE, REFUSE, TRASH
T. U.S. MAIL
U. CHEMICALS
V. COMMODITIES DRY BULK
W. REFRIGERATED FOOD
X. BEVERAGES
Y. PAPER PRODUCTS
Z. OTHER *(Specify)*

24. HAZARDOUS MATERIALS CARRIED/SHIPPED *(Please Circle **All** that Apply.)* **T**–IN CARGO TANKS **P**–IN PACKAGES

C	S	A. DIVISION 1.1	T	P	C	S	J. CLASS 3	T	P	C	S	T. CLASS 7 (No Placards)	T	P
C	S	B. DIVISION 1.2	T	P	C	S	K. DIVISION 4.1	T	P	C	S	U. CLASS 8	T	P
C	S	C. DIVISION 1.3	T	P	C	S	L. DIVISION 4.2	T	P	C	S	V. CLASS 9	T	P
C	S	D. DIVISION 1.4	T	P	C	S	M. DIVISION 4.3	T	P	C	S	W. P.I.H.	T	P
C	S	E. DIVISION 1.5	T	P	C	S	N. DIVISION 5.1	T	P	C	S	X. COMBUSTIBLE LIQUID	T	P
C	S	F. DIVISION 1.6	T	P	C	S	O. DIVISION 5.2	T	P	C	S	Y. HAZARDOUS SUB. (RQ)	T	P
C	S	G. DIVISION 2.1	T	P	C	S	P. DIVISION 6.1 (Liq.)	T	P	C	S	Z. HAZARDOUS WASTE	T	P
C	S	H. DIVISION 2.2	T	P	C	S	Q. DIVISION 6.1 (Solid)	T	P	C	S	AA. ORM-D	T	P
C	S	I. DIVISION 2.3	T	P	C	S	R. DIVISION 6.2	T	P	C	S	BB. ELEVATED TEMP. MAT.	T	P
					C	S	S. CLASS 7 (Placards)	T	P	C	S	CC. MARINE POLLUTANTS	T	P

25. EQUIPMENT	*Straight Trucks*	*Truck Tractors*	*Trailers*	*HazMat Cargo Tank Trailers*	*HazMat Cargo Tank Trucks*	*PASSENGERS MotorCoach*	*School Bus*	*Mini-bus/Van*	*Limousine*
OWNED									
TERM LEASED									
TRIP LEASED									

26. DRIVERS SUBJECT TO FMCSR:

INTERSTATE	INTRASTATE	
100-Mile Radius	100-Mile Radius	TOTAL DRIVERS
Beyond 100-Mile Radius	Beyond 100-Mile Radius	TOTAL CDL DRIVERS

27. CERTIFICATION STATEMENT (to be completed by an authorized official)

I, _____ *(Please print Name)* certify that I am familiar with the Federal Motor Carrier Safety Regulations and/or the Federal Hazardous Materials Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct, and complete.

Signature _____ Date _____ Title _____

Form MCS-150 (Rev. 10-94) 103A MCS-150-Form Disk

BILLING CODE 4910–22–C

Notice

The Form MCS–150, Motor Carrier Identification Report, must be filed by all motor carriers operating in interstate or foreign commerce. A new motor carrier must file Form MCS–150 within 90 days after beginning operations. Exception: A motor carrier that has received written notification of a safety rating from the Federal Highway Administration (FHWA) need not file the report. To mail, fold the completed report so that the self-addressed postage paid panel is on the outside. This report is required by 49 CFR Part 385 and authorized by 49 U.S.C. 504 (1982 & Supp. III 1985).

The public reporting burden for this collection of information on the Form MCS–150 is estimated by the FHWA to average 20 minutes. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to the Office of Management and Budget and the FHWA at the following addresses:

Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503

and

Federal Highway Administration, OMC Field Operations, HFO–10, 400 7th Street, SW., Washington, DC 20590

Instructions for Completing the Motor Carrier Identification Report (MCS–150)

(Please Print or Type All Information)

1. Enter the legal name of the business entity (i.e., corporation, partnership, or individual) that owns/controls the motor carrier/shipper operation.

2. If the business entity is operating under a name other than that in Block 1, (i.e., ''trade name'') enter that name. Otherwise, leave blank.

3. Enter the principal place of business street address (where all safety records are maintained).

4. Enter mailing address if different from the physical address, otherwise leave bank. Also, applies to #7, #8, #12–#14.

5. Enter the city where the principal place of business is located.

6. If a Mexican motor carrier or shipper, enter the Mexican neighborhood or barrio where the principal place of business is located.

7. Enter the city corresponding with the mailing address.

8. If a Mexican motor carrier or shipper, enter the Mexican neighborhood or barrio corresponding with the mailing address.

9. Enter the name of the county in which the principal place of business is located.

10. Enter the two-letter postal abbreviation for the State, or the name of the Canadian Province or Mexican State, in which the principal place of business is located.

11. Enter the zip code number corresponding with the street address.

12. Enter the name of the county corresponding with the mailing address.

13. Enter the two-letter postal abbreviation for the State, or the name of the Canadian Province or Mexican State, corresponding with the mailing address.

14. Enter the ZIP code number corresponding with the mailing address.

15. Enter the telephone number, including area code, of the principal place of business.

16. Enter the identification number assigned to your motor carrier operation by the U.S. Department of Transportation, if known. Otherwise, enter ''N/A.''

17. Enter the motor carrier ''MC'' or ''MX'' number under which the Interstate Commerce Commission (ICC) issued your operating authority, if appropriate. Otherwise, enter ''N/A.''

18. Enter the employer identification number (EIN #) or social security number (SSN #) assigned to your motor carrier operation by the Internal Revenue Service.

19. Circle the appropriate type of carrier operation.

A. Interstate.
B. Intrastate, transporting hazardous materials (49 CFR 100–180).
C. Intrastate, NOT transporting hazardous materials.

Interstate—transportation of persons or property across State lines, including international boundaries, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Intrastate—transportation of persons or property wholly within one State.

20. Circle the appropriate type of shipper operation.

A. Interstate
B. Intrastate
Interstate & Intrastate—See #19 above.

21. Enter the carrier's total mileage for the past calendar year.

22. Circle appropriate classification. Circle all that apply. If ''L. Other'' is circled, enter the type of operation in the space provided.

A. Authorized For Hire
B. Exempt For Hire
C. Private (Property)
D. Private Passengers (Business)
E. Private Passengers (Non-Business)
F. Migrant
G. U.S. Mail
H. Federal Government
I. State Government
J. Local Government
K. Indian Tribe
L. Other

Authorized For Hire—transportation for compensation as a common or contract carrier of property, owned by others, or passengers under the provisions of the ICC.

Exempt For Hire—transportation for compensation of property or passengers exempt from the economic regulation by the ICC.

Private (Property)—means a person who provides transportation of property by commercial motor vehicle and is not a for-hire motor carrier.

Private Passengers (Business)—a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large (e.g., bands).

Private Passengers (Non-Business)—a private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business) (e.g., church buses).

Migrant—interstate transportation, including a contract carrier, but not a common carrier of 3 or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon.

U.S. Mail—transportation of U.S. Mail under contract with the U.S. Postal Service.

Federal Government—transportation of property or passengers by a U.S. Federal Government agency.

State Government—transportation of property or passengers by a U.S. State Government agency.

Local Government—transportation of property or passengers by a local municipality.

Indian Tribe—transportation of property or passengers by a Indian tribal government.

Other—transportation of property or passengers by some other operation classification not described by any of the above.

23. Circle all the letters of the types of cargo you usually transport. If ''Z. Other'' is circled, enter the name of the commodity in the space provided.

24. Circle all the letters of the types of hazardous materials (HM) you transport/ship. In the columns before the HM types, either circle C for carrier of HM or S for a shipper of HM. In the columns following the HM types, either circle T if the HM is transported in cargo tanks or P if the HM is transported in other packages (49 CFR 173.2).

25. Enter the total number of vehicles owned, term leased and trip leased, that are, or can be, operational the day this form is completed.

Motorcoach—a vehicle designed for long distance transportation of passengers, usually equipped with storage racks above the seats and a baggage hold beneath the cabin.

School Bus—a vehicle designed and/or equipped mainly to carry primary and secondary students to and from school, usually built on a medium or large truck chassis.

Mini-bus/Van—a multi-purpose passenger vehicle with a capacity of 10–24 people, typically built on a small truck chassis.

Limousine—a passenger vehicle usually built on a lengthened automobile chassis.

26. Enter the number of interstate/intrastate drivers used on an average work day. Part-time, casual, term leased, trip leased and company drivers are to be included. Also, enter the total number of drivers and the total number of drivers who have a Commercial Drivers License (CDL).

Interstate—driver transports people or property across State lines, including international boundaries, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Intrastate—driver transports people or property wholly within one State.

100-mile radius driver—driver operates only within a 100 air-mile radius of the normal work reporting location.

27. Print or type the name, in the space provided, of the individual authorized to sign

documents on behalf of the entity listed in Block 1. That individual must sign, date, and show his or her title in the spaces provided (Certification Statement, see 49 CFR 385.21 and 385.23).

PART 363—ENFORCEMENT PROCEEDINGS

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Subpart A—Civil Penalty Proceedings

§ 363.101 Nature of proceeding.

Civil penalty proceedings are proceedings pursuant to 5 U.S.C. 554 in which the agency makes a monetary claim or seeks an order against the respondent, based on violation of the FMCSRs or HMRs. Final agency orders that may result from civil penalty proceedings include one or more of the following:

(a) Monetary penalty;
(b) Settlement agreement;
(c) Out-of-service order;
(d) Notice to post;
(e) Notice of abate; and
(f) Any other order within the authority of the agency.

§ 363.102 Notice of violation (complaint).

(a) Civil penalty proceedings are commenced by the issuance of a notice of violation, which serves as the complaint in subsequent proceedings and represents the claim of the agency against respondent. Each notice shall contain the following:

(1) The provisions of law and regulation alleged to have been violated;

(2) A recitation, separately stated and numbered, of each alleged violation, including a brief statement of the material facts constituting each violation.

(3) The amount being claimed and the maximum amount authorized to be claimed under the statute, and the contents of any order sought to be imposed;

(4) A statement that failure to answer the notice within the prescribed time will constitute a waiver of the opportunity to contest the claim;

(5) A reply form to be completed and returned to the agency, except in the case of an out-of-service order; and

(6) The address and telefax number to which the reply form and/or full payment of the amount claimed may be sent, and the telephone number to call to discuss settlement.

(b) A notice may contain such other matters as the FHWA deems appropriate, including a notice to abate.

(c) A notice of violation is transmitted by the agency to the respondent using a method of delivery with a return receipt, such as, but not limited to, certified mail and personal delivery evidenced by a certificate of service.

§ 363.103 Form reply to notice of violation.

(a) *Time for reply*. The reply form included in the notice of violation must be served on the agency by the respondent within 15 days of respondent's receipt of the notice. The form reply may be sent to the agency by mail, personal delivery, or telefax. Although a return receipt is not required, the burden is on the respondent to prove it has made a timely answer.

(b) *Contents of reply form*. The respondent must provide the information requested on the reply form, and indicate, by checking the appropriate box, its response to the Notice of Violation. Respondent may select only one option on the reply form. The response options are:

(1) Pay the full amount claimed in the Notice of Violation (check included), and/or agree to comply with the order by signing where indicated;

(2) Enter into settlement negotiations (while preserving the right to contest the claim at a later date); and

(3) Contest the claim immediately through the institution of administrative adjudication.

(c) *Failure to reply*. If a completed reply on the form provided, or in a form containing the same information, is not served on the agency within 15 days of the respondent's receipt of the notice of violation, the notice of violation becomes the final agency order in the proceeding. Respondent's failure to reply constitutes an admission of all facts alleged in the notice of violation and a waiver of the respondent's opportunity to contest the claim.

§ 363.104 Special procedures for out-of-service orders.

(a) Whenever it is determined that a violation of the FMCSRs poses an imminent hazard to safety, the agency may order a vehicle or employee operating such vehicle out of service, or order a motor carrier to cease all or part of the employer's commercial motor vehicle operations. In making any such order, no restrictions shall be imposed on any employee or motor carrier beyond that required to abate the hazard.

(b) An out-of-service order must be personally served on the driver when a driver or vehicle is being placed out of service, and on a responsible representative of the motor carrier at its principal place of business or other location to which the order applies when all or part of a motor carrier's commercial motor vehicle operations are being placed out of service.

(c) A motor carrier or employee shall comply with the out-of-service order immediately upon its issuance. The penalty for violating an out-of-service order shall be specifically noted in the order. An out-of-service order shall not prevent vehicles of the motor carrier in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicles or drivers are specifically ordered out of service effective immediately. Vehicles and drivers proceeding to their immediate destination shall be subject to compliance with the order upon arrival.

(d) If the out-of-service order is contested, an administrative adjudication shall be made available on an expedited basis under procedures provided in § 363.110.

(e) For purposes of this section, the term *immediate destination* means the next scheduled stop of the vehicle

already in transit where the cargo on board can be safely secured, and the term *imminent hazard* means any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury of death if not discontinued immediately.

§ 363.105 Payment of the claim.

(a) Payment of the full amount claimed may be made at any time before issuance of a final order, with or without the reply form. After the issuance of a final order, claims are subject to interest, penalties, and administrative charges in accordance with 4 CFR part 103.

(b) If the full payment option is selected by the respondent on the reply form, but payment is not made on the agency within 15 days of the respondent's receipt of the notice of violation, the notice of violation becomes the final agency order in the proceeding.

(c) Unless otherwise provided in writing by the mutual consent of the parties, payment and/or compliance with the order constitutes an admission of all facts alleged in the notice of violation and a waiver of the respondent's opportunity to contest the claim, and results in the notice of violation becoming the final agency order.

§ 363.106 Settlement of civil penalty claims; generally.

(a) Settlement of disputed civil penalty claims may occur at any time before the issuance of a final order.

(b) Content of settlement agreements. When agreement is reached to resolve the claim, a settlement agreement constituting the final disposition of the proceeding shall be signed by the parties. The settlement agreement shall contain the following:

(1) The legal basis of the claim, including an admission of all jurisdictional facts;

(2) Unless otherwise provided, a finding of the facts constituting the violations committed;

(3) The amount due the FHWA and the terms of payment, and/or the terms of the order;

(4) An express waiver of the right to further procedural steps and of all rights to judicial review;

(5) A statement that the agreement is not binding on the agency until executed by the agency's authorized representative; and

(6) A statement that failure to pay other otherwise perform in accordance with the terms of the agreement will result in the notice of violation becoming the final agency order, and the amount claimed in the notice of violation becoming due and payable immediately.

(c) An executed settlement agreement is binding on the parties according to its terms. The respondent's signed, written consent to a settlement agreement may only be withdrawn, in writing, if the agency has not executed the agreement within 28 days after execution by respondent.

(d) The agency's acceptance of partial payment of a claim tendered unilaterally by a respondent does not constitute a settlement agreement. All settlement agreements must be in the form specified in paragraph (b) of this section.

(e) Settlement agreements reached during the course of an administrative adjudication need not be approved by the Administrative Law Judge or Associated Administrator unless specifically directed by those officials.

§ 363.107 Settlement negotiations.

This section establishes procedures when the settlement negotiations option is selected on the reply form.

(a) The parties should enter into negotiations expeditiously and in good faith, using all reasonable means.

(b) Opportunity for an administrative adjudication. Respondents electing on the reply form to engage in settlement negotiations retain the opportunity to contest the claim through an administrative adjudication if the negotiations do not result in a settlement agreement.

(c) Discontinuance of negotiations within 90 days. The agency may discontinue negotiations within 90 days of the notice of violation by sending the respondent a final notice of violation. The respondent may discontinue negotiations within the same period by requesting an administrative adjudication and sending the agency a written answer to the notice of violation.

(d) Failure to reach agreement after 90 days. If the parties do not reach a settlement agreement within 90 days, a final notice of violation shall be issued by the agency to the respondent.

(e) Final Notice of Violation. The final notice of violation represents the agency's final claim against the respondent. The final notice of violation may incorporate the notice of violation by reference, amend the notice of violation to reflect the settlement negotiations, or include some combination of both.

(1) A final notice of violation shall be transmitted to the respondent using a method of delivery within a return receipt, such as, but not limited to, certified mail and personal delivery evidenced by a certificate of service.

(2) The reply to the final notice of violation shall be completed in conformance with the requirements of § 363.108(c).

§ 363.108 Request for administrative adjudication.

The respondent may contest the claim by requesting an administrative adjudication and sending a written answer to the agency. An administrative adjudication is a process to resolve contested claims before the Associate Administrator or an Administrative Law Judge. Unless settled, the Associate Administrator shall decide the matter or refer it to an Administrative Law Judge expeditiously.

(a) *Time for answer.* Respondents who select administrative adjudication on the reply form to the notice of violation, or who receive a final notice of violation, must serve a written answer on the agency within 28 days of receipt of the applicable notice.

(b) *Form of answer.* The answer may be sent to the agency by mail, personal delivery, or telefax. Though a return receipt is not required, the burden is on the respondent to prove it has made a timely answer.

(c) *Contents of answer.* Generally, the answer must state the grounds for contesting the claim and any affirmative defenses that the respondent intends to assert. Specifically, the answer:

(1) Must admit or deny each separately stated and numbered allegation of violation in the claim. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the claim that is not specifically denied in the answer is deemed admitted. A general denial of the claim is grounds for a finding of default;

(2) Must include all affirmative defenses, including those relating to jurisdiction, limitations, and procedure;

(3) Must request referral to an Administrative Law Judge, if desired. Referral to an Administrative Law Judge is generally available only to resolve material issues of fact. Failure to request it results in a waiver of the right to an opportunity for referral; and

(4) May include a motion to dismiss, but a motion to dismiss is not a substitute for an answer.

(d) *Failure to answer.* If a written answer meeting the requirements of this section is not served on the agency by the respondent or representative of the respondent within 28 days, the notice of violation or final notice of violation,

whichever is applicable, becomes the final agency order in the proceeding. Merely selecting the adjudication option on the reply form, without submitting a written answer in accordance with this section, also results in the notice of violation becoming the final agency order in the proceeding. Respondent's failure to answer constitutes an admission of all facts alleged in the notice of violation and a waiver of the respondent's opportunity to contest the claim.

(e) *Default.* If an answer is not in the form required by paragraph (c) of this section the respondent may be found in default by the Associate Administrator or Administrative Law Judge and a final agency order issued in the proceeding. Default by respondent constitutes an admission of all facts alleged in the notice of violation and a waiver of the respondent's opportunity to contest the claim, and results in the Notice of Violation becoming the final agency order in the proceeding.

§ 363.109 Procedures in administrative adjudications.

(a) Associate Administrator. Contested claims shall be transmitted to the Associate Administrator for resolution by final order or for assignment to an Administrative Law Judge. The Associate Administrator determines if there are material factual issues in dispute, but may refer the matter to an administrative law judge to make the determination.

(b) Referral to an Administrative Law Judge. If there are material factual issues in dispute and respondent has requested referral to an Administrative Law Judge, the Associate Administrator shall assign the matter to an Administrative Law Judge. The Associate Administrator may, in his or her discretion, refer other matters to an Administrative Law Judge.

(c) Decision. If there are no material factual issues in dispute or the matter has not been referred to an Administrative Law Judge, the Associate Administrator may resolve the Matter and issue a final order.

(d) Except as otherwise provided in these rules, in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, or by the Associate Administrator or Administrative Law Judge, the Federal Rules of Civil Procedure and the Federal Rules of Evidence shall apply in all administrative adjudications.

(e) Motions. An application for an order or ruling in an administrative adjudication shall be by motion. Unless made during an oral hearing, motions shall be made in writing, shall state with particularity the grounds for relief sought, and shall be accompanied by any relevant affidavits or other evidence. Any party may file a response to a written motion within 7 days, or within such other time provided by the Associate Administrator or the Administrative Law Judge. Failure to respond to a motion may constitute grounds for granting it. Oral argument or briefs on a motion may be ordered by the Administrative Law Judge or by the Associate Administrator.

(f) The Associate Administrator and the Administrative Law Judge have the discretion to conduct an oral hearing on the record, decide the matter on the pleadings, or employ any other appropriate process.

(g) The Associate Administrator and the Administrative Law Judge may conduct or permit forms of alternative dispute resolution upon the consent of the parties.

(h) Appearance. Any party to an administrative proceeding may appear personally and be represented by an attorney or other person. A representative must serve a notice of appearance on all parties, including the name of the respondent or title of the matter, as well as the representative's name, address, and telephone number, before participating in the proceeding.

(i) Withdrawal. At any time after a request for an administrative adjudication, but prior to the issuance of a decision by the Administrative Law Judge or Associate Administrator, any party may, in writing, withdraw a request for an administrative adjudication or the agency may withdraw the notice of violation. If a proceeding before an Administrative Law Judge is so withdrawn, the assignment of the Administrative Law Judge is terminated and the Administrative Law Judge shall dismiss the proceeding with prejudice. A withdrawal by the respondent constitutes and irrevocable waiver of the respondent's right to an administrative adjudication on the matter presented in the notice of violation.

§ 363.110 Expedited review by the Associate Administrator.

(a) Decisions to order a motor carrier's operations out of service is whole or in part are subject to review by the Associate Administrator in accordance with 5 U.S.C. 554, except that such review must be provided within 10 days from the date of the out-of-service order; provided a written request for review is received by the Associate Administrator within 5 days from the date of the notice. Written requests received after the 5th day but within 10 days of the effective date of the out-of-service order or final unsatisfactory rating resulting in an out-of-service order will be reviewed within 10 days from the date of the request.

(b) Any petition for review received more than 10 days after the date of an out-of-service order will be treated as a request for administrative adjudication under § 363.108 of this part, unless the Associate Administrator, in his or her discretion, provides otherwise.

(c) Any requests for review submitted pursuant to this section must be in writing and particularly address the matters which are disputed, the grounds for the dispute, and the reasons why expedited review is required.

(d) The Associate Administrator may refer the matter for a hearing before and Administrative Law Judge within the same time prescribed for expedited review. The procedures in § 363.109, except for time periods, shall apply to the hearing.

(e) The Associate Administrator or Administrative Law Judge may stay any order or safety rating during the pendency of the expedited review. Thereafter, the matter may be administered pursuant to § 363.109.

(f) Unless a stay is granted under paragraph (e) of this section or the period extended by mutual consent of the parties, the decision on an expedited review shall be issued within the time prescribed for such expedited review.

(g) The decision of the Administrative Law Judge on referral from the Associate Administrator shall become the final agency order after 24 hours unless amended or vacated by the Associate Administrator.

§ 363.111 Administrative Law Judge decision.

(a) After considering the evidence and arguments of the parties, the Administrative Law Judge shall issue a decision. The decision shall be sent to the parties and to the Associate Administrator. The Administrative Law Judge may issue an oral decision in the presence of the parties, which will be entered in the record of the proceedings.

(b) Finality. Except for expedited review under § 363.110, the decision of the Administrative Law Judge becomes the final decision of the agency 45 days after it is issued, unless a petition for review is filed under § 363.112 within that period, or the Associate Administrator, on his own motion, reviews or vacates the decision.

§ 363.112 Review of Administrative Law Judge decision.

(a) All petitions to review administrative adjudication decisions of the Administrative Law Judge must be accompanied by a statement of the

grounds for review. Each petition must set out in detail objections to the decision and refer to any evidence in the record which is relied upon to support the petition. It shall also state the relief requested. Failure to object to any error in the decision constitutes a waiver of the right to allege such error in subsequent proceedings.

(b) A party may petition for review of a decision of the Administrative Law Judge on only the following three grounds:

(1) A finding of fact is not supported by substantial evidence;

(2) A conclusion of law is not made in accordance with applicable law, precedent, or public policy; and

(3) The Administrative Law Judge committed prejudicial error in applying the governing procedural rules.

(c) Reply briefs may be filed within 35 days after the petition for review is filed. Further pleadings may be filed by a party only if expressly allowed by the Associate Administrator.

(d) Copies of the petition for review and all motions and briefs must be served on all parties.

(e) Oral argument will be permitted only if expressly allowed by the Associate Administrator.

§ 363.113 Decision on review.

(a) The Associate Administrator may adopt, modify, or reverse the Administrative Law Judge's decision and may make any necessary findings of law or fact. The Associate Administrator may also remand the matter to the Administrative Law Judge with instructions for further proceedings. If the matter is not remanded, the Associate Administrator shall issue a final order disposing of the proceedings and serve it on all parties.

(b) Finality. Unless otherwise stated, an order of the Associate Administrator on review becomes the final order of the agency upon issuance.

§ 363.114 Reconsideration.

Within 21 days of a decision by the Associate Administrator, any party may petition for reconsideration. The filing of a petition for reconsideration does not stay the effectiveness of a final order unless so ordered by the Associate Administrator.

§ 363.115 Judicial review.

(a) Any aggrieved person, who, after an administrative adjudication, is adversely affected by a final order issued may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred, or where the violator has its principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit.

(b) Judicial review shall be based on a determination of whether or not the findings and conclusions in the final order were supported by substantial evidence or otherwise in accordance with law. No objection that has not been urged before the agency must be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of the final order of the agency.

§ 363.116 Failure to comply with final order.

If, within 30 days of receipt of a final agency order issued under this part, the respondent does not pay a civil penalty assessed, take any other action required by the order, or file a petition under §§ 363.114 or 363.115, the case may be referred to the Attorney General with a request that an action be brought in the appropriate United States District Court to enforce the terms of the order or collect the civil penalty.

Subpart B—Driver Qualification Proceedings

§ 363.201 Nature of proceeding.

Driver qualification proceedings are the means by which the agency resolves challenges to or disputes involving a determination of a driver's medical qualification to operate a commercial motor vehicle or challenges to disqualification by the Federal Highway Administration of a driver following convictions for certain driving offenses.

§ 363.202 Commencement of proceedings.

(a) Driver qualification proceedings are commenced by the issuance to a driver or motor carrier of:

(1) A notice of determination by the agency (the determination may be issued unilaterally by the agency or in resolution of a conflict of medical evaluations pursuant to § 363.204); or

(2) A letter of disqualification issued by the agency, based upon a conviction for a disqualifying offense or other cause listed in § 383.51 or 391.15 of this subchapter.

(b) Each notice of determination or letter of disqualification shall contain the following:

(1) A statement of the provisions of the regulations under which the action is being taken;

(2) A copy of all documentary evidence relied on or considered in taking such action, or, in the case of voluminous evidence, a summary of such evidence;

(3) Notice that the determination or disqualification may be contested, and that failure to answer will constitute a waiver of the opportunity to contest the determination or disqualification; and

(4) Notice that the burden of proof will be on the applicant in cases arising under § 363.204.

(c) In a medical qualification proceeding, the notice of determination must be transmitted to the driver involved. In cases arising under § 363.204, the notice of determination shall also be transmitted to the motor carrier and any other parties involved in the resolution of a conflict of medical evaluations. Any party may respond. In a disqualification proceeding, the letter of disqualification must be transmitted both to the driver and to the employing motor carrier, if the latter is known.

(d) The notice or letter commencing the proceeding is transmitted by the agency to any respondent or necessary party using a method of delivery with a return receipt, such as, but not limited to, certified mail and personal delivery evidenced by a certificate of service.

§ 363.203 Answer to medical qualification determination or letter of disqualification.

(a) *Time to answer.* An answer to the notice of determination or letter of disqualification must be completed by the respondent and served on the agency within 2 months of respondent's receipt of the notice of determination. The answer may be sent to the agency by mail or telefax. Though a return receipt is not required, the burden is on the respondent to prove it has made a timely answer.

(b) *Contents of the answer.* The answer must contain the following:

(1) The grounds for contesting the determination;

(2) Copies of all evidence upon which petitioner relies.

(3) A request for referral to an Administrative Law Judge, if one is desired, which must set forth material factual issues believed to be in dispute.

(c) *Supporting evidence.* All written evidence shall be submitted in the following forms:

(1) An affidavit of a person having personal knowledge of the facts alleged;

(2) Documentary evidence in the form of exhibits attached to an affidavit identifying the exhibit and giving its source;

(3) A medical report (or reports) prepared by a medical examiner or authorized representative of a medical institution; and

(4) An official record of a government agency.

(d) *Failure to answer.* If a written answer contesting the notice or letter is

not received by the agency within 2 months, the notice of determination or letter of disqualification becomes the final agency order in the proceeding. Respondent's failure to answer constitutes and admission of all facts alleged in the letter or notice and a waiver of the respondent's opportunity to contest the determination of disqualification.

(e) *Letter of Disqualification.* In proceedings based on convictions for disqualifying offenses, the only relevant defenses are that:

(1) The respondent driver was not convicted as alleged;

(2) The alleged conviction was overturned, vacated, remanded, or otherwise voided on appeal;

(3) The violation for which the conviction was entered is not a disqualifying offense; or

(4) The term of the disqualification period has already been served in whole or in part because of State action.

§ 363.204 Special procedures for resolution of conflicts of medical evaluation.

(a) *Applications.* An application for determination of a driver's medical qualifications under standards in part 391 of this chapter will only be accepted if they conform to the requirements of this section.

(b) *Conditions.* Each applicant must meet the following conditions.

(1) The application must be in writing and contain the name and address of the driver, motor carrier, and all physicians involved in the conflict.

(2) The applicant must provide documentary evidence that there is disagreement between the physician for the driver and the physician for the motor carrier concerning the driver's medical qualifications.

(3) The applicant must submit a written opinion and report from an independent medical specialist in the field in which the conflict arose, together with the results of all tests performed by that independent specialist. The independent medical specialist should be one agreed to by the motor carrier and the driver.

(4) If no agreement to select an independent specialist can be reached, the applicant must demonstrate it agreed and the other party refused to submit the matter to a specialist. If possible, the applicant must then submit the report of an independent specialist selected by the applicant. The report should be based on personal examination or, if that is not possible, on an evaluation of the reports of the two examining physicians in conflict.

(5) The independent medical specialist must be provided with a copy of the regulations in part 391 of this subchapter, and this part, a medical history of the driver, and a detailed statement of the work the driver performs or is to perform, which must be noted in the specialist's report.

(6) The applicant must submit all medical records, statements and reports of all physicians known to have provided opinions as to the driver's qualifications.

(7) The applicant must submit any other documentary evidence which may reflect on the driver's qualifications.

(8) The application must allege that the driver intends to drive or is intended to be used as driver in interstate commerce.

(9) The application and all supporting documents must be submitted in triplicate to the Director, Office of Motor Carrier Research and Standards, Federal Highway Administration, Washington DC 20590.

(c) *Initiation.* Upon receipt of a satisfactory application, the Director will issue a notice to all parties that an application for resolution of a medical conflict has been received with respect to the identified driver, and may require additional information from the parties.

(d) *Reply.* Any party may submit a reply to the notice within 30 days after service. The reply must be accompanied by all evidence the party desires to be considered by the Director in making a determination.

(e) *Parties.* For purposes of this section, the parties are the driver, the motor carrier, and any other person whom the Director designates as such.

(f) *Determination.* After considering all the medical evidence submitted by the parties and the opinions of medical experts to whom any matter under consideration may have been referred, the Director shall issue a Determination of Qualification deciding whether the drive is qualified under part 391 of this subchapter.

(g) *Petitions for review.* A driver or motor carrier adversely affected by the Director's determination may within 60 days petition for review to the Associate Administrator under this part.

§ 363.205 Driver's qualification status pending determinations and proceedings.

(a) In proceedings which are unilaterally commenced by the agency, the driver shall be deemed qualified unless and until a final order is issued disqualifying the driver.

(b) In proceedings arising under § 363.204:

(1) If the driver is not yet employed by the motor carrier with which the conflict of medical qualification arises, the driver shall be deemed unqualified as a driver only with respect to that motor carrier.

(2) If the conflict arises from a biennial or other medical examination conducted after the driver was previously found qualified and employed as a driver by the motor carrier with which the conflict exists, the driver shall be deemed qualified only with respect to that motor carrier unless and until a final determination by the Director, Office of Motor Standards is issued finding the driver unqualified, or unless the Associate Administrator otherwise provides.

(c) During the pendency of a proceeding on a petition for review of the Determination of Qualification issued by the Director under § 363.204, the driver's status will remain as decided in that Determination, unless otherwise provided by the Associate Administrator.

§ 363.206 Administrative adjudication.

(a) *Referral to an Administrative Law Judge.* If there are material factual issues in dispute and respondent has requested referral to an Administrative Law Judge, the Associate Administrator may assign the matter to an Administrative Law Judge.

(b) *Decision.* If there are not material factual issues in dispute or respondent has not requested referral, the Associate Administrator may resolve the matter and issue a final order.

(c) *Procedures.* Administrative adjudication and any agency review are conducted in accordance with §§ 363.109 and 363.111–363.115.

Subpart C—General Provisions

§ 363.301 Applicability.

The general provisions in this subpart apply to part 362 of this subchapter and this part 363.

§ 363.302 Computation of time.

(a) Generally, in computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday, in which case the time period shall run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period shall be counted.

(b) Date of entry of orders. In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is served.

§ 363.303 Service.

(a) *Definition.*

Service means the delivery of documents to necessary entities in the context of an administrative proceeding. Service by mail is complete upon mailing.

(b) *Certificate of service.* A certificate of service shall accompany all documents served in an administrative proceeding, except the notice of violation on § 363.102, the reply form in § 363.103, and the notice of determination and letter of disqualification in § 363.202. It shall consist of a certificate of personal delivery or a certificate of mailing, executed by the person making the personal delivery or mailing the document.

(c) *Service list.* The initial notice or other document of the agency in an administrative proceeding shall have attached a list of persons to be served. This service list shall be updated by the agency as necessary. Copies of all documents must be served on the persons, and in the number of copies, indicated on the service list.

(d) *Form of delivery.* All service required by these rules shall be made by mail or personal delivery, unless otherwise prescribed.

§ 363.304 Extension of time.

(a) Unless directed otherwise by the Associate Administrator or Administrative Law Judge before whom a matter is pending, the parties may stipulate to reasonable extensions of time by filing such stipulation in the official docket and serving copies on all parties on the service list.

(b) All requests for extensions of time shall be filed with the office in the agency to which the answer is to be sent, or, if the matter is an administrative adjudication, with the Administrative Law Judge or the Associate Administrator, whichever is appropriate. All requests must state the reasons for the request. Only those requests showing good cause or upon the mutual consent of the parties may be granted by the appropriate official. No motion for continuance or postponement of a hearing date filed within 7 days of the date set for a hearing will be granted unless it is accompanied by an affidavit showing that extraordinary circumstances warrant a continuance.

§ 363.305 Administrative Law Judge.

(a) *Powers of an Administrative Law Judge.* In accordance with the rules in this subchapter, an Administrative Law Judge may:

(1) Give notice of and hold prehearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the administrative adjudication in accordance with the rules of this subchapter;

(7) Hold conferences to settle or simplify the issues by the consent of the parties;

(8) Dispose of procedural motions and requests;

(9) Make findings of fact and conclusions of law, and issue decisions.

(b) *Limitations on the power of the Administrative Law Judge.* The Administrative Law Judge is bound by the procedural requirements of this part and the precedent opinions of the agency as recorded in written opinions of the Associate Administrator or in opinions adopted by the Associate Administrator. If the Administrative Law Judge imposes any sanction not specified in this subchapter, a party may file an interlocutory appeal of right with the Associate Administrator pursuant to § 363.307. This section does not preclude an Administrative Law Judge from barring a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that proceeding.

(c) *Disqualification.* The Administrative Law Judge may disqualify himself or herself at any time, either at the request of any party or upon his or her own initiative. Assignments of Administrative Law Judges are made by the Chief Administrative Law Judge upon the request of the Associate Administrator. Any request for a change in such assignment, including disqualification, will be considered only for good cause which would unduly prejudice the proceeding.

§ 363.306 Certification of documents.

(a) *Signature required.* The attorney of record, the party, or the party's representative shall sign each document tendered for filing with the hearing docket clerk, the Administrative Law Judge, the Associate Administrator, or served on a party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney, the party, or the party's representative has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If the attorney of record, the party, or the party's representative signs a document in violation of this section, the Administrative Law Judge or the Associate Administrator may:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the petition for review of the Administrative Law Judge's decision to the Associate Administrator.

§ 363.307 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the Administrative Law Judge to the Associate Administrator until the Administrative Law Judge's decision has been entered on the record. A decision or order of the Associate Administrator on the interlocutory appeal does not constitute a final order for the purposes of judicial review under § 363.115.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the Administrative Law Judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the Administrative Law Judge issues a decision on the request. If the Administrative Law Judge grants the request, the proceedings are stayed until the Associate Administrator issues a decision on the interlocutory appeal. The Administrative Law Judge shall grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the Administrative Law

Judge of an interlocutory appeal of right, the proceedings shall be stayed until the Associate Administrator issues a decision on the interlocutory appeal. A party may file an interlocutory appeal with the Associate Administrator, without the consent of the Administrative Law Judge, before the Administrative Law Judge has made a decision, in the following situations:

(1) A ruling or order by the Administrative Law Judge barring a person from the proceedings;

(2) Failure of the Administrative Law Judge to dismiss the proceedings in accordance with § 363.109(i);

(3) A ruling or order by the Administrative Law Judge in violation of § 363.305(b); and

(4) Denial by the Administrative Law Judge of a motion to disqualify under § 363.305(c).

(d) Procedure. A party must file a notice of interlocutory appeal, with any supporting documents, with the Associate Administrator, and serve copies on each party and the Administrative Law Judge, not later than 10 days after the Administrative Law Judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the Administrative Law Judge's decision granting an interlocutory appeal for cause, whichever is appropriate. A party must file a reply brief, if any, with the Associate Administrator and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The Associate Administrator shall render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) The Associate Administrator may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

PART 364—VIOLATIONS, PENALTIES, AND COLLECTIONS

Subpart A—General

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Subpart D—Monetary Penalty Collection

364.401 Payment.
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Authority: 49 U.S.C. Chapters 5, 51, 311, 313 and 315.

Subpart A—General

§ 364.101 Purpose.

The purposes of this part are to define the various types of violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs), and orders authorized to be issued thereunder; to describe the range of penalties that may be imposed for such violations and how those penalties are assessed; and to identify the means that may be employed to collect those penalties once it has been finally decided by the agency that they are due.

§ 364.102 Policy.

(a) Penalties are assessed administratively by the agency for violations of the FMCSRs, HMRs, and administrative orders at levels sufficient to bring about satisfactory compliance. Criminal penalties are also authorized to be sought in U.S. District Court under certain circumstances.

(b) The maximum amounts of civil penalties that can be assessed for regulatory violations subject to the proceedings in this subchapter are established in the statutes granting enforcement powers. The determination of the actual civil penalties assessed in each proceeding is based on those defined limits and consideration of information available at the time the claim is made concerning the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In adjudicating the claims and orders under the administrative procedures in this subchapter, additional information may be developed regarding these factors that may affect the final amount of the claim.

(c) When assessing penalties for violations of notices and orders or settling claims based on these assessments, consideration will be given to good faith efforts to achieve compliance with the terms of the notices and orders.

(d) Criminal penalties may be sought against a motor carrier, its officers or agents, a driver, or other persons when it can be established that violations were deliberate or resulted from a willful disregard for the regulations. Criminal penalties may be sought against an employee only when a causative link can be established between a knowing and willful violation and an accident or hazardous materials incident or the risk thereof.

(e) If a State, political subdivision of a State, foreign nation, or other governmental entity imposes any civil or criminal penalty for acts constituting violations of the regulations covered by this part, and those penalties are determined by the Associate Administrator to be appropriate for such violations, no further penalties will be assessed by the Federal Highway Administration.

Subpart B—Civil Penalties

§ 364.201 Types of violations and maximum monetary penalties.

(a) Violations of parts 350–399 of the FMCS are divided into three categories, each of which carries a maximum penalty as noted below. Unless otherwise noted, a separate violation occurs for each day the violation continues:

(1) Recordkeeping—violations which involve knowing failure to prepare or maintain a record required by the regulations, or knowing preparation or maintenance of a required record which is incomplete, inaccurate or false. Maximum penalty: $500 per violation, which may be increased by $500 for each day the violation continues up to $2,500. Actual or constructive possession of the means with which to verify the existence or accuracy of the record is presumptive evidence that the person responsible for maintaining such record committed a knowing violation when such record is incomplete, inaccurate, or false.

(2) Serious pattern of safety violations—no civil penalties are assessed for isolated violations of non-recordkeeping provisions of the regulations. The term ''serious patterns of violations'' describes a middle range of violations between those of recordkeeping noncompliance and willful disregard of the regulations. These types of violations are not the isolated human errors, but are tolerated patterns of equipment violations or operating conduct that any responsible business entity could detect and correct if it wanted to meet its full safety responsibility to the public. A pattern may be established by single violations

of more than one regulation, as well as by multiple violations of a single regulation. No set number of acts are required. All that is needed is a basis to infer that the acts are not isolated or sporadic. More than one pattern may be alleged in a single claim. For example, in one notice of violations, patterns of hours-of-service violations, use of unsafe equipment, and employment of unqualified drivers may be alleged and supported with separately counted violations in each category. The area of noncompliance may be further broken down if patterns are discernible to that extent. In the same notice, for instance, it may be alleged that each driver used by a carrier constitutes a separate pattern and further that each such driver may account for separate patterns of violations of the 10-hour driving rule (49 CFR 395.3(a)(1)), the 15-hour on-duty rule (§ 395.3(a)(2)), and the 70-hours in 8 days on-duty rule (§ 395.3(b)(2)), each of which presents a separate pattern. When serious patterns of violation are detected, civil penalties not to exceed $1,000 for each violation within a pattern up to a maximum of $10,000 for each pattern may be assessed.

(3) Substantial Health and Safety Violations. This category applies to violations which could reasonably lead to, or have resulted in, serious personal injury or death. These are violations that are serious in their nature and have been allowed to occur or continue by the motor carrier who knew or should have known of their existence. Illustrative of such violations are vehicles that are dispatched or continued in a condition which would result in an out-of-service order; drivers who are dispatched or continued in use when they are unqualified, disqualified, or have tested positive for drugs; and drivers who are dispatched or continue in an unsafe or fatigued condition. Penalties up to $10,000 may be assessed for each violation.

(4) Limitation on employee non-recordkeeping violations. Except for recordkeeping violations, no civil penalty may be assessed against an employee of a motor carrier unless it is determined that the employee's actions amounted to gross negligence or reckless disregard for safety. When that can be shown, the maximum civil penalty is $1,000.

(i) Owner operators. For purposes of this section, an owner-operator while in the course of personally operating a commercial motor vehicle is considered an employee. When that same owner-operator is not acting in a driving capacity, he or she shall be treated as a motor carrier or employer.

(ii) Gross negligence is an act or omission of an aggravated nature regarding a legal duty, as opposed to a mere failure to exercise ordinary care. It amounts to indifference to or utter disregard of a legal duty so far as other persons may be affected. Reckless disregard for safety is conduct evincing indifference to consequences under circumstances involving danger to life or safety of others even though no harm was intended.

(b) Violations pertaining to commercial drivers licenses (CDL). Violations with respect to the operations of commercial motor vehicles (CMV) for which a CDL is required under part 383 of this chapter are subject to civil penalties up to a maximum of $2,500 per violation. These violations include the operation of a CMV by a driver who has not obtained a CDL or has more than one driver's license; failure to make required notifications of traffic violations, license suspensions or previous employment; and operating a CMV after the driver or the CMV was placed out-of-service by a duly authorized enforcement official.

(c) Violations pertaining to minimum levels of Financial Responsibility.

(1) Failure by a motor carrier to maintain the prescribed levels of financial responsibility pursuant to Part 387 of this chapter constitutes a violation for which a civil penalty of up to $10,000 may be assessed for each violation. Each time a motor carrier dispatches a commercial motor vehicle without the required level of Financial Responsibility may be counted as a separate violation with no overall limitation.

(2) Failure to produce the required proof of Financial Responsibility (MCS–90 or MCS–82) is presumptive evidence of failure to maintain the required levels of Financial Responsibility. The presumption may be rebutted by presentation of the required proof of Financial Responsibility covering the applicable period of time within 10 days of demand.

(3) Failure to maintain the required proof of Financial Responsibility upon demand is a separate offense for which a civil penalty of up to $500 may be assessed. A separate civil penalty of $500 may be assessed for each day such record is not produced after demand has been made.

(d) Violations of the Hazardous Materials Regulations. The violations in this subsection apply to motor carriers, drivers, and shippers when the transportation is by highway in commercial motor vehicles.

(1) All violations of the Hazardous Materials Transportation Act (HMTA), as amended, or orders or regulations issued under the authority of that Act applicable to the transporting of hazardous materials by highway or the causing of them to be transported by highway are subject to a civil penalty of not more than $25,000 and not less than $250 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(2) All violations of the HMTA, as amended, or orders, regulations, or exemptions issued under the authority of that Act applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of a packaging or container which is represented, marked, certified or sold as being qualified for use in the transportation of hazardous materials by highway are subject to a civil penalty of not more than $25,000 and not less than $250 for each violation.

(3) Whenever regulations issued under the authority of the HMTA, as amended, require compliance with another set of regulations, e.g., the Federal Motor Carrier Safety Regulations, while transporting hazardous materials, any such violation of the latter regulations will be considered a violation of the HMR and subject to a civil penalty of not more than $25,000 and not less than $250.

(4) Transporting hazardous materials requiring the display of placards or transporting more than 15 passengers by a motor carrier during any period in which such motor carrier has a final safety rating of unsatisfactory is considered a violation of the MHTA and subject to a civil penalty of not more than $25,000 and not less then $250, and each transportation movement by such carrier is considered a separate violation.

(e) Violations of Notices and Orders. Additional civil penalties pursuant to 49 U.S.C. 521(b) are chargeable for violations of notices and orders which are issued in proceedings under part 306, as follows:

(1) Notice to Abate.

(i) Failure to cease violations of the safety regulations in the time prescribed in the notice may subject the motor carrier to reinstatement of any deferred assessment or payment of a penalty or portion thereof. (The time within which to comply with a notice to abate shall not begin with respect to contested violations until such time as the violations are established.)

(ii) Failure to comply with specific actions prescribed in an order (other than to cease violations of the regulations), which were determined to be essential to abatement of future

violations is subject to a civil penalty of $1,000 per violation per day up to a maximum of $10,000 per violation.

(2) Notice to Post. Failure to post the notice of violation as directed is subject to a civil penalty of $500 for each such failure.

(3) Final Order. Failure to pay the penalty assessed in a final order within the time prescribed in the order will result in an automatic waiver of any reduction in the original claim found to be valid and immediate restoration to the full amount assessed in the notice of violation.

(4) Out-of-Service Order.

(i) Operation of a commercial motor vehicle by a driver during the period the driver was placed out of service subjects the driver to civil penalty of $1,000 to $2,500 per violation. (For purposes of this violation, the term ''driver'' includes an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

(ii) Requiring or Permitting a driver to operate a commercial motor vehicle during the period the driver was placed out of service subjects the motor carrier to a civil penalty of $2,500 to $10,000 per violation.

(iii) Operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made subjects the driver to a civil penalty of $1,000 to $2,500 each time the vehicle is so operated. (This violation applies to drivers as defined in paragraph (e)(4)(i) of this section.)

(iv) Requiring or Permitting the operation of a commercial motor vehicle after the vehicle was placed out of service and before the required repairs were made subjects the motor carrier to a civil penalty of $2,500 to $10,000 each time the vehicle is so operated after notice of the defect is received. (This violation applies to motor carriers, including independent contractors who are not ''drivers'' as defined in paragraph (e)(4)(i) of this section).

(v) Failure to return written certification of correction as required by the out-of-service order is subject to a civil penalty of up to $500 per violation.

(vi) Knowingly falsifying written certification of correction required by the out-of-service order is considered the same as operating or requiring or permitting a driver to operate an out-of-service vehicle and is subject to the same civil penalties provided in paragraph (e)(4)(iii) and (iv) of this section. Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

(vii) Operating or causing to operate in violation of an order to cease all or part of the motor carrier's commercial motor vehicle operations, i.e., failure to cease operations as ordered, is subject to a civil penalty of up to $10,000 per day after the effective date and time of the order to cease.

§ 364.202 Civil penalty assessment factors.

(a) The nature, circumstances, extent, and gravity of the violations listed in § 364.201 may serve as mitigating or aggravating factors affecting the amount of the penalty assessed. These factors relate to the violations per se, i.e., their magnitude, blatancy, frequency and potential for immediate consequences. They could be determinative in charging substantial health and safety violations or patterns of safety violations, as well as assessing a high, medium, or low penalty. In evaluating a motor carrier's safety fitness, the terms acute and critical are used in reference to particular regulations of which violations are noted. Violations of these regulations, therefore, are by their nature serious, and this will be considered in assessing penalties. Similarly, when the circumstances in which violations occur are so obvious that any responsible motor carrier could easily correct them, the continuation of such violations is an aggravating factor to be considered in assessing the level of civil penalty. When violations are so numerous, frequent or longstanding as to indicate habitual noncompliance, the extent of the violations is a consideration. Finally, the gravity of the violation relates to the likelihood of immediate and harmful consequences. When violations have resulted in death or serious injuries, the level of civil penalty is likely to be higher. Similarly, the occurrence of death or serious injury in other instances resulting from the same type of violation increases the gravity of the offense.

(b) Violator factors. The following factors relate to the disposition or conduct of the violator for consideration in the assessment of civil penalties.

(1) Degree of culpability. This factor requires an evaluation of blameworthiness on the part of the violator. It will range from the low end, where a motor carrier may have had various knowledge of violations but little actual involvement, to the high end, where the motor carrier had actual knowledge and disregarded or even promoted noncompliance.

(2) History of prior offenses. Persistent noncompliance reflects a disregard for safety which, in turn, increases the prospect for imminently hazardous conditions leading to accidents. Timely correction of violation patterns should prevent imminent hazards from developing and reduce the likelihood of accidents. Consequently, this factor is a major indicator of a motor carrier's knowledge of its responsibility and disposition toward compliance. Evaluation of this factor will range from a low end, where there is no history of previous violation, to a history of previous noncompliance with the regulations generally, to prior violations of similar regulations, to recent violations of the same regulations, to the high end of repeated and persistent violations of the same regulations.

(3) Ability to pay. The violator's size, gross revenues, resources, and the standards in 4 CFR part 103 (Standards for Compromise of Claims: Inability to Pay) should be taken into consideration in making a determination whether to charge the total potential assessment. This consideration may affect the decision as to the number of violations to cite as well as the level of the penalty to be assessed for each violation. The violator may submit evidence of its ability to pay at any time, and it will be considered in mitigation of the amount claimed. However, this evidence may not be given much weight when the other factors in this paragraph (b) indicate a high assessment is warranted.

(4) Effect on ability to continue to do business. Insofar as this factor is distinguishable from paragraph (b)(3) of this section, it relates to the timeliness of payment and abatement of violations. Evidence that immediate payment of even a mitigated civil penalty will effectively terminate a motor carrier's or shipper's business will be considered in determining whether to defer payment or to allow installment payments of the civil penalty assessed.

(5) Other matters as justice and public safety may require. Matters other than those specifically included in the factors listed in this section may also be either aggravating or mitigating in the interest of justice or public safety. These may include such factors as cooperation or lack thereof; general attitude toward compliance; institution or revision of a safety program; hiring or assignment of personnel with specifically defined safety responsibilities; comprehensiveness of corrective actions; and effectiveness and speed of compliance.

(c) The preponderance of aggravating factors may also indicate the need for more intensive enforcement in the form of other orders, revocations of operating authority, out-of-service, injunctions, or criminal prosecutions.

Subpart C—Criminal Penalties and Other Sanctions

§ 364.301 Criminal penalties.

(a) Except as provided in paragraph (b) of this section, any person who knowingly and willfully violates any provision of the FMCS shall, upon conviction, be subject for each offense to a fine not to exceed $25,000 or imprisonment for a term not to exceed one year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led to or could have led to death or serious injury, in which case the violator shall be liable upon conviction, for a fine not to exceed $2,500.

(b) Any person who knowingly and willfully violates sections 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31302, 31303, 31304, 31305(b), or 31310(g)(2)), or regulations issued under such sections, shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.

(c) Any person who knowingly violates 49 U.S.C. 5104(b), or any person who knowingly and willfully violates any provision of the HMTA, as amended, or any regulation issued thereunder, shall be fined under title 18 of the United States Code, imprisoned for 5 years, or both.

(d) Additional criminal penalties appear in 49 U.S.C. 522–526.

(e) If the agency becomes aware of any willful act for which a criminal penalty may be imposed as noted in this section, the facts and circumstances of such violation may be reported to the Department of Justice for criminal prosecution of the offender.

§ 364.302 Injunctions.

(a) The Associate Administrator may file a civil action to enforce or redress a violation of a commercial motor vehicle safety regulation or order of the FHWA under 49 U.S.C. chapters 5, 51, 311 (except sections 31138 and 31139), and 315, in an appropriate district court of the United States. The court may grant such relief as is necessary or appropriate, including injunctive and equitable relief and punitive damages.

(b) Imminent Hazard—Hazardous Materials Regulations. The Associate Administrator may file a civil action to suspend or restrict the transportation of hazardous material responsible for an imminent hazard or to eliminate or ameliorate such a hazard, in an appropriate district court of the United States. The court may grant such relief as is necessary or appropriate, including injunctive and equitable relief and punitive damages. ''Imminent hazard'' means that there is substantial likelihood that death, serious illness, or severe personal injury will result from the transportation by motor vehicle of a particular hazardous material before an administrative proceeding to abate the risk of harm can be completed.

(c) Imminent Hazard—Federal Motor Carrier Safety Regulations. Whenever it is determined that a violation of the FMCS poses an imminent hazard, the Associate Administrator or the authorized delegate of that official shall order a commercial motor vehicle or the operator of a commercial motor vehicle out of service, or order an employer to cease all or part of its commercial motor vehicle operations until such time as the violations creating the imminently hazardous condition are satisfactorily abated. ''Imminent hazard'' means any condition of commercial motor vehicle, driver or commercial motor vehicle operations which is likely to result in serious personal injury or death if not discontinued immediately.

(d) The employer or driver shall comply immediately upon the issuance of an order under paragraph (c) of this section. Opportunity for review shall be provided in accordance with § 363.110 of this subchapter. An order to an employer to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered out of service forthwith. Vehicles and drivers proceeding to their immediate destinations shall be subject to full compliance with the order upon arrival.

(e) For purposes of paragraph (d), the term *immediate destination* means the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

§ 364.303 Disqualifications.

In addition to any civil or criminal penalties provided for in this part, operators of commercial motor vehicles who are convicted of certain offenses may also be disqualified for periods from 60 days to lifetime, as follows:

(a) Serious traffic violations.

(1) Two serious traffic violations in a 3-year period—sixty days.

(2) Three serious traffic violations in a 3-year period—one hundred twenty days.

(b) Violations of out-of-service orders.

(1) First violation of operating a commercial motor vehicle during the period that the operator, operation, or vehicle are placed out of service—ninety days.

(2) Second violation in a ten-year period of operating a commercial motor vehicle during the period that the operator, operation, or vehicle are placed out of service—one to five years.

(3) Third violation or more in a ten-year period of operating a commercial motor vehicle during the period that the operator, operation, or vehicle are placed out of service—three to five years.

(4) First violation of operating a commercial motor vehicle transporting hazardous materials or passengers during the period that the operator, operation, or vehicle are placed out of service—180 days.

(5) Second violation or more of operating a commercial motor vehicle transporting hazardous materials or passengers during the period that the operator, operation, or vehicle are placed out of service—three to five years.

(c) First violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance—at least one year.

(d) First violation of leaving the scene of an accident involving a commercial motor vehicle operated by the violator—at least one year.

(e) Using a commercial motor vehicle in the commission of a felony (except a felony described in paragraph (i) of this section—at least one year.

(f) Second or further violations described in paragraphs (c) and (d) of this section—lifetime.

(g) Using a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes—lifetime.

(h) Any combination of violations described in paragraphs (c) through (f) of this section—lifetime.

(i) Using a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession in a commercial motor vehicle with intent to manufacture, distribute, or dispense a controlled substance—lifetime.

Subpart D—Monetary Penalty Collection

§ 364.401 Payment.

All monetary penalties are due and payable as provided in the final agency order or settlement agreement disposing of the notice of violation or claim. Interest will accrue from the date payment was due and payable after issuance of a final order, and will be added to all outstanding balances not timely paid.

§ 364.402 Collections.

Unpaid monetary penalties or balances will be pursued aggressively under the Federal Standards for the Administrative Collection of Claims at 4 CFR part 102, as adopted by the Department of Transportation and delegated to the Federal Highway Administration in 49 CFR part 89. Penalties may be recovered in an action on behalf of the United States in the appropriate U.S. District Court.

PARTS 385 AND 386 AND § 391.47—[REMOVED AND RESERVED]

2. Chapter III of title 49, CFR, is amended by removing and reserving parts 385 and 386 and § 391.47.

[FR Doc. 96–10125 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–22–M

federal register

Monday
April 29, 1996

Part IV

Department of Justice

8 CFR Part 1, et al.

Executive Office of Immigration Review; Motions and Appeals in Immigration Proceedings; Final Rule

DEPARTMENT OF JUSTICE

8 CFR Parts 1, 3, 103, 208, 212, 242, and 246

[EOIR No. 102F; AG Order No. 2020–96]

RIN 1125–AA01

Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule streamlines motions and appeals practice before the Board of Immigration Appeals (''Board''), and establishes a centralized procedure for filing notices of appeal, fees, fee waiver requests, and briefs directly with the Board. The rule establishes time and number limitations on motions to reconsider and on motions to reopen and makes certain changes to appellate procedures, in great measure, to reflect the statutory directives of section 545 of the Immigration Act of 1990. The new 30-day period for filing appeals and the provisions for filing appeals directly with the Board apply to Immigration Judge decisions issued on or after the effective date of the final rule.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470.

SUPPLEMENTARY INFORMATION: Under the final rule, parties will have the opportunity to file only one motion to reopen and one motion to reconsider during the administrative adjudication process. In most instances, the motion to reopen must be filed not later than 90 days after the date on which the final administrative decision was rendered or on or before September 30, 1996, whichever is later. Generally, a motion to reconsider must be filed not later than 30 days after the date on which the final administrative decision was rendered on or before July 31, 1996 whichever is later. The rule also provides that a notice of appeal will be timely if filed within 30 days of the issuance of an Immigration Judge's decision. The Department notes that the new 30-day period for filing appeals and the provisions for filing appeals directly with the Board apply to Immigration Judge decisions issued on or after the effective date of the final rule. Therefore, the old regulation's 10-day period (13 days if the appeal is mailed) for filing appeals and provisions for filing appeals with the Immigration Courts apply to Immigration Judge decisions issued before the effective date of this rule.

The rule outlines the required content of motions and notices of appeal, and requires parties to file or remit directly with the Board of Immigration Appeals (''Board''): (1) All motions to reopen and motions to reconsider decisions of the Board pertaining to proceedings before Immigration Judges; (2) all notices of appeals of decisions of Immigration Judges; and (3) all relevant fees or fee waiver requests. Furthermore, the rule addresses the definition of the term ''lawfully admitted for permanent residence,'' the procedure for certifying a case to the Board, and appeals of in absentia decisions. The Department notes that the field sites of the Executive Office for Immigration Review (''EOIR''), formerly referred to as the Offices of the Immigration Judges, are now called Immigration Courts.

The Department of Justice has published a number of proposed rules addressing both the motion practice and the appeals process before the Board. Most recently, the Department published a proposed rule regarding these procedures in May 1995 that incorporated and expanded proposed rules published in May and June 1994. 60 FR 24573 (May 9, 1995); 59 FR 29386 (June 7, 1994); 59 FR 24977 (May 13, 1994).

In response to the above rulemakings, the Department received 71 comments. The comments addressed a number of issues, including the definition of the term ''lawfully admitted for permanent residence,'' the time and number limitations on motions to reopen and reconsider, the availability of an appeal where an order has been entered in absentia (particularly in exclusion proceedings), the streamlined appeals procedure, and the construction of briefing schedules for both motions and appeals.

The Department has carefully considered and evaluated the issues raised by the commenters and has modified the rule considerably. The following sections summarize the comments, set forth the responses of the Department of Justice, and explain the final provisions adopted. We note that a number of technical corrections were made to the proposed rule. These corrections include the addition of 8 U.S.C. 1282, 31 U.S.C. 9701 and 8 CFR part 2 to the authority citation for Part 208 and the addition of 8 U.S.C. 1252a to the authority citation for Part 242.

(1) Definition of Lawful Permanent Resident—Section 1.1(p)

Comment: Some commenters objected that the definition of the term ''lawfully admitted for permanent residence'' in section 1.1(p) provides that lawful permanent resident status terminates upon the entry of a final administrative order of exclusion or deportation. They argued that lawful permanent resident status is not deemed to be terminated during the pendency of petitions for review, motions to reopen and/or reconsider, and habeas corpus proceedings, citing cases in the United States Courts of Appeal for the Ninth and Second Circuits. *Butros* v. *INS,* 990 F.2d 1142 (9th Cir. 1993); *Vargas* v. *INS,* 938 F.2d 358 (2d Cir. 1991). In those cases, the courts held that under the regulations regarding motions to reopen, lawful permanent resident status could not be terminated prior to the alien's actual physical departure from the United States.

Response and Disposition: After careful consideration, the Department has decided to retain the regulation as previously proposed. The finding that lawful permanent resident status terminates upon the entry of a final administrative order of exclusion or deportation was established by the Board in *Matter of Lok,* 18 I&N Dec. 101 (BIA 1981). The *Lok* rule has been upheld by courts of appeals in at least four circuits and provides finality in immigration proceedings. *See Jaramillo* v. *INS,* 1 F.3d 1149 (11th Cir. 1993); *Katsis* v. *INS,* 997 F.2d 1067 (3d Cir. 1993), *cert denied,* 114 S.Ct. 902 (1994); *Variamparambil* v. *INS,* 831 F.2d 1362 (7th Cir. 1987); *Rivera* v. *INS,* 810 F.2d 540 (5th Cir. 1987). In addition, the Ninth Circuit recently held that where deportability is not contested, lawful permanent resident status for purposes of an application for a waiver under section 212(c) of the Immigration and Nationality Act (''Act'') terminates upon the entry of an administratively final order of exclusion or deportation. *Foroughi* v. *INS,* 60 F.3d 510 (9th Cir. 1995).

The decisions in *Butros* and *Vargas* were tied closely to the former regulations regarding motions. In *Butros,* the court emphasized that the former section 3.2 was written very broadly and concluded that since the only expressed barrier to reopening or reconsideration contained in the regulation was actual departure from the United States, the Board could not by decision limit the right to reopening. However, the court specifically provided that the ''Board could, no doubt, alter this regulation'' to allow

further restrictions. 990 F.2d. at 1144. In *Vargas,* the Second Circuit also found that the former regulations preserved an alien's right to move for reopening until the occurrence of physical deportation. The court reasoned that, although the Board's decision in *Lok* prevented reopening by an alien who had not accrued the required seven years prior to a final administrative order of deportation, the Second Circuit would not allow the Board, through the denial of a motion, to extend the *Lok* rationale to terminate an alien's previously existing eligibility for section 212(c) relief. 938 F.2d at 361. This final rule addresses the ambiguity of the regulatory language noted in the Second and Ninth Circuit decisions by establishing clear limits on the ability to file a motion to reopen and the concomitant effect on the alien's status as a lawful permanent resident. The definition at section 1.1 will be applied nationwide, which will promote the goal of uniform application of the immigration laws.

Sections 3.2(c)(1) and 3.23(b)(4) are further amended to clarify that, notwithstanding the provisions of section 1.1(p) of this chapter, if an alien accrues the seven years of lawful unrelinquished domicile necessary for eligibility for a waiver under section 212(c) of the Act prior to the entry of an administratively final order of exclusion or deportation, he or she may file a motion to reopen for consideration or further consideration of such an application. An alien may not accrue time toward the seven years of lawful unrelinquished domicile required for section 212(c) purposes after the entry of a final administrative order of exclusion or deportation.

(2) Motions To Reopen—Sections 3.2 and 3.23

Comment: Commenters noted that motions to reopen can serve any of three fundamental purposes: (i) to provide an opportunity to bring new evidence to light; (ii) to allow parties to avail themselves of recent changes in the law; and (iii) to provide an opportunity for an applicant to seek additional relief that was not previously available. Given those purposes, commenters objected to the rule's time and number limitations on motions to reopen.

The May 1995 proposed rule expanded the filing period for motions to reopen from 20 days to 90 days. Commenters stated that this period was insufficient to fulfill the purposes of motions to reopen as set forth above. Commenters advocated either the elimination of any defined filing period for motions to reopen or further expansion of the filing period. In support of this position, they cited to a study conducted by the Attorney General in 1991 (''AG Study''), *see* summary at 68 INTERPRETER RELEASES No. 27 at 907 (July 22, 1991), which concluded that there was no abuse of the motions process. From this conclusion, commenters disputed the necessity for any reform of the motions process. A number of commenters alternatively requested that a ''good cause'' exception to the time and number limitations be added to the new provisions concerning motions to reopen.

Some commenters requested clearer language in section 3.2(c)(4) regarding the motions to reopen and motions to remand provision. Particularly, commenters were concerned that the rule required, rather than permitted, the Board to remand a motion to reopen to an Immigration Judge or a Service Officer when an appeal had already been filed. Commenters advocated a rule that would expressly state that the Board had discretion to render a decision on a motion to reopen without remanding the motion.

Response and Disposition: After careful consideration, the Department has decided to retain both the time and the number limitations applicable to motions to reopen. The provision instituting motions reform is statutorily required. The Immigration Act of 1990, Pub. L. No. 101–649, 104 stat. 4978 (1990), states that ''the Attorney General shall issue regulations with respect to * * * the period of time in which motions to reopen and to reconsider may be offered in deportation proceedings, which regulations shall include a limitation on the number of such motions that may be filed and a maximum time period for the filing of such motions.'' Immigration Act of 1990 at § 545(d), 104 stat. at 5066. The Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 955, 101st Cong., 2d Sess. (1990) (''Conference Report''), explained this provision as follows: ''Unless the Attorney General finds reasonable evidence to the contrary, the regulations should state that such motions be made within 20 days of the date of the final determination in the proceeding and that such motions be limited to one motion to reopen and one motion to reconsider.'' H.R. Conf. Rep. No. 955 at 133.

Some commenters argued that the Conference Report suggested that the Attorney General has discretion to not promulgate the regulations if she ''finds reasonable evidence to the contrary.'' However, the Department of Justice believes that the statutory directive to promulgate regulations limiting motions to reopen is mandatory. The Attorney General is only given discretion to determine the number of motions and the length of time to file such motions. It does not give the Attorney General discretion to determine whether to promulgate a rule putting limitations on motions.

Moreover, in a recent case, the Supreme Court noted that the Immigration Act of 1990, which amended the Act, demonstrated a congressional intent to ''expedite petitions for review and to redress the related problem of successive and frivolous administrative appeals and motions.'' *Stone* v. *INS*, 115 S.Ct. 1537, 1546 (1995). Justice Kennedy, writing for the majority, stated:

> Congress' intent in adopting and then amending the Act was to expedite both the initiation and the completion of the judicial review process. * * * [A] principal purpose of the 1990 amendments to the Act was to expedite petitions for review and to redress the related problem of successive and frivolous administrative appeals and motions. In the Immigration Act of 1990, Congress * * * [f]irst * * * *directed* the Attorney General to promulgate regulations limiting the number of reconsideration and reopening motions that an alien could file. § 545(b). Second, it *instructed* the Attorney General to promulgate regulations specifying the maximum time period for the filing of those motions, hinting that a 20-day period would be appropriate.

Stone v. *INS*, 115 S.Ct. at 1546 (emphasis supplied).

Although the AG Study concluded that there was not significant abuse of the process, Congress has neither rescinded or amended its mandate to limit the number and time frames of motions. Therefore, the Attorney General's obligation to comply with Congress' statutory directive is unaffected by the conclusions of the AG Study.

Prior to the final rulemaking, provisions concerning a time limit for filing motions to reopen were published twice in proposed form. *See* 60 FR 24573 (May 9, 1995) and 59 FR 29386 (June 7, 1994). Consonant with the Conference Report, the first proposed rule provided for a 20-day time frame to file a motion. The Department received considerable comment regarding the 1994 proposed rule. In response to the arguments raised by the commenters, the May 1995 proposed rule provided for an expanded 90-day time frame to file motions to reopen. The Department received considerable comment in response to the May 1995 proposed rule, with many commenters arguing that even the 90-day time frame was

inadequate for the reasons previously stated.

After carefully weighing all of the comments, the Department has decided to retain the amount of time to file a motion to reopen at 90 days as provided in the May 1995 proposed rule. The 90-day time period represents a considerable extension beyond the 20 days suggested in the Conference Report. A time frame of 90 days for filing motions to reopen will provide parties an opportunity to avail themselves of changed law, facts, and circumstances. By setting a time limitation and retaining the one motion limitation, the rule is consistent with section 545 of the Immigration Act of 1990 and the directions of the Conference Report. The 90-day time period also conforms to the period provided in section 106(a) of the Act for filing a petition for review in federal court from a final order of deportation (except, of course, for aliens convicted of an aggravated felony who are limited to 30 days in which to file a petition for review). Therefore, the 90-day period is likely to promote consolidation of petitions for review of final orders of deportation and motions, thereby increasing judicial efficiency.

The Department does not agree with the commenters' suggestions that a ''good cause exception'' would be an appropriate procedural mechanism for addressing exceptional cases that fall beyond this rule's time and number limitations. Instead, section 3.2(a) of the rule provides a mechanism that allows the Board to reopen or reconsider *sua sponte* and provides a procedural vehicle for the consideration of cases with exceptional circumstances.

The final rule corrects a technical error found in the May 1995 proposed rule regarding stays of deportation. In that proposed rule, section 3.2(f) indicated that except where a motion is filed pursuant to the provisions of section 3.23(b)(5), the filing of a motion to reopen shall not stay the execution of any decision. This language is identical to that found in the prior June 1994 proposed rule. However, because of renumbering in the May 1995 proposed rule, section 3.2(f) should have referenced section 3.23(b)(6), not section 3.23(b)(5) to remain consistent. This oversight has been corrected although the section numbering has again changed. The correct cross reference in the final rule has become section 3.23(b)(4)(iii).

The Department has clarified the language of section 3.2(c)(4) by replacing the word ''shall'' in the May 1995 proposed regulation with the word ''may'' in the final rule. This language expressly recognizes the Board's discretion to decide whether to treat a motion to reopen as a motion to remand when it is filed at specified procedural junctures, i.e., at the time of the filing of an appeal or during the pendency of such an appeal but prior to a final Board decision. In such instances, motions to remand are not subject to the time and number limitations on motions to reopen and motions to reconsider as they occur before the entry of a final administrative decision. For that reason, the final rule drops the technically incorrect time and number limitation language that appeared in the proposed rule. However, this provision does not limit the Board's discretion to resolve a case without remanding it.

In order to provide more consistency and uniformity in appellate procedures, section 3.2(g)(3), regarding the motions briefing schedule, has been changed to provide the opposing party 13 days from the date of service of the motion to file a brief in opposition to a motion, regardless of whether the motion is before the Board or the Service.

(3) Motions To Reconsider—Sections 3.2 and 3.23

Comment: A number of commenters objected to section 3.2(b) of the May 1995 proposed rule, which allowed a petitioner to file only one motion to reconsider within 30 days of the final administrative decision, as unduly restrictive. The proposed 30-day filing period was increased from the 20-day filing period of the June 1994 proposed rule. However, commenters stated that even the 30-day time limit would work a hardship on litigants, particularly pro se litigants. Furthermore, they stated that the time limit might cut off meritorious claims. Some commenters found the 30-day time limit adequate.

Some commenters argued that the AG Study supported the contention that reform of the immigration motions process is unnecessary. They also disputed that motion reform was mandated by the Immigration Act of 1990.

Response and Disposition: The final rule retains the proposed rule's provisions regarding the time and number limitations on motions to reconsider. The Department believes that these provisions afford parties a sufficient opportunity to seek reexamination of certain issues and also respond to the mandates of the Immigration Act of 1990 to impose time and number limitations on motions.

The purpose of a motion to reconsider a decision is to provide an opportunity to reexamine the facts or to correct an error of law. The time limitation ensures that such reexamination occurs before the facts surrounding the decision become stale. The Department believes that the 30-day time frame is an appropriate time period to meet those goals. Furthermore, it provides parties a sufficient amount of time to draft and file the motion and is consistent with the 30-day time frame for filing a notice of appeal. To make it clearer and more accessible to the parties, section 3.23 has been reorganized.

(4) New Appeal Filing Procedures—Sections 3.3, 3.8, 3.38, 242.21 and 246.7

Comment: The vast majority of the commenters applauded the proposal to streamline and centralize the appeal process. They were particularly pleased that the notice of appeal and the fees/fee waiver requests would be filed directly with the Board. However, commenters were concerned that the requirement to provide a detailed statement of the reasons for appeal in the notice of appeal essentially required an appellant to argue his or her case prematurely. They suggested that this requirement would be particularly burdensome to pro se and non-English speaking appellants.

Commenters objected to the proposed time frames for filing notices of appeal. Specifically, they stated that a period of 15 calendar days from the issuance of an Immigration Judge's decision, where the decision is rendered orally, and 20 calendar days from the mailing of an Immigration Judge's decision, where a written decision is served by mail, was too little time, particularly in light of the notice of appeal's detailed statement requirement and delays in the mail service.

Commenters further argued that the appeals briefing schedule provision, which accords non-detained aliens 30 days to file a brief and detained aliens 14 days to file a brief, was inequitable and fundamentally unfair because it treated two classes of appellants differently. They also noted that the rule created a particular hardship for detained appellants who, because of the fact of their detention, have difficulty meeting filing deadlines. The commenters were further concerned that the rule could be understood to require parties to file briefs prior to receipt of the transcript.

Response and Disposition: The final rule retains the provisions that streamline and centralize the appeals process. As outlined in the proposed rule and republished in the final rule, the new appeals system requires parties to file all notices of appeal of decisions of Immigration Judges and all fee-related documents directly with the Board. The

final rule has been amended to provide that a notice of appeal must be filed within 30 calendar days after the mailing of an Immigration Judge's written decision or within 30 days of the stating of an Immigration Judge's oral decision. The time frame has been increased in order to address concerns raised both by the circuit courts of appeals and the commenters regarding the sufficiency of time to initiate the appellate process. In keeping with the Department's goal of streamlining the appeals process, the rule provides a uniform filing process, whether the Immigration Judge's decision was rendered orally or was written and served by mail.

The new process addresses concerns, identified by the Ninth Circuit, about both the prior 10-day filing time period for appeals and the requirement that parties remit the fee in one forum and file the notice of appeal in another. *See Gonzales-Julio* v. *INS,* 34 F. 3d 820 (9th Cir. 1994); *Vlaicu* v. *INS,* 998 F. 2d 758 (9th Cir. 1993). This final rule responds to those concerns by expanding the filing time for appeal to 30 days and by requiring that the notice of appeal and the fee be filed at the same place and time.

Additionally, the final rule makes uniform the briefing schedule for both detained and non-detained appellants. Although the proposed rule never anticipated requiring parties to submit a brief prior to transcript availability in those cases which are transcribed, the final rule contains clarifying language to that effect.

The Department has retained the requirement that parties specifically identify their reasons for appeal on the notice of appeal. The Board has repeatedly found this statement provides meaningful information that aids the Board's review of the cases. *Matter of Valencia,* 19 I&N Dec. 354 (BIA 1986); *Matter of Holguin,* 13 I&N Dec. 423 (BIA 1969). Furthermore, the statement requirement has been consistently upheld by the circuit courts. *Soriano* v. *INS,* 45 F.3d 287 (8th Cir. 1995); *Nazakat* v. *INS,* 981 F.2d 1146 (10th Cir. 1992); *Toquero* v. *INS,* 956 F.2d 193 (9th Cir. 1992); *Lozada* v. *INS,* 857 F.2d 10 (1st Cir. 1988); *Bonne-Annee* v. *INS,* 810 F.2d 1077 (11th Cir. 1987); *Townsend* v. *INS,* 799 F.2d 179 (5th Cir. 1986).

A new paragraph ''(e)'' has been added to section 3.38 to inform aliens that they are required to notify the Board within five working days of any changes of address or telephone number and to inform the aliens' representatives that changes in a representative's business mailing address or telephone number also should be submitted to the Board. The change of address and telephone number notification requirement mirrors the reporting requirements in section 3.15 relating to proceedings before Immigration Judges. Additionally, the Department will issue a new Appeal Fee Waiver Request Form (EOIR–26A) in conjunction with the enactment of this final rule. Parties unable to pay the fee fixed for an appeal will be required to file this form with their notice of appeal. The Department notes that this constitutes a change from the Board's past practice of accepting in pauperis affidavits and other informal requests to waive fees. The new Appeal Fee Waiver Request (Form EOIR–26A) will provide a uniform mechanism for requesting the Board to waive an appeal fee.

(5) In Absentia Hearings—Sections 3.1, 3.23 and 242.21

Comments: Commenters correctly asserted that section 242B(c) of the Act regarding in absentia hearings applies only to deportation proceedings. Therefore, they argued, a provision disallowing appeals from orders of exclusion entered in absentia lacks statutory authority. Commenters noted that the statute does not authorize in absentia exclusion hearings and advocated the withdrawal of the provision that provides for such hearings.

One commenter suggested that the in absentia hearing provisions in section 242B restrict only motions to reopen and judicial review and do not bar the timely filing of a notice of appeal on the merits of the case where a respondent receives notification of the in absentia order prior to expiration of the time to file an appeal. The commenter advocated allowing direct appeals under such circumstances.

Commenters also objected to section 3.23(b)(4)(iii), formerly section 3.23(b)(6), which specifies under what circumstances an order of deportation entered in absentia may be rescinded. They noted that the rule makes no provision for rescission of an order of exclusion entered in absentia.

Response and Disposition: With regard to in absentia hearings under section 242B(c) of the Act, the commenters are correct that the statute only applies to deportation hearings and does not apply to in absentia exclusion hearings and, further, that appeals from orders entered following such exclusion hearings should be allowed. Therefore, the provision in section 3.1(b)(1) of the proposed regulation that stated that ''no appeal shall lie from an order of exclusion entered in absentia'' has been removed. An appeal from an order of exclusion entered in absentia is permissible but must be filed within the time limit for appeals set by section 3.38(b).

Further, an alien may file a motion to reopen exclusion proceedings to rescind an order of exclusion entered in absentia. Such a motion must be supported by evidence that the alien had reasonable cause for his failure to appear at the exclusion hearing. This provision is consistent with the Board's decision in *Matter of Haim,* 19 I&N Dec. 641 (BIA 1988).

The rule retains the provision prohibiting an appeal to the Board from an Immigration Judge's order of deportation entered in absentia. Congress restricted review of deportation orders entered in absentia in section 242B of the Act by providing that such orders may only be rescinded by filing a motion to reopen with the Immigration Judge. *See* section 242B(c)(1) of the Act; *Matter of Gonzalez-Lopez,* Interim Decision #3198 (BIA 1993). Further, the Board has confirmed that sections 3.1(b) and 3.3 allow an alien to appeal to the Board from an Immigration Judge's denial of such a motion to reopen an in absentia decision. *Matter of Gonzales-Lopez* at 4.

In addition to restricting the manner in which an in absentia order of deportation may be rescinded, Congress delayed eligibility for most forms of relief from deportation for an alien against whom a final order of deportation is entered in absentia. *See* section 242B(e) of the Act. Specifically, where the alien fails to demonstrate improper notice or exceptional circumstances for failing to appear, the alien must wait until five years after the final order of deportation to apply for relief such as voluntary departure, suspension of deportation, or adjustment of status. Accordingly, the Department has determined that a bar against direct appeals from an in absentia deportation order of an Immigration Judge to the Board is consistent with the restrictive action Congress has taken towards such in absentia orders.

The Department considered the commenters' request for an appeal to the Board on the merits of a deportation case in which an in absentia order has been entered. However, we note that there exists the opportunity for review of such an order in the federal courts. Section 106 of the Act provides for judicial review of final orders of deportation including those entered in absentia. Specifically, section 242(B)(c)(4) allows for judicial review of an order entered in absentia under

section 242B, regarding the validity of the notice provided to the alien, the reasons for the alien's failure to appear, and the question of whether the Service demonstrated deportability by clear, convincing, and unequivocal evidence. Further, section 106(a)(5) of the Act allows for the direct de novo review of a final administrative order of deportation in federal district court, including one entered in absentia, where the alien makes a non-frivolous claim to be a national of the United States. In sum, given Congress' restrictive stance in section 242B of the Act regarding review of orders of deportation entered in absentia and in light of the fact that avenues still exist for review in federal court of such orders, the Department has retained the bar on direct appeals to the Board from an Immigration Judge's order of deportation entered in abstentia.

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b). The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule 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 section 6 of Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and record keeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and record keeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and record keeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 246

Administrative practice and procedure, Aliens, Immigration.

Accordingly, Chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

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

Authority: 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. Section 1.1 is amended by adding a new paragraph (p) to read as follows:

§ 1.1 Definitions.

* * * * *

(p) The term *lawfully admitted for permanent residence* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion or deportation.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

4. Section 3.1 is amended by revising paragraphs (b)(1), (b)(2), and (c) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(1) Decisions of Immigration Judges in exclusion cases, as provided in part 236 of this chapter.

(2) Decisions of Immigration Judges in deportation cases, as provided in part 242 of this chapter, except that no appeal shall lie from an order of deportation entered in absentia. No appeal shall lie from an order of an Immigration Judge under § 244.1 of this chapter granting voluntary departure within a period of at least 30 days, if the sole ground of appeal is that a greater period of departure time should have been fixed.

* * * * *

(c) *Jurisdiction by certification.* The Commissioner, or any other duly authorized officer of the Service, any Immigration Judge, or the Board may in any case arising under paragraph (b) of this section certify such case to the Board. The Board in its discretion may review any such case by certification without regard to the provisions of § 3.7 if it determines that the parties have already been given a fair opportunity to make representations before the Board regarding the case, including the opportunity request oral argument and to submit a brief.

* * * * *

5. Section 3.2 is revised to read as follows:

§ 3.2 Reopening or reconsideration.

(a) *General.* The Board may at any time reopen or reconsider on its own motion any case in which it has rendered a decision. A request to reopen or reconsider any case in which a decision has been made by the Board, which request is made by the Service, or by the party affected by the decision, must be in the form of a written motion to the Board. The decision to grant or deny a motion to reopen or reconsider is within the discretion of the Board, subject to the restrictions of this section. The Board has discretion to deny a motion to reopen even if the party moving has made out a *prima facie* case for relief.

(b) *Motion to reconsider.* (1) A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority. A motion to reconsider a decision rendered by an Immigration Judge or Service officer that is pending when an appeal is filed with the Board, or that is filed subsequent to the filing with the Board of an appeal from the decision sought to be reconsidered, shall be deemed a motion to remand the decision for further proceedings before the Immigration Judge or the Service officer from whose decision the appeal was taken. Such motion, which shall be consolidated with and considered by the Board in connection with any appeal to the Board, is subject to the time and numerical limitations of paragraph (b)(2) of this section.

(2) A motion to reconsider a decision must be filed with the Board within 30

days after the mailing of the Board decision or on or before July 31, 1996, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider.

(c) *Motion to reopen.* (1) A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material. A motion to reopen proceedings for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation. A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him or her and an opportunity to apply therefore was afforded at the former hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Subject to the other requirements and restrictions of this section, and notwithstanding the provisions in § 1.1(p) of this chapter, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act (8 U.S.C. 1182(c)) may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(2) Except as provided in paragraph (c)(3) of this section, a party may file only one motion to reopen proceedings (whether before the Board or the Immigration Judge) and that motion must be filed not later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or on or before September 30, 1996, whichever is later.

(3) The time and numerical limitations set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of § 3.23(b)(4)(iii);

(ii) To apply or reapply for asylum, or withholding of deportation, based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the former hearing; or

(iii) Agreed upon by all parties and jointly filed. Notwithstanding such agreement, the parties may contest the issues in a reopened proceeding.

(4) A motion to reopen a decision rendered by an Immigration Judge or Service officer that is pending when an appeal is filed, or that is filed while an appeal is pending before the Board, may be deemed a motion to remand for further proceedings before the Immigration Judge or the Service officer from whose decision the appeal was taken. Such motion may be consolidated with, and considered by the Board in connection with, the appeal to the Board.

(d) *Departure or deportation.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of deportation or exclusion proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation of a person who is the subject of deportation or exclusion proceedings, occurring after the filing of a motion to reopen or a motion to reconsider, shall constitute a withdrawal of such motion.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the deportation or exclusion order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which a deportation or exclusion order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under section 242(e) of the Act (8 U.S.C. 1252(e)), and, if so, the current status of that proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of § 3.23(b)(4)(iii), the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

(g) *Filing procedures.* (1) *English language, entry of appearance, and proof of service requirements.* A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If the moving party, other than the Service, is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27) must be filed with the motion. In all cases, the motion shall include proof of service on the opposing party of the motion and all attachments.

(2) *Distribution of motion papers.* (i) A motion to reopen or motion to reconsider a decision of the Board pertaining to proceedings before an Immigration Judge shall be filed directly with the Board. Such motion must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 3.8. The record of proceeding pertaining to such a motion shall be forwarded to the Board upon the request or order of the Board.

(ii) A motion to reopen or a motion to reconsider a decision of the Board pertaining to a matter initially adjudicated by an officer of the Service shall be filed with the officer of the Service having administrative control over the record of proceeding.

(iii) If the motion is made by the Service in proceedings in which the Service has administrative control over the record of proceedings, the record of proceedings in the case and the motion shall be filed directly with the Board. If such motion is filed directly with an office of the Service, the entire record of proceeding shall be forwarded to the Board by the Service officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs.

(3) *Briefs and response.* The moving party may file a brief if it is included with the motion. If the motion is filed directly with the Board pursuant to paragraph (g)(2)(i) of this section, the opposing party shall have 13 days from the date of service of the motion to file a brief in opposition to the motion directly with the Board. If the motion is filed with an office of the Service pursuant to paragraph (g)(2)(ii) of this section, the opposing party shall have 13 days from the date of filing of the motion to file a brief in opposition to the motion directly with the office of the Service. In all cases, briefs and any other filings made in conjunction with a motion shall include proof of service on the opposing party. The Board, in its

discretion, may extend the time within which such brief is to be submitted and may authorize the filing of a brief directly with the Board. A motion shall be deemed unopposed unless a timely response is made. The Board may, in its discretion, consider a brief filed out of time.

(h) *Oral argument.* A request for oral argument, if desired, shall be incorporated in the motion to reopen or reconsider. The Board, in its discretion, may grant or deny requests for oral argument.

(i) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. If the order directs a reopening and further proceedings are necessary, the record shall be returned to the Immigration Court or the officer of the Service having administrative control over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

6. Section 3.3 is revised to read as follows:

§ 3.3 Notice of appeal.

(a) *Filing.* (1) *Appeal from decision of an Immigration Judge.* A party affected by a decision who is entitled under this chapter to appeal to the Board from a decision of an Immigration Judge shall be given notice of his or her right to appeal. An appeal from a decision of an Immigration Judge shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) directly with the Board, within the time specified in the governing sections of this chapter. The appealing parties are only those parties who are covered by the decision of an Immigration Judge and who are specifically named on the Notice of Appeal. The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 3.8. If the respondent/applicant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27) must be filed with the Notice of Appeal. The appeal must reflect proof of service of a copy of the appeal and all attachments on the opposing party. The appeal and all attachments must be in English or accompanied by a certified English translation. An appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified in the governing sections of this chapter. A notice of appeal may not be filed by any party who has waived appeal pursuant to § 3.39.

(2) *Appeal from decision of a Service officer.* A party affected by a decision who is entitled under this chapter to appeal to the Board from a decision of a Service officer shall be given notice of his or her right to appeal. An appeal from a decision of a Service officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals of Decision of District Director (Form EOIR–29) directly with the office of the Service having administrative control over the record of proceeding within the time specified in the governing sections of this chapter. The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 3.8 and, if the appellant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27). The appeal and all attachments must be in English or accompanied by a certified English translation. An appeal is not properly filed until its receipt at the appropriate office of the Service, together with all required documents and fees, and the fee provisions of § 3.8 are satisfied.

(b) *Statement of the basis of appeal.* The party taking the appeal must identify the reasons for the appeal in the Notice of Appeal (Form EOIR–26 or Form EOIR–29) or in any attachments thereto, in order to avoid summary dismissal pursuant to § 3.1(d)(1–a)(i). The statement must specifically identify the findings of fact, the conclusions of law, or both, that are being challenged. If a question of law is presented, supporting authority must be cited. If the dispute is over the findings of fact, the specific facts contested must be identified. Where the appeal concerns discretionary relief, the appellant must state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion and must identify the specific factual and legal finding or findings that are being challenged. The appellant must also indicate in the Notice of Appeal (Form EOIR–26 or Form EOIR–29) whether he or she desires oral argument before the Board and whether he or she will be filing a separate written brief or statement in support of the appeal.

(c) *Briefs.* (1) *Appeal from decision of an Immigration Judge.* Briefs in support of or in opposition to an appeal from a decision of an Immigration Judge shall be filed directly with the Board. In those cases that are transcribed, the briefing schedule shall be set by the Board after the transcript is available. An appellant shall be provided 30 days in which to file a brief, unless a shorter period is specified by the Board. The appellee shall have the same period of time in which to file a reply brief that was initially granted to the appellant to file his or her brief. The time to file a reply brief commences from the date upon which the appellant's brief was due, as originally set or extended by the Board. The Board, upon written motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown. In its discretion, the Board may consider a brief that has been filed out of time. All briefs, filings, and motions filed in conjunction with an appeal shall include proof of service on the opposing party.

(2) *Appeal from decision of a Service officer.* Briefs in support of or in opposition to an appeal from a decision of a Service officer shall be filed directly with the office of the Service having administrative control over the file in accordance with a briefing schedule set by that office. The alien shall be provided 30 days in which to file a brief, unless a shorter period is specified by the Service officer from whose decision the appeal is taken. The Service shall have the same period of time in which to file a reply brief that was initially granted to the alien to file his or her brief. The time to file a reply brief commences from the date upon which the alien's brief was due, as originally set or extended. Upon written request of the alien, the Service officer from whose decision the appeal is taken or the Board may extend the period for filing a brief for good cause shown. The Board may authorize the filing of briefs directly with the Board. In its discretion, the Board may consider a brief that has been filed out of time. All briefs and other documents filed in conjunction with an appeal, unless filed by an alien directly with a Service office, shall include proof of service on the opposing party.

(d) *Effect of certification.* The certification of a case, as provided in this part, shall not relieve the party affected from compliance with the provisions of this section in the event that he or she is entitled and desires to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal.

(e) *Effect of departure from the United States.* Departure from the United States of a person who is the subject of deportation proceedings, prior to the taking of an appeal from a decision in his or her case, shall constitute a waiver of his or her right to appeal.

7. Section 3.4 is revised to read as follows:

§ 3.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office at which the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 3.5, the decision made in the case shall be final to the same extent as if no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned and the initial decision shall be final to the same extent as if no appeal had been taken. If a decision on the appeal has been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

8. Section 3.5 is revised to read as follows:

§ 3.5 Forwarding of record on appeal.

(a) *Appeal from decision of an Immigration Judge.* If an appeal is taken from a decision of an Immigration Judge, the record of proceeding shall be forwarded to the Board upon the request or the order of the Board.

(b) *Appeal from decision of a Service officer.* If an appeal is taken from a decision of a Service officer, the record of proceeding shall be forwarded to the Board by the Service officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs. A Service officer need not forward such an appeal to the Board, but may reopen and reconsider any decision made by the officer if the new decision will grant the benefit that has been requested in the appeal. The new decision must be served on the appealing party within 45 days of receipt of any briefs or upon expiration of the time allowed for the submission of any briefs. If the new decision is not served within these time limits or the appealing party does not agree that the new decision disposes of the matter, the record of proceeding shall be immediately forwarded to the Board.

9. Section 3.6 is revised to read as follows:

§ 3.6 Stay of execution of decision.

(a) Except as provided under § 242.2(d) of this chapter and paragraph (b) of this section, the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

(b) The provisions of paragraph (a) of this section shall not apply to an order of an Immigration Judge under § 3.23 or § 242.22 of this chapter denying a motion to reopen or reconsider or to stay deportation, except where such order expressly grants a stay or where the motion was filed pursuant to the provisions of § 3.23(b)(4)(ii). The Board may, in its discretion, stay deportation while an appeal is pending from any such order if no stay has been granted by the Immigration Judge or a Service officer.

10. Section 3.7 is revised to read as follows:

§ 3.7 Notice of Certification.

Whenever, in accordance with the provisions of § 3.1(c), a case is certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is rendered that the case will be certified, the office of the Service or the Immigration Court having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or the Immigration Court having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in § 3.3(c). The case shall be certified and forwarded to the Board by the office of the Service or Immigration Court having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date the Board declined to accept the case.

11. Section 3.8 is revised to read as follows:

§ 3.8 Fees.

(a) *Appeal from decision of an Immigration Judge or motion within the jurisdiction of the Board.* Except as provided in paragraph (c) of this section or when filed by an officer of the Service, a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) filed pursuant to § 3.3(a), or a motion related to Immigration Judge proceedings that is within the jurisdiction of the Board and is filed directly with the Board pursuant to § 3.2(g), shall be accompanied by the fee specified in applicable provisions of § 103.7(b)(1) of this chapter. Fees shall be paid by check or money order payable to the ''United States Department of Justice.'' Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. A remittance shall not satisfy the fee requirements of this section if the remittance is found uncollectible.

(b) *Appeal from decision of a Service officer or motion within the jurisdiction of the Board.* Except as provided in paragraph (c) of this section, a Notice of Appeal to the Board of Immigration Appeals of Decision of District Director (Form EOIR–29), or a motion related to such a case filed under this part by any person other than an officer of the Service, filed directly with the Service shall be accompanied by the appropriate fee specified, and remitted in accordance with the provisions of § 103.7 of this chapter.

(c) *Waiver of fees.* The Board may, in its discretion, authorize the prosecution of any appeal or any motion over which the Board has jurisdiction without payment of the required fee. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or motion, he or she shall file with the Notice of Appeal (Form EOIR–26 or Form EOIR–29) or motion, an Appeal Fee Waiver Request, (Form EOIR–26A). If the request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed.

12. Section 3.23 is amended by revising paragraph (b) to read as follows:

§ 3.23 Motions.

* * * * *

(b) *Reopening/Reconsideration.* (1) The Immigration Judge may upon his or her own motion, or upon motion of the trial attorney or the alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under part 3 of this chapter. If the Immigration Judge is unavailable or unable to adjudicate the motion to reopen, the Chief Immigration Judge or his delegate shall reassign such motion to another Immigration Judge. Motions to reopen or reconsider a decision of the Immigration Judge must filed with the Immigration Court having administrative control over the record of proceeding. Such motions shall comply with applicable provisions of 8 CFR 208.4, 208.19, and 242.22. The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. A motion to reconsider shall state the reasons for the motion and shall be supported by pertinent authority. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents.

(2) Upon request by an alien in conjunction with a motion to reopen or a motion to reconsider, the Immigration Judge may stay the execution of a final order of deportation or exclusion. The filing of a motion to reopen pursuant to the provisions of paragraph (b)(4)(iii) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

(3) A motion to reconsider must be filed on or before July 31, 1996, on which the decision for which reconsideration is being sought was rendered, or whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider.

(4) A motion to reopen will not be granted unless the Immigration Judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing. A motion to reopen will not be granted for the purpose of providing the alien an opportunity to apply for any form of discretionary relief if the alien's rights to make such application were fully explained to him or her by the Immigration Judge and he or she was afforded an opportunity to apply at the hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Subject to the other requirements and restrictions of this section, and notwithstanding the provisions in 1.1(p) of this chapter, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act (8 U.S.C. 1182(c)) may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(i) Except as provided in paragraph (b)(4)(ii) of this section, a party may file only one motion to reopen proceedings (whether before the Board or the Immigration Judge) and that motion must be filed not later than 90 after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or on or before September 30, 1996, whichever is later.

(ii) The time and numerical limitations set forth in paragraph (b)(4)(i) of this section shall not apply to a motion to reopen filed pursuant to the provisions of paragraph (b)(4)(iii) of this section, or to a motion to reopen proceedings to apply or reapply for asylum or for withholding of deportation based on changed circumstances, which arise subsequent to the conclusion of proceedings, in the country of nationality or in the country to which deportation has been ordered, or to a motion to reopen agreed upon by all parties and jointly filed.

(iii) A motion to reopen deportation proceedings to rescind an order of deportation entered in absentia must be filed:

(A) Within 180 days after the date of the order of deportation. The motion must demonstrate that the failure to appear was because of exceptional circumstances beyond the control of the alien (e.g., serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances); or

(B) At any time if the alien demonstrates that the alien did not receive notice in accordance with subsection 242B(a)(2) of the Act (8 U.S.C. 1252b(a)(2)) and notice was required pursuant to such subsection; or the alien demonstrates that the alien was in federal or state custody and did not appear through no fault of the alien.

(iv) A motion to reopen exclusion hearings on the basis that the Immigration Judge improperly entered an order of exclusion in absentia must be supported by evidence that the alien had reasonable cause for his failure to appear.

13. Section 3.24 is revised to read as follows:

§ 3.24 Fees pertaining to matters within the jurisdiction of the Immigration Judge.

Unless waived by the Immigration Judge, any fee pertaining to a matter within the jurisdiction of the Immigration Judge shall be remitted in accordance with the provisions of § 103.7 of this chapter. Any such fee may be waived by the Immigration Judge upon a showing that the respondent/applicant is incapable of paying the fees because of indigency. A properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. 1746 by the respondent/applicant must accompany the request for waiver of fees and shall substantiate the indigency of the respondent/application.

14. Section 3.31 is amended by revising paragraph (b) to read as follows:

§ 3.31 Filing documents and applications.

* * * * *

(b) All documents or applications requiring the payment of a fee must be accompanied by a fee receipt from the Service or by an application for a waiver of fees pursuant to § 3.24. Except as provided in § 3.8(a)(c), any fee relating to Immigration Judge proceedings shall be paid to, and accepted by, any Service office authorized to accept fees for other purposes pursuant to § 103.7(a) of this chapter.

* * * * *

15. Section 3.38 is amended by revising paragraph (b); redesignating paragraphs (c) and (d) as paragraphs (f) and (g), respectively; and adding new paragraphs (c),(d) and (e) to read as follows:

§ 3.38 Appeals.

* * * * *

(b) The Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) shall be filed directly with the Board of Immigration Appeals within 30 calendar days after the stating of an Immigration Judge's oral decision or the mailing of an Immigration Judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR–26) may not be filed by any party who has waived appeal.

(c) The date of filing of the Notice of Appeal (Form EOIR–26) shall be the date the Notice is received by the Board.

(d) A Notice of Appeal (Form EOIR–26) must be accompanied by the appropriate fee or by an Appeal Fee Waiver Request (Form EOIR–26A). If the fee is not paid or the Appeal Fee Waiver

Request (Form EOIR–26A) is not filed within the specified time period indicated in paragraph(b) of this section, the appeal will not be deemed properly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

(e) Within five working days of any change of address, an alien must provide written notice of the change of address on Form EOIR–33 to the Board. Where a party is represented, the representative should also provide to the Board written notice of any change in the representative's business mailing address.

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

16. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.5 [Amended]

17. In § 103.5, paragraph (a)(1)(i) is amended by revising the phrase ''parts 210, 242, or 245a'' in the first sentence to read ''parts 3, 210, 242 and 245a,''.

18. In § 103.7, paragraph (a) is revised to read as follows:

§ 103.7 Fees.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 483a shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or regulation. Except for fees remitted directly to the Board pursuant to the provisions of § 3.8(a) of this chapter, any fee relating to any Executive Office for Immigration Review proceeding shall be paid to, and accepted by, any Service office authorized to accept fees. Payment of any fee under this section does not constitute filing of the document with the Board or with the Immigration Court. The Service shall return to the payer, at the time of payment, a receipt for any fee paid. The Service shall also return to the payer any documents, submitted with the fee, relating to any Immigration Judge proceeding. A charge of $5 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. An issued receipt for any such remittance shall not be binding if the remittance is found uncollectible. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. Fees in the form of postage stamps shall not be accepted. Remittances to the Service shall be made payable to the ''Immigration and Naturalization Service,'' except that in case of applicants residing in the Virgin Islands of the United States, the remittances shall be made payable to the ''Commissioner of Finance of the Virgin Islands'' and, in the case of applicants residing in Guam, the remittances shall be made payable to the ''Treasurer, Guam.'' If application to the Service is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the Immigration and Naturalization Service in United States currency. Remittances to the Board shall be made payable to the ''United States Department of Justice.''

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

19. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1252 note, 1252b, 1253, 1282 and 1283; 31 U.S.C. 9701; and 8 CFR part 2.

20. In § 208.19, paragraph (a) is revised to read as follows:

§ 208.19 Motion to reopen or reconsider.

(a) A proceeding in which asylum or withholding of deportation was denied may be reopened or a decision from such a proceeding reconsidered for proper cause upon motion pursuant to the requirements of 8 CFR 3.2, 3.23, 103.5, and 242.22 where applicable.

* * * * *

PART 236—EXCLUSION OF ALIENS

21. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

22. Section 236.7 is revised to read as follows:

§ 236.7 Appeals.

Except as limited by section 236 of the Act, an appeal from a decision of an Immigration Judge under this part may be taken by either party pursuant to § 3.38 of this chapter.

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

23. The authority citation for part 242 is revised to read as follows:

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

§ 242.19 [Amended]

24. In § 242.19, the form number ''I–290A'' is removed each time it appears and, in its place, the form number ''EOIR–26'' is added in paragraphs (6) and (c).

25. In § 242.21, paragraph (a) is revised to read as follows:

§ 242.21 Appeals.

(a) Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Notice of Appeal (Form EOIR–26), fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board of Immigration Appeals. The reasons for the appeal shall be stated in the Notice of Appeal (Form EOIR–26) in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1–a) of this chapter.

* * * * *

26. Section 242.22 is amended by revising the first sentence and by adding a sentence at the end of the section, to read as follows:

§ 242.22 Reopening or reconsideration.

Motions to reopen or reconsider are subject to the requirements and limitations set forth in § 3.23 of this chapter. * * * The filing of a motion to reopen pursuant to the provisions of § 3.23(b)(4)(ii) of this chapter shall stay the deportation of the alien pending the disposition of the motion and the adjudication of any properly filed administrative appeal.

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

27. The authority citation for part 246 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259.

28. Section 246.7 is revised to read as follows:

§ 246.7 Appeals.

Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge under this part to the Board of Immigration Appeals except that no appeal shall lie from an order of deportation entered in absentia. An appeal shall be taken within 30 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be specifically identified in the Notice of Appeal (Form EOIR 26); failure to do so may constitute a ground for dismissal of the appeal by the Board.

Dated: April 16, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–10157 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–01–M

federal register

Monday
April 29, 1996

Part IV

Department of Justice

8 CFR Part 1, et al.

Executive Office of Immigration Review; Motions and Appeals in Immigration Proceedings; Final Rule

DEPARTMENT OF JUSTICE

8 CFR Parts 1, 3, 103, 208, 212, 242, and 246

[EOIR No. 102F; AG Order No. 2020–96]

RIN 1125–AA01

Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule streamlines motions and appeals practice before the Board of Immigration Appeals (''Board''), and establishes a centralized procedure for filing notices of appeal, fees, fee waiver requests, and briefs directly with the Board. The rule establishes time and number limitations on motions to reconsider and on motions to reopen and makes certain changes to appellate procedures, in great measure, to reflect the statutory directives of section 545 of the Immigration Act of 1990. The new 30-day period for filing appeals and the provisions for filing appeals directly with the Board apply to Immigration Judge decisions issued on or after the effective date of the final rule.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470.

SUPPLEMENTARY INFORMATION: Under the final rule, parties will have the opportunity to file only one motion to reopen and one motion to reconsider during the administrative adjudication process. In most instances, the motion to reopen must be filed not later than 90 days after the date on which the final administrative decision was rendered or on or before September 30, 1996, whichever is later. Generally, a motion to reconsider must be filed not later than 30 days after the date on which the final administrative decision was rendered on or before July 31, 1996 whichever is later. The rule also provides that a notice of appeal will be timely if filed within 30 days of the issuance of an Immigration Judge's decision. The Department notes that the new 30-day period for filing appeals and the provisions for filing appeals directly with the Board apply to Immigration Judge decisions issued on or after the effective date of the final rule. Therefore, the old regulation's 10-day period (13 days if the appeal is mailed) for filing appeals and provisions for filing appeals with the Immigration Courts apply to Immigration Judge decisions issued before the effective date of this rule.

The rule outlines the required content of motions and notices of appeal, and requires parties to file or remit directly with the Board of Immigration Appeals (''Board''): (1) All motions to reopen and motions to reconsider decisions of the Board pertaining to proceedings before Immigration Judges; (2) all notices of appeals of decisions of Immigration Judges; and (3) all relevant fees or fee waiver requests. Furthermore, the rule addresses the definition of the term ''lawfully admitted for permanent residence,'' the procedure for certifying a case to the Board, and appeals of in absentia decisions. The Department notes that the field sites of the Executive Office for Immigration Review (''EOIR''), formerly referred to as the Offices of the Immigration Judges, are now called Immigration Courts.

The Department of Justice has published a number of proposed rules addressing both the motion practice and the appeals process before the Board. Most recently, the Department published a proposed rule regarding these procedures in May 1995 that incorporated and expanded proposed rules published in May and June 1994. 60 FR 24573 (May 9, 1995); 59 FR 29386 (June 7, 1994); 59 FR 24977 (May 13, 1994).

In response to the above rulemakings, the Department received 71 comments. The comments addressed a number of issues, including the definition of the term ''lawfully admitted for permanent residence,'' the time and number limitations on motions to reopen and reconsider, the availability of an appeal where an order has been entered in absentia (particularly in exclusion proceedings), the streamlined appeals procedure, and the construction of briefing schedules for both motions and appeals.

The Department has carefully considered and evaluated the issues raised by the commenters and has modified the rule considerably. The following sections summarize the comments, set forth the responses of the Department of Justice, and explain the final provisions adopted. We note that a number of technical corrections were made to the proposed rule. These corrections include the addition of 8 U.S.C. 1282, 31 U.S.C. 9701 and 8 CFR part 2 to the authority citation for Part 208 and the addition of 8 U.S.C. 1252a to the authority citation for Part 242.

(1) Definition of Lawful Permanent Resident—Section 1.1(p)

Comment: Some commenters objected that the definition of the term ''lawfully admitted for permanent residence'' in section 1.1(p) provides that lawful permanent resident status terminates upon the entry of a final administrative order of exclusion or deportation. They argued that lawful permanent resident status is not deemed to be terminated during the pendency of petitions for review, motions to reopen and/or reconsider, and habeas corpus proceedings, citing cases in the United States Courts of Appeal for the Ninth and Second Circuits. *Butros* v. *INS,* 990 F.2d 1142 (9th Cir. 1993); *Vargas* v. *INS,* 938 F.2d 358 (2d Cir. 1991). In those cases, the courts held that under the regulations regarding motions to reopen, lawful permanent resident status could not be terminated prior to the alien's actual physical departure from the United States.

Response and Disposition: After careful consideration, the Department has decided to retain the regulation as previously proposed. The finding that lawful permanent resident status terminates upon the entry of a final administrative order of exclusion or deportation was established by the Board in *Matter of Lok,* 18 I&N Dec. 101 (BIA 1981). The *Lok* rule has been upheld by courts of appeals in at least four circuits and provides finality in immigration proceedings. *See Jaramillo* v. *INS,* 1 F.3d 1149 (11th Cir. 1993); *Katsis* v. *INS,* 997 F.2d 1067 (3d Cir. 1993), *cert denied,* 114 S.Ct. 902 (1994); *Variamparambil* v. *INS,* 831 F.2d 1362 (7th Cir. 1987); *Rivera* v. *INS,* 810 F.2d 540 (5th Cir. 1987). In addition, the Ninth Circuit recently held that where deportability is not contested, lawful permanent resident status for purposes of an application for a waiver under section 212(c) of the Immigration and Nationality Act (''Act'') terminates upon the entry of an administratively final order of exclusion or deportation. *Foroughi* v. *INS,* 60 F.3d 510 (9th Cir. 1995).

The decisions in *Butros* and *Vargas* were tied closely to the former regulations regarding motions. In *Butros,* the court emphasized that the former section 3.2 was written very broadly and concluded that since the only expressed barrier to reopening or reconsideration contained in the regulation was actual departure from the United States, the Board could not by decision limit the right to reopening. However, the court specifically provided that the ''Board could, no doubt, alter this regulation'' to allow

further restrictions. 990 F.2d. at 1144. In *Vargas,* the Second Circuit also found that the former regulations preserved an alien's right to move for reopening until the occurrence of physical deportation. The court reasoned that, although the Board's decision in *Lok* prevented reopening by an alien who had not accrued the required seven years prior to a final administrative order of deportation, the Second Circuit would not allow the Board, through the denial of a motion, to extend the *Lok* rationale to terminate an alien's previously existing eligibility for section 212(c) relief. 938 F.2d at 361. This final rule addresses the ambiguity of the regulatory language noted in the Second and Ninth Circuit decisions by establishing clear limits on the ability to file a motion to reopen and the concomitant effect on the alien's status as a lawful permanent resident. The definition at section 1.1 will be applied nationwide, which will promote the goal of uniform application of the immigration laws.

Sections 3.2(c)(1) and 3.23(b)(4) are further amended to clarify that, notwithstanding the provisions of section 1.1(p) of this chapter, if an alien accrues the seven years of lawful unrelinquished domicile necessary for eligibility for a waiver under section 212(c) of the Act prior to the entry of an administratively final order of exclusion or deportation, he or she may file a motion to reopen for consideration or further consideration of such an application. An alien may not accrue time toward the seven years of lawful unrelinquished domicile required for section 212(c) purposes after the entry of a final administrative order of exclusion or deportation.

(2) Motions To Reopen—Sections 3.2 and 3.23

Comment: Commenters noted that motions to reopen can serve any of three fundamental purposes: (i) to provide an opportunity to bring new evidence to light; (ii) to allow parties to avail themselves of recent changes in the law; and (iii) to provide an opportunity for an applicant to seek additional relief that was not previously available. Given those purposes, commenters objected to the rule's time and number limitations on motions to reopen.

The May 1995 proposed rule expanded the filing period for motions to reopen from 20 days to 90 days. Commenters stated that this period was insufficient to fulfill the purposes of motions to reopen as set forth above. Commenters advocated either the elimination of any defined filing period for motions to reopen or further expansion of the filing period. In support of this position, they cited to a study conducted by the Attorney General in 1991 (''AG Study''), *see* summary at 68 INTERPRETER RELEASES No. 27 at 907 (July 22, 1991), which concluded that there was no abuse of the motions process. From this conclusion, commenters disputed the necessity for any reform of the motions process. A number of commenters alternatively requested that a ''good cause'' exception to the time and number limitations be added to the new provisions concerning motions to reopen.

Some commenters requested clearer language in section 3.2(c)(4) regarding the motions to reopen and motions to remand provision. Particularly, commenters were concerned that the rule required, rather than permitted, the Board to remand a motion to reopen to an Immigration Judge or a Service Officer when an appeal had already been filed. Commenters advocated a rule that would expressly state that the Board had discretion to render a decision on a motion to reopen without remanding the motion.

Response and Disposition: After careful consideration, the Department has decided to retain both the time and the number limitations applicable to motions to reopen. The provision instituting motions reform is statutorily required. The Immigration Act of 1990, Pub. L. No. 101–649, 104 stat. 4978 (1990), states that ''the Attorney General shall issue regulations with respect to * * * the period of time in which motions to reopen and to reconsider may be offered in deportation proceedings, which regulations shall include a limitation on the number of such motions that may be filed and a maximum time period for the filing of such motions.'' Immigration Act of 1990 at § 545(d), 104 stat. at 5066. The Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 955, 101st Cong., 2d Sess. (1990) (''Conference Report''), explained this provision as follows: ''Unless the Attorney General finds reasonable evidence to the contrary, the regulations should state that such motions be made within 20 days of the date of the final determination in the proceeding and that such motions be limited to one motion to reopen and one motion to reconsider.'' H.R. Conf. Rep. No. 955 at 133.

Some commenters argued that the Conference Report suggested that the Attorney General has discretion to not promulgate the regulations if she ''finds reasonable evidence to the contrary.'' However, the Department of Justice believes that the statutory directive to promulgate regulations limiting motions to reopen is mandatory. The Attorney General is only given discretion to determine the number of motions and the length of time to file such motions. It does not give the Attorney General discretion to determine whether to promulgate a rule putting limitations on motions.

Moreover, in a recent case, the Supreme Court noted that the Immigration Act of 1990, which amended the Act, demonstrated a congressional intent to ''expedite petitions for review and to redress the related problem of successive and frivolous administrative appeals and motions.'' *Stone* v. *INS*, 115 S.Ct. 1537, 1546 (1995). Justice Kennedy, writing for the majority, stated:

> Congress' intent in adopting and then amending the Act was to expedite both the initiation and the completion of the judicial review process. * * * [A] principal purpose of the 1990 amendments to the Act was to expedite petitions for review and to redress the related problem of successive and frivolous administrative appeals and motions. In the Immigration Act of 1990, Congress * * * [f]irst * * * *directed* the Attorney General to promulgate regulations limiting the number of reconsideration and reopening motions that an alien could file. § 545(b). Second, it *instructed* the Attorney General to promulgate regulations specifying the maximum time period for the filing of those motions, hinting that a 20-day period would be appropriate.

Stone v. *INS*, 115 S.Ct. at 1546 (emphasis supplied).

Although the AG Study concluded that there was not significant abuse of the process, Congress has neither rescinded or amended its mandate to limit the number and time frames of motions. Therefore, the Attorney General's obligation to comply with Congress' statutory directive is unaffected by the conclusions of the AG Study.

Prior to the final rulemaking, provisions concerning a time limit for filing motions to reopen were published twice in proposed form. *See* 60 FR 24573 (May 9, 1995) and 59 FR 29386 (June 7, 1994). Consonant with the Conference Report, the first proposed rule provided for a 20-day time frame to file a motion. The Department received considerable comment regarding the 1994 proposed rule. In response to the arguments raised by the commenters, the May 1995 proposed rule provided for an expanded 90-day time frame to file motions to reopen. The Department received considerable comment in response to the May 1995 proposed rule, with many commenters arguing that even the 90-day time frame was

inadequate for the reasons previously stated.

After carefully weighing all of the comments, the Department has decided to retain the amount of time to file a motion to reopen at 90 days as provided in the May 1995 proposed rule. The 90-day time period represents a considerable extension beyond the 20 days suggested in the Conference Report. A time frame of 90 days for filing motions to reopen will provide parties an opportunity to avail themselves of changed law, facts, and circumstances. By setting a time limitation and retaining the one motion limitation, the rule is consistent with section 545 of the Immigration Act of 1990 and the directions of the Conference Report. The 90-day time period also conforms to the period provided in section 106(a) of the Act for filing a petition for review in federal court from a final order of deportation (except, of course, for aliens convicted of an aggravated felony who are limited to 30 days in which to file a petition for review). Therefore, the 90-day period is likely to promote consolidation of petitions for review of final orders of deportation and motions, thereby increasing judicial efficiency.

The Department does not agree with the commenters' suggestions that a ''good cause exception'' would be an appropriate procedural mechanism for addressing exceptional cases that fall beyond this rule's time and number limitations. Instead, section 3.2(a) of the rule provides a mechanism that allows the Board to reopen or reconsider *sua sponte* and provides a procedural vehicle for the consideration of cases with exceptional circumstances.

The final rule corrects a technical error found in the May 1995 proposed rule regarding stays of deportation. In that proposed rule, section 3.2(f) indicated that except where a motion is filed pursuant to the provisions of section 3.23(b)(5), the filing of a motion to reopen shall not stay the execution of any decision. This language is identical to that found in the prior June 1994 proposed rule. However, because of renumbering in the May 1995 proposed rule, section 3.2(f) should have referenced section 3.23(b)(6), not section 3.23(b)(5) to remain consistent. This oversight has been corrected although the section numbering has again changed. The correct cross reference in the final rule has become section 3.23(b)(4)(iii).

The Department has clarified the language of section 3.2(c)(4) by replacing the word ''shall'' in the May 1995 proposed regulation with the word ''may'' in the final rule. This language expressly recognizes the Board's discretion to decide whether to treat a motion to reopen as a motion to remand when it is filed at specified procedural junctures, i.e., at the time of the filing of an appeal or during the pendency of such an appeal but prior to a final Board decision. In such instances, motions to remand are not subject to the time and number limitations on motions to reopen and motions to reconsider as they occur before the entry of a final administrative decision. For that reason, the final rule drops the technically incorrect time and number limitation language that appeared in the proposed rule. However, this provision does not limit the Board's discretion to resolve a case without remanding it.

In order to provide more consistency and uniformity in appellate procedures, section 3.2(g)(3), regarding the motions briefing schedule, has been changed to provide the opposing party 13 days from the date of service of the motion to file a brief in opposition to a motion, regardless of whether the motion is before the Board or the Service.

(3) Motions To Reconsider—Sections 3.2 and 3.23

Comment: A number of commenters objected to section 3.2(b) of the May 1995 proposed rule, which allowed a petitioner to file only one motion to reconsider within 30 days of the final administrative decision, as unduly restrictive. The proposed 30-day filing period was increased from the 20-day filing period of the June 1994 proposed rule. However, commenters stated that even the 30-day time limit would work a hardship on litigants, particularly pro se litigants. Furthermore, they stated that the time limit might cut off meritorious claims. Some commenters found the 30-day time limit adequate.

Some commenters argued that the AG Study supported the contention that reform of the immigration motions process is unnecessary. They also disputed that motion reform was mandated by the Immigration Act of 1990.

Response and Disposition: The final rule retains the proposed rule's provisions regarding the time and number limitations on motions to reconsider. The Department believes that these provisions afford parties a sufficient opportunity to seek reexamination of certain issues and also respond to the mandates of the Immigration Act of 1990 to impose time and number limitations on motions.

The purpose of a motion to reconsider a decision is to provide an opportunity to reexamine the facts or to correct an error of law. The time limitation ensures that such reexamination occurs before the facts surrounding the decision become stale. The Department believes that the 30-day time frame is an appropriate time period to meet those goals. Furthermore, it provides parties a sufficient amount of time to draft and file the motion and is consistent with the 30-day time frame for filing a notice of appeal. To make it clearer and more accessible to the parties, section 3.23 has been reorganized.

(4) New Appeal Filing Procedures—Sections 3.3, 3.8, 3.38, 242.21 and 246.7

Comment: The vast majority of the commenters applauded the proposal to streamline and centralize the appeal process. They were particularly pleased that the notice of appeal and the fees/fee waiver requests would be filed directly with the Board. However, commenters were concerned that the requirement to provide a detailed statement of the reasons for appeal in the notice of appeal essentially required an appellant to argue his or her case prematurely. They suggested that this requirement would be particularly burdensome to pro se and non-English speaking appellants.

Commenters objected to the proposed time frames for filing notices of appeal. Specifically, they stated that a period of 15 calendar days from the issuance of an Immigration Judge's decision, where the decision is rendered orally, and 20 calendar days from the mailing of an Immigration Judge's decision, where a written decision is served by mail, was too little time, particularly in light of the notice of appeal's detailed statement requirement and delays in the mail service.

Commenters further argued that the appeals briefing schedule provision, which accords non-detained aliens 30 days to file a brief and detained aliens 14 days to file a brief, was inequitable and fundamentally unfair because it treated two classes of appellants differently. They also noted that the rule created a particular hardship for detained appellants who, because of the fact of their detention, have difficulty meeting filing deadlines. The commenters were further concerned that the rule could be understood to require parties to file briefs prior to receipt of the transcript.

Response and Disposition: The final rule retains the provisions that streamline and centralize the appeals process. As outlined in the proposed rule and republished in the final rule, the new appeals system requires parties to file all notices of appeal of decisions of Immigration Judges and all fee-related documents directly with the Board. The

final rule has been amended to provide that a notice of appeal must be filed within 30 calendar days after the mailing of an Immigration Judge's written decision or within 30 days of the stating of an Immigration Judge's oral decision. The time frame has been increased in order to address concerns raised both by the circuit courts of appeals and the commenters regarding the sufficiency of time to initiate the appellate process. In keeping with the Department's goal of streamlining the appeals process, the rule provides a uniform filing process, whether the Immigration Judge's decision was rendered orally or was written and served by mail.

The new process addresses concerns, identified by the Ninth Circuit, about both the prior 10-day filing time period for appeals and the requirement that parties remit the fee in one forum and file the notice of appeal in another. *See Gonzales-Julio* v. *INS,* 34 F. 3d 820 (9th Cir. 1994); *Vlaicu* v. *INS,* 998 F. 2d 758 (9th Cir. 1993). This final rule responds to those concerns by expanding the filing time for appeal to 30 days and by requiring that the notice of appeal and the fee be filed at the same place and time.

Additionally, the final rule makes uniform the briefing schedule for both detained and non-detained appellants. Although the proposed rule never anticipated requiring parties to submit a brief prior to transcript availability in those cases which are transcribed, the final rule contains clarifying language to that effect.

The Department has retained the requirement that parties specifically identify their reasons for appeal on the notice of appeal. The Board has repeatedly found this statement provides meaningful information that aids the Board's review of the cases. *Matter of Valencia,* 19 I&N Dec. 354 (BIA 1986); *Matter of Holguin,* 13 I&N Dec. 423 (BIA 1969). Furthermore, the statement requirement has been consistently upheld by the circuit courts. *Soriano* v. *INS,* 45 F.3d 287 (8th Cir. 1995); *Nazakat* v. *INS,* 981 F.2d 1146 (10th Cir. 1992); *Toquero* v. *INS,* 956 F.2d 193 (9th Cir. 1992); *Lozada* v. *INS,* 857 F.2d 10 (1st Cir. 1988); *Bonne-Annee* v. *INS,* 810 F.2d 1077 (11th Cir. 1987); *Townsend* v. *INS,* 799 F.2d 179 (5th Cir. 1986).

A new paragraph ''(e)'' has been added to section 3.38 to inform aliens that they are required to notify the Board within five working days of any changes of address or telephone number and to inform the aliens' representatives that changes in a representative's business mailing address or telephone number also should be submitted to the Board. The change of address and telephone number notification requirement mirrors the reporting requirements in section 3.15 relating to proceedings before Immigration Judges. Additionally, the Department will issue a new Appeal Fee Waiver Request Form (EOIR–26A) in conjunction with the enactment of this final rule. Parties unable to pay the fee fixed for an appeal will be required to file this form with their notice of appeal. The Department notes that this constitutes a change from the Board's past practice of accepting in pauperis affidavits and other informal requests to waive fees. The new Appeal Fee Waiver Request (Form EOIR–26A) will provide a uniform mechanism for requesting the Board to waive an appeal fee.

(5) In Absentia Hearings—Sections 3.1, 3.23 and 242.21

Comments: Commenters correctly asserted that section 242B(c) of the Act regarding in absentia hearings applies only to deportation proceedings. Therefore, they argued, a provision disallowing appeals from orders of exclusion entered in absentia lacks statutory authority. Commenters noted that the statute does not authorize in absentia exclusion hearings and advocated the withdrawal of the provision that provides for such hearings.

One commenter suggested that the in absentia hearing provisions in section 242B restrict only motions to reopen and judicial review and do not bar the timely filing of a notice of appeal on the merits of the case where a respondent receives notification of the in absentia order prior to expiration of the time to file an appeal. The commenter advocated allowing direct appeals under such circumstances.

Commenters also objected to section 3.23(b)(4)(iii), formerly section 3.23(b)(6), which specifies under what circumstances an order of deportation entered in absentia may be rescinded. They noted that the rule makes no provision for rescission of an order of exclusion entered in absentia.

Response and Disposition: With regard to in absentia hearings under section 242B(c) of the Act, the commenters are correct that the statute only applies to deportation hearings and does not apply to in absentia exclusion hearings and, further, that appeals from orders entered following such exclusion hearings should be allowed. Therefore, the provision in section 3.1(b)(1) of the proposed regulation that stated that ''no appeal shall lie from an order of exclusion entered in absentia'' has been removed. An appeal from an order of exclusion entered in absentia is permissible but must be filed within the time limit for appeals set by section 3.38(b).

Further, an alien may file a motion to reopen exclusion proceedings to rescind an order of exclusion entered in absentia. Such a motion must be supported by evidence that the alien had reasonable cause for his failure to appear at the exclusion hearing. This provision is consistent with the Board's decision in *Matter of Haim,* 19 I&N Dec. 641 (BIA 1988).

The rule retains the provision prohibiting an appeal to the Board from an Immigration Judge's order of deportation entered in absentia. Congress restricted review of deportation orders entered in absentia in section 242B of the Act by providing that such orders may only be rescinded by filing a motion to reopen with the Immigration Judge. *See* section 242B(c)(1) of the Act; *Matter of Gonzalez-Lopez,* Interim Decision #3198 (BIA 1993). Further, the Board has confirmed that sections 3.1(b) and 3.3 allow an alien to appeal to the Board from an Immigration Judge's denial of such a motion to reopen an in absentia decision. *Matter of Gonzales-Lopez* at 4.

In addition to restricting the manner in which an in absentia order of deportation may be rescinded, Congress delayed eligibility for most forms of relief from deportation for an alien against whom a final order of deportation is entered in absentia. *See* section 242B(e) of the Act. Specifically, where the alien fails to demonstrate improper notice or exceptional circumstances for failing to appear, the alien must wait until five years after the final order of deportation to apply for relief such as voluntary departure, suspension of deportation, or adjustment of status. Accordingly, the Department has determined that a bar against direct appeals from an in absentia deportation order of an Immigration Judge to the Board is consistent with the restrictive action Congress has taken towards such in absentia orders.

The Department considered the commenters' request for an appeal to the Board on the merits of a deportation case in which an in absentia order has been entered. However, we note that there exists the opportunity for review of such an order in the federal courts. Section 106 of the Act provides for judicial review of final orders of deportation including those entered in absentia. Specifically, section 242(B)(c)(4) allows for judicial review of an order entered in absentia under

section 242B, regarding the validity of the notice provided to the alien, the reasons for the alien's failure to appear, and the question of whether the Service demonstrated deportability by clear, convincing, and unequivocal evidence. Further, section 106(a)(5) of the Act allows for the direct de novo review of a final administrative order of deportation in federal district court, including one entered in absentia, where the alien makes a non-frivolous claim to be a national of the United States. In sum, given Congress' restrictive stance in section 242B of the Act regarding review of orders of deportation entered in absentia and in light of the fact that avenues still exist for review in federal court of such orders, the Department has retained the bar on direct appeals to the Board from an Immigration Judge's order of deportation entered in abstentia.

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b). The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule 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 section 6 of Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and record keeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and record keeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and record keeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 246

Administrative practice and procedure, Aliens, Immigration.

Accordingly, Chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

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

Authority: 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. Section 1.1 is amended by adding a new paragraph (p) to read as follows:

§ 1.1 Definitions.

* * * * *

(p) The term *lawfully admitted for permanent residence* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion or deportation.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

4. Section 3.1 is amended by revising paragraphs (b)(1), (b)(2), and (c) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(1) Decisions of Immigration Judges in exclusion cases, as provided in part 236 of this chapter.

(2) Decisions of Immigration Judges in deportation cases, as provided in part 242 of this chapter, except that no appeal shall lie from an order of deportation entered in absentia. No appeal shall lie from an order of an Immigration Judge under § 244.1 of this chapter granting voluntary departure within a period of at least 30 days, if the sole ground of appeal is that a greater period of departure time should have been fixed.

* * * * *

(c) *Jurisdiction by certification.* The Commissioner, or any other duly authorized officer of the Service, any Immigration Judge, or the Board may in any case arising under paragraph (b) of this section certify such case to the Board. The Board in its discretion may review any such case by certification without regard to the provisions of § 3.7 if it determines that the parties have already been given a fair opportunity to make representations before the Board regarding the case, including the opportunity request oral argument and to submit a brief.

* * * * *

5. Section 3.2 is revised to read as follows:

§ 3.2 Reopening or reconsideration.

(a) *General.* The Board may at any time reopen or reconsider on its own motion any case in which it has rendered a decision. A request to reopen or reconsider any case in which a decision has been made by the Board, which request is made by the Service, or by the party affected by the decision, must be in the form of a written motion to the Board. The decision to grant or deny a motion to reopen or reconsider is within the discretion of the Board, subject to the restrictions of this section. The Board has discretion to deny a motion to reopen even if the party moving has made out a *prima facie* case for relief.

(b) *Motion to reconsider.* (1) A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority. A motion to reconsider a decision rendered by an Immigration Judge or Service officer that is pending when an appeal is filed with the Board, or that is filed subsequent to the filing with the Board of an appeal from the decision sought to be reconsidered, shall be deemed a motion to remand the decision for further proceedings before the Immigration Judge or the Service officer from whose decision the appeal was taken. Such motion, which shall be consolidated with and considered by the Board in connection with any appeal to the Board, is subject to the time and numerical limitations of paragraph (b)(2) of this section.

(2) A motion to reconsider a decision must be filed with the Board within 30

days after the mailing of the Board decision or on or before July 31, 1996, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider.

(c) *Motion to reopen.* (1) A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material. A motion to reopen proceedings for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation. A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him or her and an opportunity to apply therefore was afforded at the former hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Subject to the other requirements and restrictions of this section, and notwithstanding the provisions in § 1.1(p) of this chapter, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act (8 U.S.C. 1182(c)) may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(2) Except as provided in paragraph (c)(3) of this section, a party may file only one motion to reopen proceedings (whether before the Board or the Immigration Judge) and that motion must be filed not later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or on or before September 30, 1996, whichever is later.

(3) The time and numerical limitations set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of § 3.23(b)(4)(iii);

(ii) To apply or reapply for asylum, or withholding of deportation, based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the former hearing; or

(iii) Agreed upon by all parties and jointly filed. Notwithstanding such agreement, the parties may contest the issues in a reopened proceeding.

(4) A motion to reopen a decision rendered by an Immigration Judge or Service officer that is pending when an appeal is filed, or that is filed while an appeal is pending before the Board, may be deemed a motion to remand for further proceedings before the Immigration Judge or the Service officer from whose decision the appeal was taken. Such motion may be consolidated with, and considered by the Board in connection with, the appeal to the Board.

(d) *Departure or deportation.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of deportation or exclusion proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation of a person who is the subject of deportation or exclusion proceedings, occurring after the filing of a motion to reopen or a motion to reconsider, shall constitute a withdrawal of such motion.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the deportation or exclusion order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which a deportation or exclusion order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under section 242(e) of the Act (8 U.S.C. 1252(e)), and, if so, the current status of that proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of § 3.23(b)(4)(iii), the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

(g) *Filing procedures.* (1) *English language, entry of appearance, and proof of service requirements.* A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If the moving party, other than the Service, is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27) must be filed with the motion. In all cases, the motion shall include proof of service on the opposing party of the motion and all attachments.

(2) *Distribution of motion papers.* (i) A motion to reopen or motion to reconsider a decision of the Board pertaining to proceedings before an Immigration Judge shall be filed directly with the Board. Such motion must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 3.8. The record of proceeding pertaining to such a motion shall be forwarded to the Board upon the request or order of the Board.

(ii) A motion to reopen or a motion to reconsider a decision of the Board pertaining to a matter initially adjudicated by an officer of the Service shall be filed with the officer of the Service having administrative control over the record of proceeding.

(iii) If the motion is made by the Service in proceedings in which the Service has administrative control over the record of proceedings, the record of proceedings in the case and the motion shall be filed directly with the Board. If such motion is filed directly with an office of the Service, the entire record of proceeding shall be forwarded to the Board by the Service officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs.

(3) *Briefs and response.* The moving party may file a brief if it is included with the motion. If the motion is filed directly with the Board pursuant to paragraph (g)(2)(i) of this section, the opposing party shall have 13 days from the date of service of the motion to file a brief in opposition to the motion directly with the Board. If the motion is filed with an office of the Service pursuant to paragraph (g)(2)(ii) of this section, the opposing party shall have 13 days from the date of filing of the motion to file a brief in opposition to the motion directly with the office of the Service. In all cases, briefs and any other filings made in conjunction with a motion shall include proof of service on the opposing party. The Board, in its

discretion, may extend the time within which such brief is to be submitted and may authorize the filing of a brief directly with the Board. A motion shall be deemed unopposed unless a timely response is made. The Board may, in its discretion, consider a brief filed out of time.

(h) *Oral argument.* A request for oral argument, if desired, shall be incorporated in the motion to reopen or reconsider. The Board, in its discretion, may grant or deny requests for oral argument.

(i) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. If the order directs a reopening and further proceedings are necessary, the record shall be returned to the Immigration Court or the officer of the Service having administrative control over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

6. Section 3.3 is revised to read as follows:

§ 3.3 Notice of appeal.

(a) *Filing.* (1) *Appeal from decision of an Immigration Judge.* A party affected by a decision who is entitled under this chapter to appeal to the Board from a decision of an Immigration Judge shall be given notice of his or her right to appeal. An appeal from a decision of an Immigration Judge shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) directly with the Board, within the time specified in the governing sections of this chapter. The appealing parties are only those parties who are covered by the decision of an Immigration Judge and who are specifically named on the Notice of Appeal. The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 3.8. If the respondent/applicant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27) must be filed with the Notice of Appeal. The appeal must reflect proof of service of a copy of the appeal and all attachments on the opposing party. The appeal and all attachments must be in English or accompanied by a certified English translation. An appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified in the governing sections of this chapter. A notice of appeal may not be filed by any party who has waived appeal pursuant to § 3.39.

(2) *Appeal from decision of a Service officer.* A party affected by a decision who is entitled under this chapter to appeal to the Board from a decision of a Service officer shall be given notice of his or her right to appeal. An appeal from a decision of a Service officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals of Decision of District Director (Form EOIR–29) directly with the office of the Service having administrative control over the record of proceeding within the time specified in the governing sections of this chapter. The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 3.8 and, if the appellant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27). The appeal and all attachments must be in English or accompanied by a certified English translation. An appeal is not properly filed until its receipt at the appropriate office of the Service, together with all required documents and fees, and the fee provisions of § 3.8 are satisfied.

(b) *Statement of the basis of appeal.* The party taking the appeal must identify the reasons for the appeal in the Notice of Appeal (Form EOIR–26 or Form EOIR–29) or in any attachments thereto, in order to avoid summary dismissal pursuant to § 3.1(d)(1–a)(i). The statement must specifically identify the findings of fact, the conclusions of law, or both, that are being challenged. If a question of law is presented, supporting authority must be cited. If the dispute is over the findings of fact, the specific facts contested must be identified. Where the appeal concerns discretionary relief, the appellant must state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion and must identify the specific factual and legal finding or findings that are being challenged. The appellant must also indicate in the Notice of Appeal (Form EOIR–26 or Form EOIR–29) whether he or she desires oral argument before the Board and whether he or she will be filing a separate written brief or statement in support of the appeal.

(c) *Briefs.* (1) *Appeal from decision of an Immigration Judge.* Briefs in support of or in opposition to an appeal from a decision of an Immigration Judge shall be filed directly with the Board. In those cases that are transcribed, the briefing schedule shall be set by the Board after the transcript is available. An appellant shall be provided 30 days in which to file a brief, unless a shorter period is specified by the Board. The appellee shall have the same period of time in which to file a reply brief that was initially granted to the appellant to file his or her brief. The time to file a reply brief commences from the date upon which the appellant's brief was due, as originally set or extended by the Board. The Board, upon written motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown. In its discretion, the Board may consider a brief that has been filed out of time. All briefs, filings, and motions filed in conjunction with an appeal shall include proof of service on the opposing party.

(2) *Appeal from decision of a Service officer.* Briefs in support of or in opposition to an appeal from a decision of a Service officer shall be filed directly with the office of the Service having administrative control over the file in accordance with a briefing schedule set by that office. The alien shall be provided 30 days in which to file a brief, unless a shorter period is specified by the Service officer from whose decision the appeal is taken. The Service shall have the same period of time in which to file a reply brief that was initially granted to the alien to file his or her brief. The time to file a reply brief commences from the date upon which the alien's brief was due, as originally set or extended. Upon written request of the alien, the Service officer from whose decision the appeal is taken or the Board may extend the period for filing a brief for good cause shown. The Board may authorize the filing of briefs directly with the Board. In its discretion, the Board may consider a brief that has been filed out of time. All briefs and other documents filed in conjunction with an appeal, unless filed by an alien directly with a Service office, shall include proof of service on the opposing party.

(d) *Effect of certification.* The certification of a case, as provided in this part, shall not relieve the party affected from compliance with the provisions of this section in the event that he or she is entitled and desires to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal.

(e) *Effect of departure from the United States.* Departure from the United States of a person who is the subject of deportation proceedings, prior to the taking of an appeal from a decision in his or her case, shall constitute a waiver of his or her right to appeal.

7. Section 3.4 is revised to read as follows:

§ 3.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office at which the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 3.5, the decision made in the case shall be final to the same extent as if no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned and the initial decision shall be final to the same extent as if no appeal had been taken. If a decision on the appeal has been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

8. Section 3.5 is revised to read as follows:

§ 3.5 Forwarding of record on appeal.

(a) *Appeal from decision of an Immigration Judge.* If an appeal is taken from a decision of an Immigration Judge, the record of proceeding shall be forwarded to the Board upon the request or the order of the Board.

(b) *Appeal from decision of a Service officer.* If an appeal is taken from a decision of a Service officer, the record of proceeding shall be forwarded to the Board by the Service officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs. A Service officer need not forward such an appeal to the Board, but may reopen and reconsider any decision made by the officer if the new decision will grant the benefit that has been requested in the appeal. The new decision must be served on the appealing party within 45 days of receipt of any briefs or upon expiration of the time allowed for the submission of any briefs. If the new decision is not served within these time limits or the appealing party does not agree that the new decision disposes of the matter, the record of proceeding shall be immediately forwarded to the Board.

9. Section 3.6 is revised to read as follows:

§ 3.6 Stay of execution of decision.

(a) Except as provided under § 242.2(d) of this chapter and paragraph (b) of this section, the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

(b) The provisions of paragraph (a) of this section shall not apply to an order of an Immigration Judge under § 3.23 or § 242.22 of this chapter denying a motion to reopen or reconsider or to stay deportation, except where such order expressly grants a stay or where the motion was filed pursuant to the provisions of § 3.23(b)(4)(ii). The Board may, in its discretion, stay deportation while an appeal is pending from any such order if no stay has been granted by the Immigration Judge or a Service officer.

10. Section 3.7 is revised to read as follows:

§ 3.7 Notice of Certification.

Whenever, in accordance with the provisions of § 3.1(c), a case is certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is rendered that the case will be certified, the office of the Service or the Immigration Court having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or the Immigration Court having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in § 3.3(c). The case shall be certified and forwarded to the Board by the office of the Service or Immigration Court having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date the Board declined to accept the case.

11. Section 3.8 is revised to read as follows:

§ 3.8 Fees.

(a) *Appeal from decision of an Immigration Judge or motion within the jurisdiction of the Board.* Except as provided in paragraph (c) of this section or when filed by an officer of the Service, a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) filed pursuant to § 3.3(a), or a motion related to Immigration Judge proceedings that is within the jurisdiction of the Board and is filed directly with the Board pursuant to § 3.2(g), shall be accompanied by the fee specified in applicable provisions of § 103.7(b)(1) of this chapter. Fees shall be paid by check or money order payable to the ''United States Department of Justice.'' Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. A remittance shall not satisfy the fee requirements of this section if the remittance is found uncollectible.

(b) *Appeal from decision of a Service officer or motion within the jurisdiction of the Board.* Except as provided in paragraph (c) of this section, a Notice of Appeal to the Board of Immigration Appeals of Decision of District Director (Form EOIR–29), or a motion related to such a case filed under this part by any person other than an officer of the Service, filed directly with the Service shall be accompanied by the appropriate fee specified, and remitted in accordance with the provisions of § 103.7 of this chapter.

(c) *Waiver of fees.* The Board may, in its discretion, authorize the prosecution of any appeal or any motion over which the Board has jurisdiction without payment of the required fee. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or motion, he or she shall file with the Notice of Appeal (Form EOIR–26 or Form EOIR–29) or motion, an Appeal Fee Waiver Request, (Form EOIR–26A). If the request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed.

12. Section 3.23 is amended by revising paragraph (b) to read as follows:

§ 3.23 Motions.

* * * * *

(b) *Reopening/Reconsideration.* (1) The Immigration Judge may upon his or her own motion, or upon motion of the trial attorney or the alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under part 3 of this chapter. If the Immigration Judge is unavailable or unable to adjudicate the motion to reopen, the Chief Immigration Judge or his delegate shall reassign such motion to another Immigration Judge. Motions to reopen or reconsider a decision of the Immigration Judge must filed with the Immigration Court having administrative control over the record of proceeding. Such motions shall comply with applicable provisions of 8 CFR 208.4, 208.19, and 242.22. The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. A motion to reconsider shall state the reasons for the motion and shall be supported by pertinent authority. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents.

(2) Upon request by an alien in conjunction with a motion to reopen or a motion to reconsider, the Immigration Judge may stay the execution of a final order of deportation or exclusion. The filing of a motion to reopen pursuant to the provisions of paragraph (b)(4)(iii) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

(3) A motion to reconsider must be filed on or before July 31, 1996, on which the decision for which reconsideration is being sought was rendered, or whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider.

(4) A motion to reopen will not be granted unless the Immigration Judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing. A motion to reopen will not be granted for the purpose of providing the alien an opportunity to apply for any form of discretionary relief if the alien's rights to make such application were fully explained to him or her by the Immigration Judge and he or she was afforded an opportunity to apply at the hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Subject to the other requirements and restrictions of this section, and notwithstanding the provisions in 1.1(p) of this chapter, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act (8 U.S.C. 1182(c)) may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(i) Except as provided in paragraph (b)(4)(ii) of this section, a party may file only one motion to reopen proceedings (whether before the Board or the Immigration Judge) and that motion must be filed not later than 90 after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or on or before September 30, 1996, whichever is later.

(ii) The time and numerical limitations set forth in paragraph (b)(4)(i) of this section shall not apply to a motion to reopen filed pursuant to the provisions of paragraph (b)(4)(iii) of this section, or to a motion to reopen proceedings to apply or reapply for asylum or for withholding of deportation based on changed circumstances, which arise subsequent to the conclusion of proceedings, in the country of nationality or in the country to which deportation has been ordered, or to a motion to reopen agreed upon by all parties and jointly filed.

(iii) A motion to reopen deportation proceedings to rescind an order of deportation entered in absentia must be filed:

(A) Within 180 days after the date of the order of deportation. The motion must demonstrate that the failure to appear was because of exceptional circumstances beyond the control of the alien (e.g., serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances); or

(B) At any time if the alien demonstrates that the alien did not receive notice in accordance with subsection 242B(a)(2) of the Act (8 U.S.C. 1252b(a)(2)) and notice was required pursuant to such subsection; or the alien demonstrates that the alien was in federal or state custody and did not appear through no fault of the alien.

(iv) A motion to reopen exclusion hearings on the basis that the Immigration Judge improperly entered an order of exclusion in absentia must be supported by evidence that the alien had reasonable cause for his failure to appear.

13. Section 3.24 is revised to read as follows:

§ 3.24 Fees pertaining to matters within the jurisdiction of the Immigration Judge.

Unless waived by the Immigration Judge, any fee pertaining to a matter within the jurisdiction of the Immigration Judge shall be remitted in accordance with the provisions of § 103.7 of this chapter. Any such fee may be waived by the Immigration Judge upon a showing that the respondent/applicant is incapable of paying the fees because of indigency. A properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. 1746 by the respondent/applicant must accompany the request for waiver of fees and shall substantiate the indigency of the respondent/application.

14. Section 3.31 is amended by revising paragraph (b) to read as follows:

§ 3.31 Filing documents and applications.

* * * * *

(b) All documents or applications requiring the payment of a fee must be accompanied by a fee receipt from the Service or by an application for a waiver of fees pursuant to § 3.24. Except as provided in § 3.8(a)(c), any fee relating to Immigration Judge proceedings shall be paid to, and accepted by, any Service office authorized to accept fees for other purposes pursuant to § 103.7(a) of this chapter.

* * * * *

15. Section 3.38 is amended by revising paragraph (b); redesignating paragraphs (c) and (d) as paragraphs (f) and (g), respectively; and adding new paragraphs (c),(d) and (e) to read as follows:

§ 3.38 Appeals.

* * * * *

(b) The Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) shall be filed directly with the Board of Immigration Appeals within 30 calendar days after the stating of an Immigration Judge's oral decision or the mailing of an Immigration Judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR–26) may not be filed by any party who has waived appeal.

(c) The date of filing of the Notice of Appeal (Form EOIR–26) shall be the date the Notice is received by the Board.

(d) A Notice of Appeal (Form EOIR–26) must be accompanied by the appropriate fee or by an Appeal Fee Waiver Request (Form EOIR–26A). If the fee is not paid or the Appeal Fee Waiver

Request (Form EOIR–26A) is not filed within the specified time period indicated in paragraph(b) of this section, the appeal will not be deemed properly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

(e) Within five working days of any change of address, an alien must provide written notice of the change of address on Form EOIR–33 to the Board. Where a party is represented, the representative should also provide to the Board written notice of any change in the representative's business mailing address.

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

16. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.5 [Amended]

17. In § 103.5, paragraph (a)(1)(i) is amended by revising the phrase ''parts 210, 242, or 245a'' in the first sentence to read ''parts 3, 210, 242 and 245a,''.

18. In § 103.7, paragraph (a) is revised to read as follows:

§ 103.7 Fees.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 483a shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or regulation. Except for fees remitted directly to the Board pursuant to the provisions of § 3.8(a) of this chapter, any fee relating to any Executive Office for Immigration Review proceeding shall be paid to, and accepted by, any Service office authorized to accept fees. Payment of any fee under this section does not constitute filing of the document with the Board or with the Immigration Court. The Service shall return to the payer, at the time of payment, a receipt for any fee paid. The Service shall also return to the payer any documents, submitted with the fee, relating to any Immigration Judge proceeding. A charge of $5 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. An issued receipt for any such remittance shall not be binding if the remittance is found uncollectible. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. Fees in the form of postage stamps shall not be accepted. Remittances to the Service shall be made payable to the ''Immigration and Naturalization Service,'' except that in case of applicants residing in the Virgin Islands of the United States, the remittances shall be made payable to the ''Commissioner of Finance of the Virgin Islands'' and, in the case of applicants residing in Guam, the remittances shall be made payable to the ''Treasurer, Guam.'' If application to the Service is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the Immigration and Naturalization Service in United States currency. Remittances to the Board shall be made payable to the ''United States Department of Justice.''

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

19. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1252 note, 1252b, 1253, 1282 and 1283; 31 U.S.C. 9701; and 8 CFR part 2.

20. In § 208.19, paragraph (a) is revised to read as follows:

§ 208.19 Motion to reopen or reconsider.

(a) A proceeding in which asylum or withholding of deportation was denied may be reopened or a decision from such a proceeding reconsidered for proper cause upon motion pursuant to the requirements of 8 CFR 3.2, 3.23, 103.5, and 242.22 where applicable.

* * * * *

PART 236—EXCLUSION OF ALIENS

21. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

22. Section 236.7 is revised to read as follows:

§ 236.7 Appeals.

Except as limited by section 236 of the Act, an appeal from a decision of an Immigration Judge under this part may be taken by either party pursuant to § 3.38 of this chapter.

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

23. The authority citation for part 242 is revised to read as follows:

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

§ 242.19 [Amended]

24. In § 242.19, the form number ''I–290A'' is removed each time it appears and, in its place, the form number ''EOIR–26'' is added in paragraphs (6) and (c).

25. In § 242.21, paragraph (a) is revised to read as follows:

§ 242.21 Appeals.

(a) Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Notice of Appeal (Form EOIR–26), fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board of Immigration Appeals. The reasons for the appeal shall be stated in the Notice of Appeal (Form EOIR–26) in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1–a) of this chapter.

* * * * *

26. Section 242.22 is amended by revising the first sentence and by adding a sentence at the end of the section, to read as follows:

§ 242.22 Reopening or reconsideration.

Motions to reopen or reconsider are subject to the requirements and limitations set forth in § 3.23 of this chapter. * * * The filing of a motion to reopen pursuant to the provisions of § 3.23(b)(4)(ii) of this chapter shall stay the deportation of the alien pending the disposition of the motion and the adjudication of any properly filed administrative appeal.

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

27. The authority citation for part 246 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259.

28. Section 246.7 is revised to read as follows:

§ 246.7 Appeals.

Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge under this part to the Board of Immigration Appeals except that no appeal shall lie from an order of deportation entered in absentia. An appeal shall be taken within 30 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be specifically identified in the Notice of Appeal (Form EOIR 26); failure to do so may constitute a ground for dismissal of the appeal by the Board.

Dated: April 16, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–10157 Filed 4–26–96; 8:45 am]

BILLING CODE 4410–01–M

federal register

Monday
April 29, 1996

Part V

Federal Retirement Thrift Investment Board

5 CFR Part 1653

Domestic Relations Orders Affecting Thrift Savings Plan Accounts; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1653

Domestic Relations Orders Affecting Thrift Savings Plan Accounts

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the Board's regulations governing payments from the Thrift Savings Plan (TSP) pursuant to retirement benefits court orders and in response to legal process for the enforcement of a participant's legal obligations to provide child support or make alimony payments. This final rule amends Board regulations to provide for elimination of the mandatory 30-day tax notification period.

EFFECTIVE DATE: These final rules are effective April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, Assistant General Counsel for Administration. (202) 942–1662. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP) pursuant to the Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, 100 Stat. 514 (codified primarily at 5 U.S.C. 8401–8479 (1994)).

Under 5 U.S.C. 8467(a) and 8435(c), a court decree of divorce, annulment, or legal separation, or a court order or court-approved property settlement agreement incident to such a court decree can award benefits from a TSP participant's account to someone other than the participant, such as the participant's spouse or former spouse. The Board refers to these court orders as retirement benefits court orders, and final regulations governing them were published by the Board at 60 FR 13604 (1995) (to be codified at 5 CFR part 1653, subpart A).

Under 8437(e)(3), sums in the TSP also are subject to legal process for the enforcement of a participant's or beneficiary's past-due legal obligations to provide child support or make alimony payments. The final regulations governing such legal process were published at 60 FR 66061 (1995) (to be codified at 5 CFR part 1653, subpart B). This final rule amends both the final rule governing retirement benefits court orders and the final rule governing legal process.

Existing regulations at section 1653.5, Procedures for payment pursuant to retirement benefits court orders, and section 1653.25, Payment pursuant to qualifying legal process, provide that payment will be made no sooner than 30 days after the Board's decision has been issued and the appropriate tax withholding notification has been provided. This minimum waiting period is provided because under Internal Revenue Code provisions the payee will often have the right to elect to transfer the payment to an Individual Retirement Account (IRA) or other eligible retirement plan, or to make a tax withholding election. The existing regulations do not permit the taxpayer to shorten this period. This rule change allows the taxpayer to waive this period and receive a TSP payment sooner. Accordingly, following the Board's decision, the payee will be provided Form TSP–13–S, Notice of Pending Court-Order Thrift Savings Plan Payment and Tax Withholding Information. The taxpayer may waive the notice period by submitting the waiver statement on that form or by submitting a letter containing an explicit waiver statement.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures for payments pursuant to court orders and in response to legal process and provide an opportunity to waive the tax notification period, and thus, shorten the period for receipt of these payments.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The purpose of these changes is to provide an opportunity to shorten the time for payments pursuant to domestic relations court orders. The Board believes this opportunity should be made available without delay.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1653

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR part 1653 is to be amended as set forth below:

PART 1653—DOMESTIC RELATIONS ORDERS AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

1. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e)(3), 8467, 8474(b)(5) and 8474(c)(1).

2. Section 1653.5 is amended by revising paragraph (a) to read as follows:

§ 1653.5 Procedures for payment pursuant to retirement benefits court orders.

(a) If a qualifying court order creates an entitlement to a portion of a TSP account under this part, payment will be made after the Board's decision has been issued and the 30-day tax withholding notification period has ended. The taxpayer may receive the payment sooner by waiving the tax notification period.

* * * * *

3. Section 1653.25 is amended by revising paragraph (a) to read as follows:

§ 1653.25 Payment pursuant to qualifying legal process.

(a) Payment will be made pursuant to qualifying legal process after the Board's decision has been issued and the 30-day tax withholding notification period has ended. The taxpayer may receive the payment sooner by waiving the tax notification period.

* * * * *

[FR Doc. 96–10366 Filed 4–26–96; 8:45 am]

BILLING CODE 6760–01–P

federal register

Monday
April 29, 1996

Part V

Federal Retirement Thrift Investment Board

5 CFR Part 1653

Domestic Relations Orders Affecting Thrift Savings Plan Accounts; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1653

Domestic Relations Orders Affecting Thrift Savings Plan Accounts

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the Board's regulations governing payments from the Thrift Savings Plan (TSP) pursuant to retirement benefits court orders and in response to legal process for the enforcement of a participant's legal obligations to provide child support or make alimony payments. This final rule amends Board regulations to provide for elimination of the mandatory 30-day tax notification period.

EFFECTIVE DATE: These final rules are effective April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, Assistant General Counsel for Administration. (202) 942–1662. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP) pursuant to the Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, 100 Stat. 514 (codified primarily at 5 U.S.C. 8401–8479 (1994)).

Under 5 U.S.C. 8467(a) and 8435(c), a court decree of divorce, annulment, or legal separation, or a court order or court-approved property settlement agreement incident to such a court decree can award benefits from a TSP participant's account to someone other than the participant, such as the participant's spouse or former spouse. The Board refers to these court orders as retirement benefits court orders, and final regulations governing them were published by the Board at 60 FR 13604 (1995) (to be codified at 5 CFR part 1653, subpart A).

Under 8437(e)(3), sums in the TSP also are subject to legal process for the enforcement of a participant's or beneficiary's past-due legal obligations to provide child support or make alimony payments. The final regulations governing such legal process were published at 60 FR 66061 (1995) (to be codified at 5 CFR part 1653, subpart B). This final rule amends both the final rule governing retirement benefits court orders and the final rule governing legal process.

Existing regulations at section 1653.5, Procedures for payment pursuant to retirement benefits court orders, and section 1653.25, Payment pursuant to qualifying legal process, provide that payment will be made no sooner than 30 days after the Board's decision has been issued and the appropriate tax withholding notification has been provided. This minimum waiting period is provided because under Internal Revenue Code provisions the payee will often have the right to elect to transfer the payment to an Individual Retirement Account (IRA) or other eligible retirement plan, or to make a tax withholding election. The existing regulations do not permit the taxpayer to shorten this period. This rule change allows the taxpayer to waive this period and receive a TSP payment sooner. Accordingly, following the Board's decision, the payee will be provided Form TSP–13–S, Notice of Pending Court-Order Thrift Savings Plan Payment and Tax Withholding Information. The taxpayer may waive the notice period by submitting the waiver statement on that form or by submitting a letter containing an explicit waiver statement.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures for payments pursuant to court orders and in response to legal process and provide an opportunity to waive the tax notification period, and thus, shorten the period for receipt of these payments.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The purpose of these changes is to provide an opportunity to shorten the time for payments pursuant to domestic relations court orders. The Board believes this opportunity should be made available without delay.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1653

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR part 1653 is to be amended as set forth below:

PART 1653—DOMESTIC RELATIONS ORDERS AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

1. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e)(3), 8467, 8474(b)(5) and 8474(c)(1).

2. Section 1653.5 is amended by revising paragraph (a) to read as follows:

§ 1653.5 Procedures for payment pursuant to retirement benefits court orders.

(a) If a qualifying court order creates an entitlement to a portion of a TSP account under this part, payment will be made after the Board's decision has been issued and the 30-day tax withholding notification period has ended. The taxpayer may receive the payment sooner by waiving the tax notification period.

* * * * *

3. Section 1653.25 is amended by revising paragraph (a) to read as follows:

§ 1653.25 Payment pursuant to qualifying legal process.

(a) Payment will be made pursuant to qualifying legal process after the Board's decision has been issued and the 30-day tax withholding notification period has ended. The taxpayer may receive the payment sooner by waiving the tax notification period.

* * * * *

[FR Doc. 96–10366 Filed 4–26–96; 8:45 am]

BILLING CODE 6760–01–P

federal register

Monday
April 29, 1996

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Regulation (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–38]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document serves to introduce the rules which follow and which comprise Federal Acquisition Circular (FAC) 90–38. The Federal Acquisition Regulatory Council has agreed to issue FAC 90–38 to amend the Federal Acquisition Regulation (FAR).

DATES: For effective dates, see individual documents following this one.

FOR FURTHER INFORMATION CONTACT: The individual whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–38 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–38 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Contact point
I	Modification of Existing Contracts	94–723	Al Winston, (703) 602–2119.
II	Application of Cost Accounting Standards Board Regulations to Educational Institutions.	95–002	Jeremy Olson, (202) 501–3221.
III	Assignment of Claims—Presidential Delegation	94–767	John Galbraith, (703) 697–6710.
IV	Interest Clause Revisions	92–045	Jeremy Olson, (202) 501–3221.

Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Modification of Existing Contracts (FAR Case 94–723)

This interim rule amends FAR 43.102 to implement section 10002 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (FASA). Section 10002 states that final regulations implementing FASA may provide for modification of existing contracts without consideration, upon request of the contractor, to incorporate changes authorized by FASA. Section 10002 also states that nothing in FASA requires the renegotiation or modification of existing contracts to incorporate changes authorized by FASA. The interim rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by FASA, the modification should insert the current version of the applicable FAR clauses.

Item II—Application of Cost Accounting Standards Board Regulations to Educational Institutions (FAR Case 95–002)

This final rule amends FAR Parts 1, 30, 42, and 52 to implement changes made to the Cost Accounting Standards. The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), has amended the regulatory provisions contained in Chapter 99 of Title 48 of the Code of Federal Regulations (FAR Appendix B). The amendments apply to educational institutions receiving a negotiated Federal contract or subcontract award in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations) and require that such educational institutions comply with certain specified CASB rules, regulations, and Cost Accounting Standards. The amendments to the CASB regulations became effective on January 9, 1995. (The entire FAR Appendix B will be issued in the loose-leaf pages of FAC 90–38.)

Item III—Assignment of Claims-Presidential Delegation (FAR Case 94–767)

This final rule amends FAR Subpart 32.8 to reflect the Presidential delegation of authority to make determinations of need for contractual no-setoff commitments, and to provide guidance for determinations of need made in accordance with the Presidential delegation dated October 3, 1995.

Item IV—Interest Clause Revisions (FAR Case 92–045)

This final rule amends FAR Subpart 32.6 and the clause at 52.232–17 to clarify that certain cost accounting standards clauses provide for the use of differing interest rates under differing circumstances.

Dated: April 18, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Number 90–38

Federal Acquisition Circular (FAC) 90–38 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

FAR Cases 94–723 and 95–002 are effective April 29, 1996; and FAR Cases 94–767 and 92–045 are effective June 28, 1996.

Dated: April 17, 1996.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: April 16, 1996.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, GSA.

Dated: April 18, 1996.

Deidre A. Lee,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 96–10427 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 43

[FAC 90–38; FAR Case 94–723; Item I]

RIN 9000–AG90

Federal Acquisition Regulation; Modification of Existing Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This interim rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103–355) to amend the Federal Acquisition Regulation (FAR). It implements Section 10002 of FASA which authorizes regulations to provide for modification of existing contracts without requiring consideration, upon request of the contractor, to incorporate changes authorized by FASA. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* April 29, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before June 28, 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, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–38, FAR case 94–723, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Al Winston at (703) 602–2119 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 FAC 90–38, FAR case 94–723.

SUPPLEMENTARY INFORMATION:

A. Background

Section 10002 of FASA states that regulations implementing FASA may provide for modification of existing contracts without consideration, upon request of the contractor, to incorporate changes authorized by FASA. Section 10002 also states that nothing in FASA requires the renegotiation or modification of existing contracts to incorporate changes authorized by FASA. The interim rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by FASA, the modification should insert the current version of the applicable FAR clauses.

B. Regulatory Flexibility Act

The changes may 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 it will require contractors seeking to amend existing contracts to so notify the contracting officer. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–38, FAR case 94–723), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because immediate implementation as an interim rule will provide significant benefits to industry and the Government. Section 10002 of FASA, authorizes contracting officers, if requested by the prime contractor to modify contracts without requiring consideration, to incorporate changes authorized by FASA. The regulatory implementation of FASA has been a success for both industry and the Government. Implementation of FASA Section 10002 as an interim rule will enable industry and the Government to gain immediate benefits, including the potential reduction of procurement costs. The interim rule authorizes the adoption of any of the FASA rules that will benefit the contracting parties. The interim rule should involve no substantial risk to industry, since contractors must affirmatively request adoption of the FASA rules to an existing contract. It has been through the process of the consideration and adoption of the FAR rules to implement FASA, that the potential benefits from this interim rule became apparent. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formulation of the final rule.

List of Subjects in 48 CFR Part 43

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Part 43 is amended as set forth below:

PART 43—CONTRACT MODIFICATIONS

1. The authority citation for 48 CFR Part 43 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 43.102 is amended by adding paragraph (c) to read as follows:

43.102 Policy.

* * * * *

(c) The Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (FASA), authorizes, but does not require, contracting officers, if requested by the prime contractor, to

modify contracts without requiring consideration to incorporate changes authorized by FASA amendments into existing contracts. Contracting officers are encouraged, if appropriate, to modify contracts without requiring consideration to incorporate these new policies. The contract modification should be accomplished by inserting into the contract, as a minimum, the current version of the applicable FAR clauses.

[FR Doc. 96–10428 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 1, 30, 42, and 52

[FAC 90–38; FAR Case 95–002; Item II]

RIN 9000–AG71

Federal Acquisition Regulation; Application of Cost Accounting Standards Board Regulations to Educational Institutions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement changes made to the Cost Accounting Standards (CAS). The final rule applies to educational institutions receiving a negotiated Federal contract or subcontract award in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CAS Board regulations), and requires that such educational institutions comply with certain specified CAS Board rules, regulations and standards. The revisions to the FAR are based on the CAS Board's amendments to 48 CFR Chapter 99. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy 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 FAC 90–38, FAR case 95–002.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), has amended the regulatory provisions contained at 48 CFR Chapter 99. The amendments apply to educational institutions receiving a negotiated Federal contract or subcontract award in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations) and require that such educational institutions comply with certain specified CASB rules, regulations, and Cost Accounting Standards (CAS). The CAS final rule was published in the Federal Register on November 8, 1994, at 59 FR 55746, and became effective on January 9, 1995, and is authorized pursuant to section 26 of the Office of Federal Procurement Policy Act. The Board has taken action on this topic in order to promote uniformity and consistency in educational institutions' cost accounting practices.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required because the requirements for the regulation were published by the CASB and codified at 48 CFR Chapter 99. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*, (FAC 90–38, FAR Case 95–002).

C. Paperwork Reduction Act

The information collection aspects of this rule have been approved by the Office of Management and Budget and assigned Control Number 0348–0055.

D. Public Comments

Public comments are not necessary because the policies and procedures contained in this regulation have already been publicized in the Federal Register by the Office of Federal Procurement Policy Cost Accounting Standards Board's Notice of Proposed Rulemaking made available for public comment in the Federal Register, at 57 FR 60503, on December 21, 1992.

List of Subjects in 48 CFR Parts 1, 30, 42, and 52

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 30, 42, and 52 are amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Parts 1, 30, 42, and 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).

1.106 [Amended]

2. Section 1.106 is amended in the FAR segment column by removing ''52.230–5'' and inserting ''52.230–6'' in its place.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.000 [Amended]

3. Section 30.000 is amended by removing ''(appendix B, FAR loose-leaf edition))'' and inserting ''(FAR appendix B)'' in its place, and by removing ''(see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201–1(b),'' and inserting ''(see 48 CFR 9903.201–1(b) (FAR appendix B)'' in its place.

30.201 [Amended]

4. Section 30.201 is amended in the first sentence by removing ''48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201–1,'' and inserting ''48 CFR 9903.201–1 (FAR appendix B)'' in its place, in the second sentence by removing ''subpart'' and inserting ''48 CFR'' in its place, and in the last sentence by removing ''48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201–2.'' and inserting ''48 CFR 9903.201–2 (FAR appendix B).'' in its place.

5. Section 30.201–1 is revised to read as follows:

30.201–1 CAS applicability.

See 48 CFR 9903.201–1 (FAR appendix B).

6. Section 30.201–2 is revised to read as follows:

30.201–2 Types of CAS coverage.

See 48 CFR 9903.201–2 (FAR appendix B).

7. Section 30.201–3 is revised to read as follows:

30.201–3 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.230–1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR 9903.201 (FAR appendix B).

(b) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall insert the basic provision set forth at 52.230–1 with its Alternate I, unless the contract is to be performed by a Federally Funded Research and Development Center (FFRDC) (see 48 CFR 9903.201–2(c)(5) (FAR appendix B)), or the provision at 48 CFR 9903.201–2(c)(6) (FAR appendix B) applies.

8. Section 30.201–4 is revised to read as follows:

30.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause at FAR 52.230–2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR 9903.201–1 (FAR appendix B)), the contract is subject to modified coverage (see 48 CFR 9903.201–2 (FAR appendix B)), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at FAR 52.230–2 requires the contractor to comply with all CAS specified in 48 CFR part 9904 (FAR appendix B), to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

(b) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000, but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201–2 (FAR appendix B), unless the clause prescribed in paragraph (c) of this subsection is used).

(2) The clause at FAR 52.230–3 requires the contractor to comply with 48 CFR 9904.401, 9904.402, 9904.405, and 9904.406 (FAR appendix B) to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its established cost accounting practices.

(c) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause at FAR 52.230–4, Consistency in Cost Accounting Practices, in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 48 CFR 9903.201–1(b)(12) (FAR appendix B)).

(d) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at FAR 52.230–6, Administration of Cost Accounting Standards, in contracts containing any of the clauses prescribed in paragraphs (a), (b), or (e) of this subsection.

(2) The clause at FAR 52.230–6 specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 48 CFR 9903.201–1 (FAR appendix B)), the contract is to be performed by an FFRDC (see 48 CFR 9903.201–2(c)(5) (FAR appendix B)), or the provision at 48 CFR 9903.201–2(c)(6) (FAR appendix B) applies.

(2) The clause at FAR 52.230–5 requires the educational institution to comply with all CAS specified in 48 CFR part 9905 (FAR appendix B), to disclose actual cost accounting practices as required by 48 CFR 9903.202–1(f) (FAR appendix B), and to follow disclosed and established cost accounting practices consistently.

9. Section 30.201–5 is revised to read as follows:

30.201–5 Waiver.

In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses (FAR 52.230–2, Cost Accounting Standards, FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230–5, Cost Accounting Standards—Educational Institution). If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, the contracting officer shall prepare a request for waiver in accordance with 48 CFR 9903.201–5 (FAR appendix B).

10. Sections 30.201–6 and 30.201–7 are added to read as follows:

30.201–6 Findings.

See 48 CFR 9903.201–6 (FAR appendix B).

30.201–7 Cognizant Federal agency responsibilities.

See 48 CFR 9903.201–7 (FAR appendix B).

11. Section 30.202–1 is revised to read as follows:

30.202–1 General requirements.

See 48 CFR 9903.202–1 (FAR appendix B).

12. Section 30.202–2 is revised to read as follows:

30.202–2 Impracticality of submission.

See 48 CFR 9903.202–2 (FAR appendix B).

13. Section 30.202–3 is revised to read as follows:

30.202–3 Amendments and revisions.

See 48 CFR 9903.202–3 (FAR appendix B).

14. Section 30.202–4 is revised to read as follows:

30.202–4 Privileged and confidential information.

See 48 CFR 9903.202–4 (FAR appendix B).

15. Section 52.202–5 is revised to read as follows:

30.202–5 Filing Disclosure Statements.

See 48 CFR 9903.202–5 (FAR appendix B).

30.202–6 [Amended]

16. Section 30.202–6(a) is amended by removing ''48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subparts 9903.201–3 and 9903.202.'' and inserting ''48 CFR 9903.201–3 and 9903.202 (FAR appendix B).'' in its place.

17. Section 30.202–7 is amended in paragraph (a) by revising the first and third sentences; and in the first sentence of (b) by inserting the word ''cognizant'' before the word ''auditor'', and removing the word ''determine'' and inserting ''ascertain'' in its place. The revised text reads as follows:

30.202–7 Determinations.

(a) *Adequacy determination.* As prescribed by 48 CFR 9903.202–6 (FAR appendix B), the cognizant auditor shall conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. * * * If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the cognizant auditor and contracting officer. * * *

* * * * *

18. Section 30.202–8 is amended in the second sentence of paragraph (a) by removing ''ACO's'' and inserting in its place ''The ACO''; and by revising (b) to read as follows:

30.202–8 Subcontractor Disclosure Statements.

* * * * *

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR 9903.202–2 (FAR appendix B).

19. Subpart 30.3 is revised to read as follows:

Subpart 30.3—CAS Rules and Regulations [Reserved]

Note: See 48 CFR 9903.3 (FAR appendix B).

20. Subpart 30.4 is revised to read as follows:

Subpart 30.4—Cost Accounting Standards [Reserved]

Note: See 48 CFR part 9904 (FAR appendix B).

21. Subpart 30.5 is revised to read as follows:

Subpart 30.5—Cost Accounting Standards for Educational Institutions [Reserved]

Note: See 48 CFR part 9905 (FAR appendix B).

30.602 [Amended]

22. Section 30.602 is amended in the introductory text by removing ''48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.305.'' and inserting ''48 CFR 9903.305 (FAR appendix B).'' in its place.

30.602–1 [Amended]

23. Section 30.602–1 is amended in the first sentence of paragraph (a)(2) by inserting after the word ''Standards,'' the phrase ''or FAR 52.230–5, Cost Accounting Standards—Educational Institution,''; in the third sentence of (a)(2) by inserting after ''52.230–2'' the phrase ''or 52.230–5''; in paragraph (b)(1) by revising the citation ''52.230–5'' to read ''FAR 52.230–6''; in the first sentence of (b)(2) by inserting after the word ''ACO'' the phrase '', with the assistance of the auditor,''.

30.602–2 [Amended]

24. Section 30.602–2 is amended as follows:

a. In paragraph (a)(1) and the first sentence of paragraph (d)(1) by inserting the word ''cognizant'' before the word ''auditor'' the first time it appears;

b. In paragraphs (a)(3), (b)(1), and (c)(1), by revising the citation ''52.230–5'' to read ''FAR 52.230–6'';

c. In the second sentence of paragraph (c)(2) by inserting after the word ''Standards,'' the phrase ''or FAR 52.230–5, Cost Accounting Standards—Educational Institution,''; and

d. In paragraph (d)(3) by inserting after the word ''Standards,'' the phrase ''52.230–5, Cost Accounting Standards—Educational Institution,''.

30.602–3 [Amended]

25. Section 30.602–3 is amended in paragraph (b)(1) by revising the citation ''52.230–5'' to read '' FAR 52.230–6''; in the first sentence of (b)(2) by adding after the word ''ACO'' the phrase '', with the assistance of the cognizant auditor,''; and in the first sentence of (d)(1) by adding before the word ''auditor'' the word ''cognizant''.

30.603 [Amended]

26. Section 30.603 is amended in the first sentence by removing the word ''his'' and inserting ''the'' in its place; and in the second sentence by removing ''ACO's'' and inserting ''The ACOs'' in its place.

PART 42—CONTRACT ADMINISTRATION

42.302 [Amended]

27. Section 42.302 is amended in paragraph (a)(11) by removing ''48 CFR chapter 99)'' and inserting ''48 CFR chapter 99 (FAR appendix B))'' in its place, and in (a)(11)(iv) by removing ''and 52.230–5'' and inserting in its place ''52.230–5 and 52.230–6.''

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

28. Section 52.230–1 is amended by:

(a) Revising the clause date;

(b) Adding a third paragraph following the NOTE under the clause heading;

(c) Removing from paragraph (a)(2) the phrase ''48 CFR parts 9903 and 9904'' and inserting ''the Cost Accounting Standards Board (48 CFR Chapter 99)'' in its place, and removing the phrase ''48 CFR, Subpart'' and inserting ''48 CFR'' in its place;

(d) Removing in the first sentence of paragraph (b) the phrase '', parts 9903 and 9904'' and inserting ''Chapter 99'' in its place, and removing the phrase ''48 CFR, Subpart'' and inserting ''48 CFR'' in its place; and in the second sentence by removing ''The'' and inserting ''When required, the'' in its place;

(e) Capitalizing all letters in the word ''Caution:'' in the CAUTION paragraph following paragraphs (b), (c)(4), and in Part II;

(f) Revising paragraphs (c) (1) and (2);

(g) Removing in paragraph (c)(4)(ii) under Part I the phrase ''48 CFR, Subpart'' and inserting ''48 CFR'' in its place;

(h) Removing in the first sentences of the first and second paragraphs in Part II the phrase ''48 CFR subpart'' and inserting ''48 CFR'' in its place; and

(i) Adding Alternate I. The added and revised text reads as follows:

52.230–1 Cost Accounting Standards Notices and Certification.

* * * * *

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (APR 1996)

* * * * *

Note: * * *

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201–2(c)(5) or 9903.201–2(c)(6), respectively.

I. DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION

* * * * *

(c) * * *

(1) *Certificate of Concurrent Submission of Disclosure Statement.*

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:

_____

Name and Address of Cognizant ACO or Federal Official Where Filed:

_____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) *Certificate of Previously Submitted Disclosure Statement.*

The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement:

_____

Name and Address of Cognizant ACO or Federal Official Where Filed:

_____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost

accounting practices disclosed in the applicable Disclosure Statement.

* * * * *

(End of provision)

Alternate I (APR 1996). As prescribed in 30.201–3(b), add the following subparagraph (c)(5) to Part I of the basic provision:

☐ (5) *Certificate of Disclosure Statement Due Date by Educational Institution*. If the offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202–1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

☐ (i) A Disclosure Statement Filing Due Date of _____ has been established with the cognizant Federal agency.

(ii) The Disclosure Statement will be submitted within the 6-month period ending _____ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official Where Disclosure Statement is to be Filed:

_____

52.230–2 [Amended]

29. Section 52.230–2 is amended by revising the clause date to read ''(Apr 1996)'', and by removing in paragraph (a) in the introductory text the phrase ''48 CFR subparts'' and inserting ''48 CFR'' in its place; in (a)(1) removing the phrase ''48 CFR subpart'' and inserting ''48 CFR'' in its place, in (a)(3) removing the phrase ''48 CFR part 9904, (appendix B, FAR loose-leaf edition),'' and inserting ''48 CFR Part 9904,'' in its place, and in (d)(2) removing the phrase ''48 CFR subpart'' and inserting ''48 CFR'' in its place.

30. Section 52.230–3 is amended by:

(a) Revising the clause date and paragraph (a)(1);

(b) Removing in paragraph (a)(2) the phrase ''48 CFR subparts'' and inserting ''48 CFR'' in its place; and

(c) Removing in paragraphs (a)(3)(ii), (d)(1) and (d)(3) the phrase ''48 CFR subpart'' and inserting ''48 CFR'' in its place. The revised text reads as follows:

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1996)

(a) * * *

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard-Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

* * * * *

52.230–5 [Redesignated as 52.230–6]

31. Section 52.230–5 is redesignated as 52.230–6 and a new section 52.230–5 is added to read as follows:

52.230–5 Cost Accounting Standards—Educational Institution.

As prescribed in 30.201–4(e), insert the following clause:

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (APR 1996)

(a) Unless the contract is exempt under 48 CFR 9903.201–1 and 9903.201–2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered contracts only*). If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202–1 through 9903.202–5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9905 in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A–21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR Part 9903, and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

32. Newly designated section 52.230–6 is amended:

(a) By revising the date of the clause to read ''(APR 1996)'';

(b) In paragraph (a)(1) by removing the phrase ''to comply with a new or modified CAS''; and removing the comma after the word ''Standards'' and inserting in its place ''; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230–5, Cost Accounting Standards-Educational Institution;'';

(c) In paragraph (a)(2) by adding an ''s'' to the end of the word ''clause'' the first time it appears; and adding after the word ''Standards,'' the phrase ''and FAR 52.230–5, Cost Accounting Standards-Educational Institution;'';

(d) In paragraph (a)(3) by adding after the word ''Standards,'' the phrase ''and FAR 52.230–5, Cost Accounting Standards-Educational Institution;'';

(e) In the introductory text of paragraph (b) by adding after the word ''ACO'' the phrase '', or cognizant Federal agency official,'';

(f) By revising paragraphs (b)(1) and (b)(2);

(g) In paragraph (b)(3) by adding an ''s'' at the end of the word ''clause'' the first time it appears; and adding after the word ''Standards,'' the phrase ''and FAR 52.230–5, Cost Accounting Standards-Educational Institution;''

(h) In paragraph (d) by removing ''CAS clause'' and inserting ''clauses'' in its place; and adding after the citation ''52.230–2,'' the phrase ''and 52.230–5;'';

(i) By revising the introductory text of paragraph (e) and the first sentence of paragraph (e)(2)(iv); and

(j) In paragraph (g) by removing ''CAS clause,'' and inserting in its place ''clauses at FAR 52.230–2 or 52.230–5,''.

The revised text reads as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)

* * * * *

(b) * * *

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230–2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230–5, Cost Accounting Standards-Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards-Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4) (ii) or (iii) of the clauses at FAR 52.230–2, Cost Accounting Standards, and FAR 52.230–5, Cost Accounting Standards-Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230–2, Cost Accounting Standards, FAR 52.230–5, Cost Accounting Standards-Educational Institution, and FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices.

* * * * *

(e) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—

* * * * *

(2) * * *

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230–2, 52.230–3, or 52.230–5, unless these changes have already been reported.

* * * * *

[FR Doc. 96–10429 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 32

[FAC 90–38; FAR Case 94–767; Item III]

RIN 9000–AG91

Federal Acquisition Regulation; Assignment of Claims; Presidential Delegation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) (FASA) to reflect the Presidential delegation of authority to make determinations of need and to provide guidance for determinations of need made in accordance with the Presidential delegation dated October 3, 1995. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance/Payment Team Leader, at (703) 697–6710, in reference to this case. For general information, contact the FAR Secretariat, Room 4037, 18th & F Streets NW., Washington, DC 20405, (202) 501–4755. Please cite FAC 90–38, FAR Case 94–767 in all correspondence related to this case.

SUPPLEMENTARY INFORMATION:

A. Background

The statutes authorizing assignments of claims under Federal contracts provide authority for the Government to make no-setoff commitments under certain conditions. FASA established a requirement for a determination of need by the President. Implementation was published in the Federal Register, at 60 FR 49729, on September 26, 1995, as FAR Case 94–761. The President, on October 3, 1995, delegated the authority to make determinations of need to the Secretaries of Defense and Energy, the Administrator of General Services, and the heads of all other departments or agencies, subject to such additional guidance as provided by the Administrator of the Office of Federal Procurement Policy. The Administrator of Procurement Policy, in accordance

with the President's delegation, has provided guidance for exercise of the authority delegated by the President to make determinations of need to make no-setoff commitments under contracts containing assignment of claims clauses. Because this guidance is administrative in nature and has no significant impact upon the public, it is being published as a final rule.

B. Regulatory Flexibility Act

As noted above, this rule implements a change in authority for existing policy and procedures in the FAR. This change in authority to be cited does not change the usage of the procedure (the no-setoff commitment) or the impact upon small entities. Thus, this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.*, (FAC 90–38, FAR Case 94–767) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 32

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Part 32 is amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR Part 32 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 32.803 is amended by revising paragraph (d) to read as follows:

32.803 Policies.

* * * * *

(d) Any contract of a designated agency (see FAR 32.801), except a contract under which full payment has been made, may include a no-setoff commitment only when a determination of need is made by the head of the agency, in accordance with the Presidential delegation of authority dated October 3, 1995, and after such determination has been published in the Federal Register. The Presidential delegation makes such determinations of need subject to further guidance issued by the Office of Federal Procurement Policy. The following guidance has been provided: Use of the no-setoff provision may be appropriate to facilitate the national defense; in the event of a national emergency or natural disaster; or when the use of the no-setoff provision may facilitate private financing of contract performance. However, in the event an offeror is significantly indebted to the United States, the contracting officer should consider whether the inclusion of the no-setoff commitment in a particular contract is in the best interests of the United States. In such an event, the contracting officer should consult with the Government officer(s) responsible for collecting the debt(s).

* * * * *

Section 32.806 is amended by revising paragraph (a)(2) to read as follows:

32.806 Contract clause.

(a) * * *

(2) If a no-setoff commitment has been authorized (see FAR 32.803(d)), the contracting officer shall use the clause with its Alternate I.

* * * * *

[FR Doc. 96–10430 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 32 and 52

[FAC 90–38; FAR Case 92–045; Item IV]

RIN 9000–AF44

Federal Acquisition Regulation; Interest Clause; Revisions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that certain Cost Accounting Standards (CAS) clauses provide for the use of differing interest rates under differing circumstances. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. 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 FAC 90–38, FAR case 92–045.

SUPPLEMENTARY INFORMATION:

A. Background

Under the CAS clauses at 52.230–2, Cost Accounting Standards, 52.230–3, Disclosure and Consistency of Cost Accounting Practices, and 52.230–4, Consistency in Cost Accounting Practices, interest charges associated with contract price adjustments resulting from CAS noncompliance are computed at the annual interest rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621), as required by subsection 5(h)(4) of the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100–679). The clauses at 52.230–2 and 52.230–3 also specify that disputes are subject to the Contract Disputes Act which, in contrast, uses the semiannual interest rate established by the Secretary of the Treasury for the Renegotiation Board pursuant to Public Law 92–41. This rule revises FAR 32.610(b)(2), 32.613(h)(3), 32.614–1(c), and the clause at 52.232–17 to clarify that the CAS clauses at 52.230–2 and 52.230–3 provide for the use of differing interest rates under differing circumstances.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.* (FAC 90–38, FAR case 92–045), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 Parts 32 and 52

Government procurement.

Dated: April 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 32 and 52 are amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR Parts 32 and 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 32.610 is amended by revising paragraph (b)(2) to read as follows:

32.610 Demand for payment of contract debt.

* * * * *

(b) * * *

(2) Notification that any amounts not paid within 30 days from the date of the demand will bear interest from the date of the demand, or from any earlier date specified in the contract, and that the interest rate shall be the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92–41. In the case of a debt arising from a price reduction for defective pricing, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, that interest will run from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C. 6621(a)(2).

* * * * *

3. Section 32.613 is amended by revising paragraph (h)(3) to read as follows:

32.613 Deferment of collection.

* * * * *

(h) * * *

(3) Notice of an interest charge, in conformity with FAR 32.614 and the clause at FAR 52.232–17, Interest; or, in the case of a debt arising from a defective pricing or a CAS noncompliance overpayment, interest, as prescribed by the applicable Price Reduction for Defective Cost or Pricing Data or CAS clause.

* * * * *

4. Section 32.614–1 is amended by revising the first sentence of paragraph (c) introductory text to read as follows:

32.614–1 Interest charges.

* * * * *

(c) Unless specified otherwise in the clause at FAR 52.232–17, the interest charge shall be at the rate established by the Secretary of the Treasury under Public Law 92–41 for the period in which the amount becomes due. * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.232–17 is amended by revising the date of the clause and the first sentence of paragraph (a) to read as follows:

52.232–17 Interest.

* * * * *

INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. * * *

* * * * *

[FR Doc. 96–10431 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Monday
April 29, 1996

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Regulation (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–38]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document serves to introduce the rules which follow and which comprise Federal Acquisition Circular (FAC) 90–38. The Federal Acquisition Regulatory Council has agreed to issue FAC 90–38 to amend the Federal Acquisition Regulation (FAR).

DATES: For effective dates, see individual documents following this one.

FOR FURTHER INFORMATION CONTACT: The individual whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–38 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–38 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Contact point
I	Modification of Existing Contracts	94–723	Al Winston, (703) 602–2119.
II	Application of Cost Accounting Standards Board Regulations to Educational Institutions.	95–002	Jeremy Olson, (202) 501–3221.
III	Assignment of Claims—Presidential Delegation	94–767	John Galbraith, (703) 697–6710.
IV	Interest Clause Revisions	92–045	Jeremy Olson, (202) 501–3221.

Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Modification of Existing Contracts (FAR Case 94–723)

This interim rule amends FAR 43.102 to implement section 10002 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (FASA). Section 10002 states that final regulations implementing FASA may provide for modification of existing contracts without consideration, upon request of the contractor, to incorporate changes authorized by FASA. Section 10002 also states that nothing in FASA requires the renegotiation or modification of existing contracts to incorporate changes authorized by FASA. The interim rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by FASA, the modification should insert the current version of the applicable FAR clauses.

Item II—Application of Cost Accounting Standards Board Regulations to Educational Institutions (FAR Case 95–002)

This final rule amends FAR Parts 1, 30, 42, and 52 to implement changes made to the Cost Accounting Standards. The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), has amended the regulatory provisions contained in Chapter 99 of Title 48 of the Code of Federal Regulations (FAR Appendix B). The amendments apply to educational institutions receiving a negotiated Federal contract or subcontract award in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations) and require that such educational institutions comply with certain specified CASB rules, regulations, and Cost Accounting Standards. The amendments to the CASB regulations became effective on January 9, 1995. (The entire FAR Appendix B will be issued in the loose-leaf pages of FAC 90–38.)

Item III—Assignment of Claims-Presidential Delegation (FAR Case 94–767)

This final rule amends FAR Subpart 32.8 to reflect the Presidential delegation of authority to make determinations of need for contractual no-setoff commitments, and to provide guidance for determinations of need made in accordance with the Presidential delegation dated October 3, 1995.

Item IV—Interest Clause Revisions (FAR Case 92–045)

This final rule amends FAR Subpart 32.6 and the clause at 52.232–17 to clarify that certain cost accounting standards clauses provide for the use of differing interest rates under differing circumstances.

Dated: April 18, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Number 90–38

Federal Acquisition Circular (FAC) 90–38 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

FAR Cases 94–723 and 95–002 are effective April 29, 1996; and FAR Cases 94–767 and 92–045 are effective June 28, 1996.

Dated: April 17, 1996.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: April 16, 1996.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, GSA.

Dated: April 18, 1996.

Deidre A. Lee,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 96–10427 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 43

[FAC 90–38; FAR Case 94–723; Item I]

RIN 9000–AG90

Federal Acquisition Regulation; Modification of Existing Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This interim rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103–355) to amend the Federal Acquisition Regulation (FAR). It implements Section 10002 of FASA which authorizes regulations to provide for modification of existing contracts without requiring consideration, upon request of the contractor, to incorporate changes authorized by FASA. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* April 29, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before June 28, 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, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–38, FAR case 94–723, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Al Winston at (703) 602–2119 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 FAC 90–38, FAR case 94–723.

SUPPLEMENTARY INFORMATION:

A. Background

Section 10002 of FASA states that regulations implementing FASA may provide for modification of existing contracts without consideration, upon request of the contractor, to incorporate changes authorized by FASA. Section 10002 also states that nothing in FASA requires the renegotiation or modification of existing contracts to incorporate changes authorized by FASA. The interim rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by FASA, the modification should insert the current version of the applicable FAR clauses.

B. Regulatory Flexibility Act

The changes may 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 it will require contractors seeking to amend existing contracts to so notify the contracting officer. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–38, FAR case 94–723), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because immediate implementation as an interim rule will provide significant benefits to industry and the Government. Section 10002 of FASA, authorizes contracting officers, if requested by the prime contractor to modify contracts without requiring consideration, to incorporate changes authorized by FASA. The regulatory implementation of FASA has been a success for both industry and the Government. Implementation of FASA Section 10002 as an interim rule will enable industry and the Government to gain immediate benefits, including the potential reduction of procurement costs. The interim rule authorizes the adoption of any of the FASA rules that will benefit the contracting parties. The interim rule should involve no substantial risk to industry, since contractors must affirmatively request adoption of the FASA rules to an existing contract. It has been through the process of the consideration and adoption of the FAR rules to implement FASA, that the potential benefits from this interim rule became apparent. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formulation of the final rule.

List of Subjects in 48 CFR Part 43

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Part 43 is amended as set forth below:

PART 43—CONTRACT MODIFICATIONS

1. The authority citation for 48 CFR Part 43 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 43.102 is amended by adding paragraph (c) to read as follows:

43.102 Policy.

* * * * *

(c) The Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (FASA), authorizes, but does not require, contracting officers, if requested by the prime contractor, to

modify contracts without requiring consideration to incorporate changes authorized by FASA amendments into existing contracts. Contracting officers are encouraged, if appropriate, to modify contracts without requiring consideration to incorporate these new policies. The contract modification should be accomplished by inserting into the contract, as a minimum, the current version of the applicable FAR clauses.

[FR Doc. 96–10428 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 1, 30, 42, and 52

[FAC 90–38; FAR Case 95–002; Item II]

RIN 9000–AG71

Federal Acquisition Regulation; Application of Cost Accounting Standards Board Regulations to Educational Institutions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement changes made to the Cost Accounting Standards (CAS). The final rule applies to educational institutions receiving a negotiated Federal contract or subcontract award in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CAS Board regulations), and requires that such educational institutions comply with certain specified CAS Board rules, regulations and standards. The revisions to the FAR are based on the CAS Board's amendments to 48 CFR Chapter 99. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy 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 FAC 90–38, FAR case 95–002.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), has amended the regulatory provisions contained at 48 CFR Chapter 99. The amendments apply to educational institutions receiving a negotiated Federal contract or subcontract award in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations) and require that such educational institutions comply with certain specified CASB rules, regulations, and Cost Accounting Standards (CAS). The CAS final rule was published in the Federal Register on November 8, 1994, at 59 FR 55746, and became effective on January 9, 1995, and is authorized pursuant to section 26 of the Office of Federal Procurement Policy Act. The Board has taken action on this topic in order to promote uniformity and consistency in educational institutions' cost accounting practices.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required because the requirements for the regulation were published by the CASB and codified at 48 CFR Chapter 99. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*, (FAC 90–38, FAR Case 95–002).

C. Paperwork Reduction Act

The information collection aspects of this rule have been approved by the Office of Management and Budget and assigned Control Number 0348–0055.

D. Public Comments

Public comments are not necessary because the policies and procedures contained in this regulation have already been publicized in the Federal Register by the Office of Federal Procurement Policy Cost Accounting Standards Board's Notice of Proposed Rulemaking made available for public comment in the Federal Register, at 57 FR 60503, on December 21, 1992.

List of Subjects in 48 CFR Parts 1, 30, 42, and 52

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 30, 42, and 52 are amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Parts 1, 30, 42, and 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).

1.106 [Amended]

2. Section 1.106 is amended in the FAR segment column by removing ''52.230–5'' and inserting ''52.230–6'' in its place.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.000 [Amended]

3. Section 30.000 is amended by removing ''(appendix B, FAR loose-leaf edition))'' and inserting ''(FAR appendix B)'' in its place, and by removing ''(see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201–1(b),'' and inserting ''(see 48 CFR 9903.201–1(b) (FAR appendix B)'' in its place.

30.201 [Amended]

4. Section 30.201 is amended in the first sentence by removing ''48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201–1,'' and inserting ''48 CFR 9903.201–1 (FAR appendix B)'' in its place, in the second sentence by removing ''subpart'' and inserting ''48 CFR'' in its place, and in the last sentence by removing ''48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201–2.'' and inserting ''48 CFR 9903.201–2 (FAR appendix B).'' in its place.

5. Section 30.201–1 is revised to read as follows:

30.201–1 CAS applicability.

See 48 CFR 9903.201–1 (FAR appendix B).

6. Section 30.201–2 is revised to read as follows:

30.201–2 Types of CAS coverage.

See 48 CFR 9903.201–2 (FAR appendix B).

7. Section 30.201–3 is revised to read as follows:

30.201–3 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.230–1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR 9903.201 (FAR appendix B).

(b) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall insert the basic provision set forth at 52.230–1 with its Alternate I, unless the contract is to be performed by a Federally Funded Research and Development Center (FFRDC) (see 48 CFR 9903.201–2(c)(5) (FAR appendix B)), or the provision at 48 CFR 9903.201–2(c)(6) (FAR appendix B) applies.

8. Section 30.201–4 is revised to read as follows:

30.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause at FAR 52.230–2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR 9903.201–1 (FAR appendix B)), the contract is subject to modified coverage (see 48 CFR 9903.201–2 (FAR appendix B)), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at FAR 52.230–2 requires the contractor to comply with all CAS specified in 48 CFR part 9904 (FAR appendix B), to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

(b) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000, but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201–2 (FAR appendix B), unless the clause prescribed in paragraph (c) of this subsection is used).

(2) The clause at FAR 52.230–3 requires the contractor to comply with 48 CFR 9904.401, 9904.402, 9904.405, and 9904.406 (FAR appendix B) to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its established cost accounting practices.

(c) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause at FAR 52.230–4, Consistency in Cost Accounting Practices, in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 48 CFR 9903.201–1(b)(12) (FAR appendix B)).

(d) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at FAR 52.230–6, Administration of Cost Accounting Standards, in contracts containing any of the clauses prescribed in paragraphs (a), (b), or (e) of this subsection.

(2) The clause at FAR 52.230–6 specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 48 CFR 9903.201–1 (FAR appendix B)), the contract is to be performed by an FFRDC (see 48 CFR 9903.201–2(c)(5) (FAR appendix B)), or the provision at 48 CFR 9903.201–2(c)(6) (FAR appendix B) applies.

(2) The clause at FAR 52.230–5 requires the educational institution to comply with all CAS specified in 48 CFR part 9905 (FAR appendix B), to disclose actual cost accounting practices as required by 48 CFR 9903.202–1(f) (FAR appendix B), and to follow disclosed and established cost accounting practices consistently.

9. Section 30.201–5 is revised to read as follows:

30.201–5 Waiver.

In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses (FAR 52.230–2, Cost Accounting Standards, FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230–5, Cost Accounting Standards—Educational Institution). If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, the contracting officer shall prepare a request for waiver in accordance with 48 CFR 9903.201–5 (FAR appendix B).

10. Sections 30.201–6 and 30.201–7 are added to read as follows:

30.201–6 Findings.

See 48 CFR 9903.201–6 (FAR appendix B).

30.201–7 Cognizant Federal agency responsibilities.

See 48 CFR 9903.201–7 (FAR appendix B).

11. Section 30.202–1 is revised to read as follows:

30.202–1 General requirements.

See 48 CFR 9903.202–1 (FAR appendix B).

12. Section 30.202–2 is revised to read as follows:

30.202–2 Impracticality of submission.

See 48 CFR 9903.202–2 (FAR appendix B).

13. Section 30.202–3 is revised to read as follows:

30.202–3 Amendments and revisions.

See 48 CFR 9903.202–3 (FAR appendix B).

14. Section 30.202–4 is revised to read as follows:

30.202–4 Privileged and confidential information.

See 48 CFR 9903.202–4 (FAR appendix B).

15. Section 52.202–5 is revised to read as follows:

30.202–5 Filing Disclosure Statements.

See 48 CFR 9903.202–5 (FAR appendix B).

30.202–6 [Amended]

16. Section 30.202–6(a) is amended by removing ''48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subparts 9903.201–3 and 9903.202.'' and inserting ''48 CFR 9903.201–3 and 9903.202 (FAR appendix B).'' in its place.

17. Section 30.202–7 is amended in paragraph (a) by revising the first and third sentences; and in the first sentence of (b) by inserting the word ''cognizant'' before the word ''auditor'', and removing the word ''determine'' and inserting ''ascertain'' in its place. The revised text reads as follows:

30.202–7 Determinations.

(a) *Adequacy determination.* As prescribed by 48 CFR 9903.202–6 (FAR appendix B), the cognizant auditor shall conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. * * * If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the cognizant auditor and contracting officer. * * *

* * * * *

18. Section 30.202–8 is amended in the second sentence of paragraph (a) by removing ''ACO's'' and inserting in its place ''The ACO''; and by revising (b) to read as follows:

30.202–8 Subcontractor Disclosure Statements.

* * * * *

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR 9903.202–2 (FAR appendix B).

19. Subpart 30.3 is revised to read as follows:

Subpart 30.3—CAS Rules and Regulations [Reserved]

Note: See 48 CFR 9903.3 (FAR appendix B).

20. Subpart 30.4 is revised to read as follows:

Subpart 30.4—Cost Accounting Standards [Reserved]

Note: See 48 CFR part 9904 (FAR appendix B).

21. Subpart 30.5 is revised to read as follows:

Subpart 30.5—Cost Accounting Standards for Educational Institutions [Reserved]

Note: See 48 CFR part 9905 (FAR appendix B).

30.602 [Amended]

22. Section 30.602 is amended in the introductory text by removing ''48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.305.'' and inserting ''48 CFR 9903.305 (FAR appendix B).'' in its place.

30.602–1 [Amended]

23. Section 30.602–1 is amended in the first sentence of paragraph (a)(2) by inserting after the word ''Standards,'' the phrase ''or FAR 52.230–5, Cost Accounting Standards—Educational Institution,''; in the third sentence of (a)(2) by inserting after ''52.230–2'' the phrase ''or 52.230–5''; in paragraph (b)(1) by revising the citation ''52.230–5'' to read ''FAR 52.230–6''; in the first sentence of (b)(2) by inserting after the word ''ACO'' the phrase '', with the assistance of the auditor,''.

30.602–2 [Amended]

24. Section 30.602–2 is amended as follows:

a. In paragraph (a)(1) and the first sentence of paragraph (d)(1) by inserting the word ''cognizant'' before the word ''auditor'' the first time it appears;

b. In paragraphs (a)(3), (b)(1), and (c)(1), by revising the citation ''52.230–5'' to read ''FAR 52.230–6'';

c. In the second sentence of paragraph (c)(2) by inserting after the word ''Standards,'' the phrase ''or FAR 52.230–5, Cost Accounting Standards—Educational Institution,''; and

d. In paragraph (d)(3) by inserting after the word ''Standards,'' the phrase ''52.230–5, Cost Accounting Standards—Educational Institution,''.

30.602–3 [Amended]

25. Section 30.602–3 is amended in paragraph (b)(1) by revising the citation ''52.230–5'' to read '' FAR 52.230–6''; in the first sentence of (b)(2) by adding after the word ''ACO'' the phrase '', with the assistance of the cognizant auditor,''; and in the first sentence of (d)(1) by adding before the word ''auditor'' the word ''cognizant''.

30.603 [Amended]

26. Section 30.603 is amended in the first sentence by removing the word ''his'' and inserting ''the'' in its place; and in the second sentence by removing ''ACO's'' and inserting ''The ACOs'' in its place.

PART 42—CONTRACT ADMINISTRATION

42.302 [Amended]

27. Section 42.302 is amended in paragraph (a)(11) by removing ''48 CFR chapter 99)'' and inserting ''48 CFR chapter 99 (FAR appendix B))'' in its place, and in (a)(11)(iv) by removing ''and 52.230–5'' and inserting in its place ''52.230–5 and 52.230–6.''

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

28. Section 52.230–1 is amended by:

(a) Revising the clause date;

(b) Adding a third paragraph following the NOTE under the clause heading;

(c) Removing from paragraph (a)(2) the phrase ''48 CFR parts 9903 and 9904'' and inserting ''the Cost Accounting Standards Board (48 CFR Chapter 99)'' in its place, and removing the phrase ''48 CFR, Subpart'' and inserting ''48 CFR'' in its place;

(d) Removing in the first sentence of paragraph (b) the phrase '', parts 9903 and 9904'' and inserting ''Chapter 99'' in its place, and removing the phrase ''48 CFR, Subpart'' and inserting ''48 CFR'' in its place; and in the second sentence by removing ''The'' and inserting ''When required, the'' in its place;

(e) Capitalizing all letters in the word ''Caution:'' in the CAUTION paragraph following paragraphs (b), (c)(4), and in Part II;

(f) Revising paragraphs (c) (1) and (2);

(g) Removing in paragraph (c)(4)(ii) under Part I the phrase ''48 CFR, Subpart'' and inserting ''48 CFR'' in its place;

(h) Removing in the first sentences of the first and second paragraphs in Part II the phrase ''48 CFR subpart'' and inserting ''48 CFR'' in its place; and

(i) Adding Alternate I. The added and revised text reads as follows:

52.230–1 Cost Accounting Standards Notices and Certification.

* * * * *

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (APR 1996)

* * * * *

Note: * * *

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201–2(c)(5) or 9903.201–2(c)(6), respectively.

I. DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION

* * * * *

(c) * * *

(1) *Certificate of Concurrent Submission of Disclosure Statement.*

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:

_____

Name and Address of Cognizant ACO or Federal Official Where Filed:

_____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) *Certificate of Previously Submitted Disclosure Statement.*

The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement:

_____

Name and Address of Cognizant ACO or Federal Official Where Filed:

_____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost

accounting practices disclosed in the applicable Disclosure Statement.

* * * * *

(End of provision)

Alternate I (APR 1996). As prescribed in 30.201–3(b), add the following subparagraph (c)(5) to Part I of the basic provision:

☐ (5) *Certificate of Disclosure Statement Due Date by Educational Institution*. If the offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202–1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

☐ (i) A Disclosure Statement Filing Due Date of _____ has been established with the cognizant Federal agency.

(ii) The Disclosure Statement will be submitted within the 6-month period ending _____ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official Where Disclosure Statement is to be Filed:

_____

52.230–2 [Amended]

29. Section 52.230–2 is amended by revising the clause date to read ''(Apr 1996)'', and by removing in paragraph (a) in the introductory text the phrase ''48 CFR subparts'' and inserting ''48 CFR'' in its place; in (a)(1) removing the phrase ''48 CFR subpart'' and inserting ''48 CFR'' in its place, in (a)(3) removing the phrase ''48 CFR part 9904, (appendix B, FAR loose-leaf edition),'' and inserting ''48 CFR Part 9904,'' in its place, and in (d)(2) removing the phrase ''48 CFR subpart'' and inserting ''48 CFR'' in its place.

30. Section 52.230–3 is amended by:

(a) Revising the clause date and paragraph (a)(1);

(b) Removing in paragraph (a)(2) the phrase ''48 CFR subparts'' and inserting ''48 CFR'' in its place; and

(c) Removing in paragraphs (a)(3)(ii), (d)(1) and (d)(3) the phrase ''48 CFR subpart'' and inserting ''48 CFR'' in its place. The revised text reads as follows:

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1996)

(a) * * *

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard-Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

* * * * *

52.230–5 [Redesignated as 52.230–6]

31. Section 52.230–5 is redesignated as 52.230–6 and a new section 52.230–5 is added to read as follows:

52.230–5 Cost Accounting Standards—Educational Institution.

As prescribed in 30.201–4(e), insert the following clause:

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (APR 1996)

(a) Unless the contract is exempt under 48 CFR 9903.201–1 and 9903.201–2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered contracts only*). If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202–1 through 9903.202–5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9905 in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A–21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR Part 9903, and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

32. Newly designated section 52.230–6 is amended:

(a) By revising the date of the clause to read ''(APR 1996)'';

(b) In paragraph (a)(1) by removing the phrase ''to comply with a new or modified CAS''; and removing the comma after the word ''Standards'' and inserting in its place ''; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230–5, Cost Accounting Standards-Educational Institution;'';

(c) In paragraph (a)(2) by adding an ''s'' to the end of the word ''clause'' the first time it appears; and adding after the word ''Standards,'' the phrase ''and FAR 52.230–5, Cost Accounting Standards-Educational Institution;'';

(d) In paragraph (a)(3) by adding after the word ''Standards,'' the phrase ''and FAR 52.230–5, Cost Accounting Standards-Educational Institution;'';

(e) In the introductory text of paragraph (b) by adding after the word ''ACO'' the phrase '', or cognizant Federal agency official,'';

(f) By revising paragraphs (b)(1) and (b)(2);

(g) In paragraph (b)(3) by adding an ''s'' at the end of the word ''clause'' the first time it appears; and adding after the word ''Standards,'' the phrase ''and FAR 52.230–5, Cost Accounting Standards-Educational Institution;''

(h) In paragraph (d) by removing ''CAS clause'' and inserting ''clauses'' in its place; and adding after the citation ''52.230–2,'' the phrase ''and 52.230–5;'';

(i) By revising the introductory text of paragraph (e) and the first sentence of paragraph (e)(2)(iv); and

(j) In paragraph (g) by removing ''CAS clause,'' and inserting in its place ''clauses at FAR 52.230–2 or 52.230–5,''.

The revised text reads as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)

* * * * *

(b) * * *

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230–2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230–5, Cost Accounting Standards-Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards-Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4) (ii) or (iii) of the clauses at FAR 52.230–2, Cost Accounting Standards, and FAR 52.230–5, Cost Accounting Standards-Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230–2, Cost Accounting Standards, FAR 52.230–5, Cost Accounting Standards-Educational Institution, and FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices.

* * * * *

(e) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—

* * * * *

(2) * * *

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230–2, 52.230–3, or 52.230–5, unless these changes have already been reported.

* * * * *

[FR Doc. 96–10429 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Part 32

[FAC 90–38; FAR Case 94–767; Item III]

RIN 9000–AG91

Federal Acquisition Regulation; Assignment of Claims; Presidential Delegation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) (FASA) to reflect the Presidential delegation of authority to make determinations of need and to provide guidance for determinations of need made in accordance with the Presidential delegation dated October 3, 1995. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance/Payment Team Leader, at (703) 697–6710, in reference to this case. For general information, contact the FAR Secretariat, Room 4037, 18th & F Streets NW., Washington, DC 20405, (202) 501–4755. Please cite FAC 90–38, FAR Case 94–767 in all correspondence related to this case.

SUPPLEMENTARY INFORMATION:

A. Background

The statutes authorizing assignments of claims under Federal contracts provide authority for the Government to make no-setoff commitments under certain conditions. FASA established a requirement for a determination of need by the President. Implementation was published in the Federal Register, at 60 FR 49729, on September 26, 1995, as FAR Case 94–761. The President, on October 3, 1995, delegated the authority to make determinations of need to the Secretaries of Defense and Energy, the Administrator of General Services, and the heads of all other departments or agencies, subject to such additional guidance as provided by the Administrator of the Office of Federal Procurement Policy. The Administrator of Procurement Policy, in accordance

with the President's delegation, has provided guidance for exercise of the authority delegated by the President to make determinations of need to make no-setoff commitments under contracts containing assignment of claims clauses. Because this guidance is administrative in nature and has no significant impact upon the public, it is being published as a final rule.

B. Regulatory Flexibility Act

As noted above, this rule implements a change in authority for existing policy and procedures in the FAR. This change in authority to be cited does not change the usage of the procedure (the no-setoff commitment) or the impact upon small entities. Thus, this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.*, (FAC 90–38, FAR Case 94–767) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 32

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Part 32 is amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR Part 32 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 32.803 is amended by revising paragraph (d) to read as follows:

32.803 Policies.

* * * * *

(d) Any contract of a designated agency (see FAR 32.801), except a contract under which full payment has been made, may include a no-setoff commitment only when a determination of need is made by the head of the agency, in accordance with the Presidential delegation of authority dated October 3, 1995, and after such determination has been published in the Federal Register. The Presidential delegation makes such determinations of need subject to further guidance issued by the Office of Federal Procurement Policy. The following guidance has been provided: Use of the no-setoff provision may be appropriate to facilitate the national defense; in the event of a national emergency or natural disaster; or when the use of the no-setoff provision may facilitate private financing of contract performance. However, in the event an offeror is significantly indebted to the United States, the contracting officer should consider whether the inclusion of the no-setoff commitment in a particular contract is in the best interests of the United States. In such an event, the contracting officer should consult with the Government officer(s) responsible for collecting the debt(s).

* * * * *

Section 32.806 is amended by revising paragraph (a)(2) to read as follows:

32.806 Contract clause.

(a) * * *

(2) If a no-setoff commitment has been authorized (see FAR 32.803(d)), the contracting officer shall use the clause with its Alternate I.

* * * * *

[FR Doc. 96–10430 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 32 and 52

[FAC 90–38; FAR Case 92–045; Item IV]

RIN 9000–AF44

Federal Acquisition Regulation; Interest Clause; Revisions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that certain Cost Accounting Standards (CAS) clauses provide for the use of differing interest rates under differing circumstances. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. 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 FAC 90–38, FAR case 92–045.

SUPPLEMENTARY INFORMATION:

A. Background

Under the CAS clauses at 52.230–2, Cost Accounting Standards, 52.230–3, Disclosure and Consistency of Cost Accounting Practices, and 52.230–4, Consistency in Cost Accounting Practices, interest charges associated with contract price adjustments resulting from CAS noncompliance are computed at the annual interest rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621), as required by subsection 5(h)(4) of the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100–679). The clauses at 52.230–2 and 52.230–3 also specify that disputes are subject to the Contract Disputes Act which, in contrast, uses the semiannual interest rate established by the Secretary of the Treasury for the Renegotiation Board pursuant to Public Law 92–41. This rule revises FAR 32.610(b)(2), 32.613(h)(3), 32.614–1(c), and the clause at 52.232–17 to clarify that the CAS clauses at 52.230–2 and 52.230–3 provide for the use of differing interest rates under differing circumstances.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.* (FAC 90–38, FAR case 92–045), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 Parts 32 and 52

Government procurement.

Dated: April 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 32 and 52 are amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR Parts 32 and 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 32.610 is amended by revising paragraph (b)(2) to read as follows:

32.610 Demand for payment of contract debt.

* * * * *

(b) * * *

(2) Notification that any amounts not paid within 30 days from the date of the demand will bear interest from the date of the demand, or from any earlier date specified in the contract, and that the interest rate shall be the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92–41. In the case of a debt arising from a price reduction for defective pricing, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, that interest will run from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C. 6621(a)(2).

* * * * *

3. Section 32.613 is amended by revising paragraph (h)(3) to read as follows:

32.613 Deferment of collection.

* * * * *

(h) * * *

(3) Notice of an interest charge, in conformity with FAR 32.614 and the clause at FAR 52.232–17, Interest; or, in the case of a debt arising from a defective pricing or a CAS noncompliance overpayment, interest, as prescribed by the applicable Price Reduction for Defective Cost or Pricing Data or CAS clause.

* * * * *

4. Section 32.614–1 is amended by revising the first sentence of paragraph (c) introductory text to read as follows:

32.614–1 Interest charges.

* * * * *

(c) Unless specified otherwise in the clause at FAR 52.232–17, the interest charge shall be at the rate established by the Secretary of the Treasury under Public Law 92–41 for the period in which the amount becomes due. * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.232–17 is amended by revising the date of the clause and the first sentence of paragraph (a) to read as follows:

52.232–17 Interest.

* * * * *

INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. * * *

* * * * *

[FR Doc. 96–10431 Filed 4–26–96; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Monday
April 29, 1996

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Nontoxic Shot Approval Procedures for Shot and Shot Coatings, Test Protocol; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AB80

Migratory Bird Hunting: Amended Test Protocol for Nontoxic Shot Approval Procedures for Shot and Shot Coatings; Proposed Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the extension of the comment period for the Service's January 26, 1996, Amended test protocol for nontoxic shot approval procedures Proposed Rule published in the Federal Register (61 FR 2470) from March 26, 1996, to May 10, 1996.

DATES: The comment period for the proposed framework will end on May 10, 1996.

ADDRESSES: Written comments should be sent to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms—634 ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Office of Migratory Bird Management, (703) 358–1714, FAX (703) 358–2217.

SUPPLEMENTARY INFORMATION: The Service announced in the January 26, 1996, Federal Register the amended test protocol for nontoxic shot approval procedures for shot and shot coatings for migratory bird hunting. The proposed protocol will update and amend the current nontoxic shot approval procedures by establishing a 3-tiered approval process. Shot will be considered at each tier with the testing becoming progressively more demanding. An environmentally benign shot could be granted approval at the first tier. This process is designed to include both candidate shot and shot coatings.

The comment period is being extended to incorporate views from all parties that have expressed an interest in reviewing the proposed rule.

Dated: April 15, 1996

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 96–10443 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–55–F

federal register

Monday
April 29, 1996

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Nontoxic Shot Approval Procedures for Shot and Shot Coatings, Test Protocol; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AB80

Migratory Bird Hunting: Amended Test Protocol for Nontoxic Shot Approval Procedures for Shot and Shot Coatings; Proposed Rule

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Dated: April 15, 1996

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 96–10443 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–55–F

federal register

Monday
April 29, 1996

Part VIII

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107, et al.

Elimination of Unnecessary and Duplicative Hazardous Materials Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 176, 177, 178, and 179

[Docket HM–222A; Admt. Nos. 107–37, 171–140, 172–147, 173–248, 174–82, 175–55, 176–39, 177–86, 178–112, and 179–51]

RIN 2137–AC69

Elimination of Unnecessary and Duplicative Hazardous Materials Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is removing unnecessary, obsolete, and duplicative regulations contained in the Hazardous Materials Regulations (HMR). In addition, RSPA is eliminating approximately 100 pages of the CFR by reformatting the Hazardous Materials Table and List of Hazardous Substances and Reportable Quantities. The intended effect of this action is to enhance compliance with the HMR by making them shorter and easier to use. This action responds to President Clinton's March 4, 1995 memorandum to heads of departments and agencies calling for a review of all agency regulations.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Gale or Jennifer K. Antonielli, (202) 366–8553; Office of Hazardous Materials Standards, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations to eliminate or revise those regulations that are outdated or in need of reform. In addition, the President directed front line regulators to ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations. In response to the President's directive, RSPA performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and associated procedural rules (49 CFR Parts 106, 107 and 110). In April and July, 1995, RSPA published notices in the Federal Register (60 FR 17049 and 60 FR 38888, respectively) that announced public meetings and requested comments on ways to improve the HMR and the kind and quality of services RSPA's customers expect. RSPA held 12 public meetings and received over 50 written comments in response to the Federal Register notices. Based on its review of the HMR and on written and oral comments received from the public on regulatory reform, RSPA issued a notice of proposed rulemaking (NPRM) on October 13, 1995, under Docket HM–222A (60 FR 53321). The NPRM proposed to eliminate over 100 sections of the HMR and to reformat the Hazardous Materials Table and Hazardous Substances Table. This is one of several rulemakings initiated by RSPA in response to its regulatory review, public meetings, and comments.

II. Summary of Amendments

RSPA received approximately 42 comments to the NPRM from chemical manufacturers and distributors, offerors, carriers, and packaging manufacturers, and State enforcement agencies. These commenters were generally supportive of RSPA's proposals in the NPRM. The primary concerns raised by commenters were about proposals to: (1) reformat the § 172.101 Hazardous Materials Table (HMT) and the List of Hazardous Substances and Reportable Quantities; (2) placard holder dimensional specifications; and (3) remove general guidance in Part 177 on emergency response activities for hazardous materials transportation accidents or incidents. Commenters also raised concerns that were beyond the scope of the proposed rule; however, they may be considered in future rulemakings.

RSPA believes this final rule will enhance compliance by reducing the number of regulations in the HMR and making them easier to use. As a result of having fewer pages, RSPA foresees the possibility of consolidating the two CFR volumes into one.

A. Reformatting the Hazardous Materials Table and Hazardous Substances Table

Several commenters stated that RSPA's proposal to reformat the label column of the HMT by identifying labels by class/division number rather than class name would make the HMR more difficult to use. One commenter added that adoption of the proposal would complicate the process of determining a label for a material. Commenters opposing this change stated that this proposal makes both teaching and applying the HMR more difficult and may create a significant burden on users of the HMR. One commenter stated that adding a table preceding the HMT to identify which label corresponds to a label code in Column (6) is impractical, especially for the infrequent user of the HMR. Another commenter added that this proposal would not enhance clarity of the HMR or the HMT because users of the HMR often overlook the instructions to the HMT and would be forced to flip between the two tables to determine the required labels. Some commenters claimed this proposal would increase the likelihood of errors. One commenter recommended that RSPA place the ''numerical identifier table'' within the margins of each page of the HMT for the reader's convenience. Another commenter suggested that if RSPA modifies the HMT, the agency should focus on reducing the size of the columns and adjusting the format. Another commenter stated that use of Roman numerals to distinguish poisons may be confused with Packing Group numerals.

Some commenters supported RSPA's proposal but recommended that RSPA inform and educate all affected persons, including emergency responders, of this change to ensure compliance with the HMR. One commenter recommended that RSPA revise the proposed heading of Column (6) to read ''Label code(s)'' to indicate that more than one label code may be specified for certain shipping descriptions.

RSPA disagrees with those commenters who stated that label codes would create confusion and lead to non-compliance and is reformatting the HMT to remove and replace Column (6) that specifies label names with a new Column (6) that specifies label codes. The numerical label codes directly correspond to numerical hazard classes and divisions which have been in place in the HMR for over five years. If a person is properly trained in accordance with subpart G of Part 172, there should be no confusion as to the class or required label for a given shipping description. In addition, through the distribution of more than four million Emergency Response Guidebooks, emergency responders have been informed of the UN hazard class system, and what the respective codes represent. RSPA believes that the benefits of eliminating over 80 pages of the CFR outweigh the minor inconvenience of using a label code rather than a label name. In the new Column (6) of the HMT, RSPA identifies the labels required by class or division number instead of spelling out the class name. For example, the POISON and KEEP AWAY FROM FOOD labels are identified as ''6.1'' and FLAMMABLE LIQUID label is identified as ''3''. Also, RSPA is adding a table to the

instructions to the HMT that clearly states which label is required for each numerical identifier.

Commenters were generally supportive of RSPA's proposal to remove the column of synonyms from appendix A to § 172.101. However, one commenter requested that RSPA reevaluate its proposal to remove the synonym column because many shippers refer to this column to determine a proper shipping name for a product. Another commenter recommended that RSPA replace the synonyms with Chemical Abstract System (CAS) Registry numbers because they provide a more reliable cross reference and are accessible to most users of the HMR. The commenter stated that CAS numbers would provide non-chemist shippers with valuable information to identify a hazardous substance. In addition to being beyond the scope of this rulemaking, RSPA believes that adding CAS numbers to the HMT would be of little value to the regulated community and would significantly add to the size of the HMR. RSPA also notes that CAS numbers can be found in the EPA's list of hazardous substances in 40 CFR 302.4. Therefore, RSPA is not adopting the commenter's suggestion.

RSPA recognizes these commenters' concerns that synonyms of hazardous substances provide guidance to shippers in determining hazardous substances. However, because all synonyms are specifically listed as hazardous substances in Appendix A to § 172.101, RSPA is removing the synonym column to simplify the Table and the HMR.

B. Reporting Requirements

One of the goals of the President's Regulatory Reinvention Initiative was to decrease, as far as practical, the reports that are required to be submitted to the government. As proposed in the NPRM, RSPA is eliminating §§ 173.11 and 177.826, which require carriers and shippers of flammable cryogenic liquids in bulk packagings to register with RSPA. RSPA also is amending, as proposed, § 107.504 by decreasing the frequency that manufacturers of cargo tanks are required to register with RSPA from three years to six years. RSPA also is removing a requirement in § 107.111 that RSPA publish in the Federal Register a list of those persons who request party status to an exemption. This change will enable RSPA to expedite the processing of requests for party status to exemptions.

C. Unnecessary Sections

Part 110

§ 110.30(a)(4) Grant application. RSPA proposed to remove the requirement that applicants for training and planning grants provide a written statement explaining whether the State or Indian tribe assesses and collects fees on the transportation of hazardous materials and whether such fees are used solely to carry out purposes related to the transportation of hazardous materials. Several commenters opposed RSPA's decision to remove the provision in § 110.30(a)(4). The commenters stated that ''because of the Congressional mandate to review this information prior to the award of the training segment of the Grants, we believe, at a minimum, that RSPA cannot unilaterally eliminate this requirement without Congressional approval.'' RSPA believes that the effect on the hazardous materials grants program of removing § 110.30(a)(4) requires further study and, therefore, RSPA is not removing § 110.30(a)(4).

Part 172

Appendix C to Part 172 Dimensional Specifications for Recommended Placard Holder. This appendix provides specific dimensions for a recommended placard holder. Some commenters expressed concern in regard to RSPA's proposal to remove specifications for placard holders from the HMR. Commenters stated that the placard specification is widely used and beneficial in reducing the potential for loss of placards during transportation. Commenters believed that removal of the placard holder dimensional specifications would lead to more confusion and noncompliance, and recommended that RSPA retain the placard holder specifications. RSPA concurs with the commenters and is not removing the specifications for the placard holder and is not revising § 172.516 as proposed.

Part 173

§ 173.10 Tank car shipments. This section contains specific requirements for offerors of tank cars containing certain hazardous materials. RSPA proposed to remove this section because RSPA believed it to be inconsistent with current industry practice. One commenter disagreed with RSPA and stated that additional justification is needed before RSPA removes this section from the HMR. Upon further review, RSPA is not removing § 173.10 from the HMR. Corresponding changes were not proposed in § 174.204 or § 174.304, which contain similar requirements applicable to rail carriers and it would be inappropriate to remove only § 173.10. RSPA will reevaluate the need for these sections in a future rulemaking action.

§ 173.324 Ethyl methyl ether. This section provides non-bulk packaging requirements specific to ethyl methyl ether. Instead of having a specific packaging section for this material, RSPA is revising its packaging reference in Column (8B) of the HMT to read ''§ 173.201'' for non-bulk packaging authorizations and is removing § 173.324.

§ 173.451 Fissile materials—general requirements. This section states that fissile radioactive material packages must comply with requirements of §§ 173.457 through 173.459. RSPA believes this section is unnecessary and is removing it. In addition, a reference to § 173.451 contained in § 173.453 is removed.

§ 173.477 Approval for export shipments. This section sets forth procedures for obtaining an approval for export shipments of packages for which an International Atomic Energy Agency certificate of competent authority has been issued. RSPA is removing this section because the requirements for export shipments of hazardous materials, including radioactive materials, are specified in § 171.12.

§ 173.478 Notification to competent authorities for export shipments. This section requires shippers who export Type B quantities of Class 7 material to notify the competent authority of each country through which or into which the package is to be transported, prior to the first shipment. The shipper is required to submit copies of all relevant competent authority certificates. RSPA is removing this section because the requirements for export shipments of hazardous materials, including Class 7 material, are specified in § 171.12.

Part 174

§ 174.16 Removal and disposition of hazardous materials at destination. This section prescribes requirements for delivering hazardous materials to non-agency and agency stations and disposing of the materials in the event that they are not removed from a carrier's property by the consignee of the materials. RSPA proposed to remove § 174.16 because it is outdated and unnecessary. Two commenters requested that RSPA retain this section. They stated that removal of this section would increase the likelihood of unauthorized or illegal access to explosives and that the requirements of § 174.16 should be the minimum standard for carriers of explosives.

RSPA believes that the ramifications of removing this section from the HMR need further review and, therefore, has decided against removing § 174.16.

§ 174.20 Local or carrier restrictions. This section states that carriers may impose local restrictions when local conditions present an unsafe transportation environment. Also, § 174.20 states that carriers must report all carrier restrictions to the Bureau of Explosives. RSPA stated in the NPRM that it was proposing to remove § 174.20 because it believes that centralizing a list of all rail carrier restrictions should be an industry practice and not a regulatory requirement. Two commenters disagreed with RSPA's proposal to remove § 174.20, stating that the section is necessary for safety and that carriers should be allowed to impose local restrictions. RSPA believes that the effect of removing this section from the HMR on the railroad industry requires further study and, therefore, RSPA is not removing § 174.20 from the HMR.

§ 174.33 Lost or destroyed labels and placards./§ 176.33 Labels./§ 177.815 Lost or destroyed labels. These sections require carriers to maintain an adequate supply of labels and placards in case labels or placards become lost or destroyed. Several commenters were concerned that removing these sections would allow carriers to move hazardous materials packages without their proper labels, and recommended that RSPA retain these sections. RSPA disagrees. By removing these sections, RSPA is not allowing carriers to transport hazardous materials that are not in compliance with the HMR. As specified in the HMR, shippers may not offer and carriers may not transport hazardous materials unless they are properly packaged, marked, labeled and placarded. This basic requirement is not eliminated by removal of these sections. Accordingly, §§ 174.33, 176.33, and 177.815 are removed as proposed.

§ 174.107 Shipping days for Division 1.1 or 1.2 (Class A explosive) materials. This section prescribes requirements for carriers to designate days in which Division 1.1 or 1.2 materials are accepted and delivered. RSPA proposed to remove this section because it generally applies to a shipment of explosives by a rail express carrier which is no longer a common practice. One commenter stated that, though this is no longer a common practice, this section should be retained as the minimum standard for such shipments by rail. RSPA believes that, by removing unnecessary and redundant regulations, the HMR will be an easier set of regulations to follow, thus increasing compliance and safety. Section 174.107 is unnecessary because it addresses a type of transportation that is no longer a common practice. Therefore, RSPA is removing § 174.107 from the HMR.

§ 174.109 Non-agency shipments. This section provides requirements for Class 1 shipments accepted by a carrier at a non-agency station. RSPA is removing this section because it is no longer necessary.

§ 174.280 Division 2.3 (poisonous gas) materials with foodstuffs. This section provides a prohibition from transporting packages labeled POISON GAS with foodstuffs. RSPA proposed to remove this section because Division 2.3 materials present a hazard if inhaled but do not pose a significant hazard to foodstuffs or edible material. One commenter stated that contamination of foodstuffs by Division 2.3 material is possible when the integrity of the packaging is compromised. RSPA is not aware of any Division 2.3 material that would pose a significant hazard to foodstuffs; and this amendment is consistent with the regulations for highway transportation. No incidents have been reported involving the transportation of foodstuffs and Division 2.3 materials in the same motor vehicle. Therefore, RSPA is removing this section from the HMR as proposed.

§ 174.410 Special handling requirements for matches. This section provides special handling requirements for strike-anywhere matches. RSPA proposed to remove this section because it believes the section is no longer necessary based on current packaging requirements in Part 173 for strike-anywhere matches. One commenter stated that this section provides a minimum standard for the safe transport of strike-anywhere matches and suggested that it be retained. RSPA believes that this section is no longer necessary and is removing it from the HMR.

§ 174.450 Fires. This section addresses disposition of cotton or charcoal which has been damaged in a fire. One commenter opposed the proposed removal of this section and stated that if these mitigation requirements are not retained, carriers will not undertake these measures. RSPA disagrees and believes that the procedures are outmoded and inappropriate as a regulatory standard. Therefore, RSPA is removing this section from the HMR.

§ 174.510 Special handling requirements for nitrates. This section prescribes requirements for carriers of nitrates to ensure that the rail car is closed, clean and free of projections before loading the nitrates. RSPA is removing this section because the requirements of subpart C of part 174 adequately cover the loading of this material in a rail car.

§ 174.57 Cleaning cars./§ 174.515 Cleaning cars; potassium permanganate./ § 174.615(a) Cleaning cars. Sections 174.515 and 174.615(a) require that rail cars be cleaned following the carriage of potassium permanganate or Division 6.1 materials, respectively. Section 174.57 requires that rail cars carrying any hazardous material that has leaked from a package be carefully cleaned. RSPA proposed to remove §§ 174.515 and 174.615(a) because it believes that the requirements of subpart C of part 174 adequately cover the cleaning of rail cars that previously contained these materials. Commenters stated that all three of these sections should be retained in order to protect worker safety and cross-contamination of products. RSPA agrees that the general provisions of § 174.57, which require that all rail cars must be cleaned when there is leakage of hazardous materials, should be retained in order to assure proper cleaning of rail cars. However, RSPA believes that retention of § 174.57 makes §§ 174.515 and 174.615 redundant and, therefore, is removing these two sections from the HMR.

§ 174.840 Special loading and handling requirements for asbestos./ § 175.640 Special requirements for Class 9 (miscellaneous hazardous) material./ § 176.906 Stowage and handling of asbestos./ § 177.844 Class 9 (miscellaneous hazardous) materials. These sections prescribe requirements for minimization of occupational exposure to asbestos. RSPA proposed to eliminate these sections because it believes that other Federal regulations more than adequately address occupational exposures to workers. Commenters requested that RSPA retain these sections and stated that RSPA is required by Congress to promulgate regulations for the safe transportation of hazardous materials, including the loading, unloading and storage incidental thereto. One commenter stated that ''it is inappropriate for RSPA to withdraw its jurisdiction simply because another Federal agency regulation infringes on RSPA's area of responsibility.'' RSPA continues to believe that other Federal regulations more than appropriately address occupational exposures to workers. Therefore, there is no need for RSPA to maintain these additional requirements and RSPA is removing these sections from the HMR.

Part 176

§ 176.79 Spaces exposed to carbon monoxide or other hazardous vapors. This section prescribes occupational requirements for personnel exposed to carbon monoxide vapors. In the NPRM, RSPA stated that the provisions of § 176.79 are governed under 46 CFR Part 97. A commenter stated that 46 CFR Part 97 only applies to inspected vessels, i.e., those vessels required to be issued certificates of inspection under the provisions of 46 U.S.C., and not vessels of foreign nations. Therefore, the commenter stated that personnel on non-inspected and foreign vessels, which constitute the vast majority of vessels carrying hazardous materials in the U.S. waters, would not be afforded any protection from carbon monoxide vapors.

RSPA acknowledges that the requirements in 46 CFR Part 97 only apply to inspected vessels, but it is inappropriate to regulate under the HMR worker protection from carbon monoxide vapors being emitted from trucks or other mechanized equipment used aboard vessels. This issue is not unique to hazardous materials transportation. Therefore, RSPA is removing this section from the HMR.

Part 177

§ 177.811 Astray shipments. This section prescribes requirements for a package that has lost its label. The section states that a carrier must place a FLAMMABLE LIQUID label on a package that has lost its label. RSPA is removing the requirements of § 177.811 because current industry practices and compliance with Part 172 of the HMR (e.g., proper shipping name and identification number markings on packages) make it very unlikely that a carrier will have ''no knowledge'' of the contents of a package of hazardous materials.

§ 177.813 Inefficient containers. This section states that experience gained on damaged packages must be recorded by the Bureau of Explosives (BOE) to determine if a packaging should be prohibited from use. This action is no longer taken by the BOE; therefore, this section is removed.

§ 177.823 Marking and placarding of motor vehicles. RSPA received comments concerning the proposed removal of provisions for transportation of leaking cargo tanks in part 177. Several commenters stated that relocating the provisions for transportation of leaking cargo tanks from § 177.856 to § 177.823 would cause confusion since the heading of this section refers to marking and placarding of motor vehicles. RSPA is relocating the provisions for leaking cargo tanks from § 177.856 to § 177.823. However, in order to eliminate any confusion, RSPA is revising the heading of § 177.823 to read ''Movement of motor vehicles in emergency situations.''

§ 177.837(a) Class 3 (flammable) liquid materials. Paragraph (a) of this section requires that the engine of a motor vehicle must be turned off when the vehicle is being loaded with Class 3 materials. RSPA proposed to remove this restriction because it is no longer necessary and often not practical, especially for application to diesel engines during cold weather. Two commenters requested that RSPA retain the requirements stating that an operating motor vehicle engine represents an ignition source. Commenters also stated that National Fire Protection Standards require that the motor of a cargo tank motor vehicle be shut down throughout the transfer operations of flammable liquids. Two commenters supported the proposal and stated that it is very difficult to restart a diesel engine if it becomes too cold and keeping the engine running could facilitate the removal of the trailer in the event of an emergency.

The provision in paragraph (a) of § 177.837 applies to all motor vehicles loading or unloading flammable liquids including those transporting non-bulk packages, not just to cargo tank motor vehicles. Based on this broad application, RSPA believes that it is not necessary to shut off the engine of all motor vehicles loading or unloading non-bulk packages of flammable liquids. However, RSPA agrees with those commenters who stated that the engines of cargo tank motor vehicles carrying Class 3 material should be shut off during loading/unloading operations. Accordingly, RSPA is not removing paragraph (a) but is revising it so that it only applies to cargo tank motor vehicles.

§ 177.838 Class 4 materials, Class 5 and Division 4.2 materials. Section 177.838(d) prescribes requirements for ''loose or baled nitrate of soda bags'' and § 177.838(e) prescribes blocking and bracing requirements for ''strike-anywhere matches''. RSPA is removing § 177.838(d) because ''loose or baled nitrate of soda bags'' are no longer routinely transported and, therefore, it is unnecessary. RSPA is removing § 177.838(e) because these modal operational requirements are no longer necessary based on current packaging requirements for strike-anywhere matches.

§ 177.853 Transportation and delivery of shipments. RSPA proposed to remove paragraphs (b) and (c) of this section which prescribe general requirements on the movement of hazardous materials. The provisions of paragraph (a) were proposed to be moved to § 177.800. Two commenters stated that it is premature to remove paragraphs (b) and (c) until RSPA determines when transportation begins and ends. RSPA believes that removing paragraphs (b) and (c) does not impinge on its ability to determine the definition of ''in transportation.'' The provisions found in paragraphs (b) and (c) address areas that should be handled through responsible business practices and not regulatory requirements.

§ 177.855 Accidents; Class 1 (explosive) materials./ § 177.856 Accidents; Class 3 (flammable liquid) materials./§ 177.857 Accidents; Class 4 (flammable solid) and Class 5 (oxidizing) materials./§ 177.858 Accidents; Class 8 (corrosive) materials./§ 177.859 Accidents; Class 2 (gases) materials./§ 177.860 Accidents or leakage; Division 6.1 (poisonous) or Division 2.3 (poisonous gas) materials./ § 177.861 Accidents; Class 7 (radioactive) materials. These sections prescribe general guidance on emergency response activities. RSPA proposed to remove these sections because of the addition of the emergency response provisions in Part 172. Several commenters requested that RSPA retain these sections because these provisions should be in addition to, and not in lieu of, the emergency response information of Part 172. One commenter stated that in order to protect the hazardous materials industry from intrusion from other Federal and State agencies into the area of hazardous materials transportation, RSPA should retain these sections. One commenter, who agreed with RSPA's proposal to remove these sections, stated that responders probably do not use the provisions in these sections in an emergency situation.

RSPA disagrees with commenters who stated that these sections should be retained in order to keep other Federal and State agencies from regulating the actions to be taken in the event of a transportation-related incident involving hazardous materials. RSPA continues to believe that these sections may not provide appropriate required actions to protect the public or the environment. The emergency response information required to be carried with hazardous materials is a much better source of information relative to the initial mitigation actions to be taken. Most of these sections were written prior to current standards addressing emergency response operations. The

means and mechanisms of responding to hazardous materials incidents have evolved greatly since these sections were introduced into the HMR. The Environmental Protection Agency and the Occupational Safety and Health Administration have regulations addressing environmental clean-up and emergency response operations and have expertise in this area. Fire departments and other emergency response organizations are better equipped and trained to handle hazardous materials transportation incidents. In addition, these sections apply to motor carriers only. They do not apply to the emergency responders, other than motor carrier personnel, who are called upon to respond to hazardous materials transportation incidents. Based on the foregoing, RSPA is removing the accident mitigation provisions in §§ 177.855–177.861 from the HMR.

D. Duplicative Sections

The following is a listing of those sections that are removed from the HMR because they are duplicative or refer the reader to a section of general applicability. In removing the sections listed below, RSPA believes that no substantive regulatory requirements are being removed. For example, RSPA is removing §§ 174.480 and 174.580 because these requirements are already covered under § 174.680. Several commenters were confused by RSPA's proposal to remove some of these sections and believed that RSPA was actually removing regulatory requirements. This is not the case. RSPA is merely consolidating provisions of the HMR to make a smaller and less burdensome set of regulations.

List of Affected Sections

171.13 Emergency regulations.
173.314(h) Requirements for compressed gases in tank car tanks.
173.444 Labeling requirements.
173.446 Placarding requirements.
173.463 Packaging and shielding-testing for integrity.
174.7 Compliance and training.
174.12 Intermediate shippers and carriers.
174.45 Reporting hazardous materials incidents.
174.69 Removal of placards and car certifications after unloading.
174.100 Forbidden Class 1 (explosive) materials.
174.208 Rail cars, truck bodies, or trailers with fumigated or treated lading.
174.380 Class 3 (flammable liquid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.
174.430 Special handling requirements for Division 4.2 (pyroforic liquid) materials.
174.480 Class 4 (flammable solid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.
174.580 Division 5.1 (oxidizer) materials, with a subsidiary hazard of Division 6.1 (poisonous materials), with foodstuffs.
174.615 Cleaning cars.
174.800 Special handling requirements for Class 8 (corrosive) materials.
174.810 Special handling requirements for wet electric storage batteries.
175.45 Reporting hazardous materials incidents. (With applicable change to § 171.15 and 171.16)
176.76 (f), (g)(1),(4) Transport vehicles, freight containers, and portable tanks containing hazardous materials.
176.78(g), (4),(5) Use of powered-operated industrial trucks on board vessels.
176.331 Transportation of Class 3 (flammable) liquids with foodstuffs.
176.419 Class 4 (flammable solids) or Class 5 (oxidizers and organic peroxides) materials transported with foodstuffs.
176.800 General stowage requirements. (last sentence)
177.803 Export and import shipments by domestic carriers by motor vehicles.
177.805 Canadian shipments and packagings.
177.806 U.S. Government material.
177.807 Reporting hazardous materials incidents.
177.808 Connecting carrier shipments.
177.809 Carrier's material and supplies.
177.812 Containers required.
177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.
177.821(c) (d)(f) Hazardous materials forbidden or limited for transportation.
177.825 Routing and training requirements for Class 7 (radioactive) materials.
177.836 Nonexplosive material.
178.346–3 Structural integrity.
178.346–4 Joints.
178.346–5 Manhole assemblies.
178.346–6 Supports and anchoring.
178.346–7 Circumferential reinforcement.
178.346–8 Accident damage protection.
178.346–9 Pumps, piping, hoses and connections.
178.346–12 Gauging devices.
178.346–14 Marking.
178.346–15 Certification.
178.347–3 Structural integrity.
178.347–4 Joints.
178.347–6 Supports and anchoring.
178.347–7 Circumferential reinforcement.
178.347–8 Accident damage protection.
178.347–9 Pumps, piping, hoses and connections.
178.347–11 Outlets.
178.347–12 Gauging devices.
178.347–14 Marking.
178.347–15 Certification.
178.348–3 Structural Integrity.
178.348–4 Joints.
178.348–5 Manhole assemblies.
178.348–6 Supports and anchoring.
178.348–7 Circumferential reinforcement.
178.348–8 Accident Damage Protection.
178.348–11 Outlets.
178.348–12 Gauging devices.
178.348–14 Marking.
178.348–15 Certification.
179.100–2 Approval.
179.100–5 Bursting pressure.
179.100–11 Tank mounting.
179.100–22 Certificate of construction.
179.104 Special requirements for spec. 105A200–F tank car tanks.
179.104–1 Tanks built under these specifications must meet the requirements of §§ 179.100, 179.101, and when applicable §§ 179.102 and 179.104.
179.104–2 Type.
179.104–3 Tank mounting.
179.104–4 Welding.
179.106 [Reserved]
179.200–2 Approval.
179.200–5 Bursting pressure.
179.200–12 Tank mounting. See § 179.10.
179.200–20 Interior heater systems.
179.200–26 Certificate of construction.
179.202—179.202–22 [Reserved]
179.220–2 Approval.
179.220–5 Bursting pressure.
179.220–12 Tank mounting.
179.220–21 Interior heating systems.
179.220–27 Certificate of construction.
179.300–2 Approval.
179.300–5 Bursting pressure.
179.300–11 Tank mounting.
179.400–2 Approval.
179.400–6(a) Bursting and buckling pressure.
179.400–26 Certificate of construction.
179.500–2 Approval.
179.500–9 Tank mounting.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under

section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined the effective date of Federal preemption for these requirements is October 1, 1996.

This final rule removes unnecessary, obsolete and duplicative regulations governing the transportation of hazardous materials, and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 12778

Any interested person may petition RSPA's Administrator for reconsideration of this final rule within 30 days of publication of this rule in the Federal Register, in accordance with the procedures set forth at 49 CFR 106.35. Neither the filing of a petition for reconsideration nor any other administrative proceeding is required before the filing of a suit in court for review of this rule.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on persons subject to the HMR.

Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

Regulation Identifier Number (RIN)

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

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107, 171, 172, 173, 174, 175, 176, 177, 178, and 179 are amended to read as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

§ 107.111 [Amended]

2. In § 107.111, paragraph (d) is removed and reserved.

§ 107.504 [Amended]

3. In § 107.504(a) and (c), the phrase ''three years'' is removed and replaced with the phrase ''six years'' each place it appears.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.13 [Removed]

5. Section 171.13 is removed.

6. In § 171.15, paragraph (b), the introductory text is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

* * * * *

(b) Except for transportation by aircraft, each notice required by paragraph (a) of this section shall be given to the Department by telephone (toll-free) on 800–424–8802. Notice involving shipments transported by aircraft must be given to the nearest FAA Civil Aviation Security Office by telephone at the earliest practical

moment after each incident in place of the notice to the Department. Notice involving etiologic agents may be given to the Director, Centers for Disease Control, U.S. Public Health Service, Atlanta, Ga. (800) 232–0124, in place of the notice to the Department or (toll call) on 202–267–2675. Each notice must include the following information:

* * * * *

7. In § 171.16, paragraph (b) is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001; and, for incidents involving transportation by aircraft, a copy of the report shall also be sent to the FAA Civil Aviation Security Office nearest the location of the incident. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 172.101, paragraph (g) is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(g) *Column 6: Labels.* Column 6 specifies codes which represent the hazard warning labels required for a package filled with a material conforming to the associated hazard class and proper shipping name, unless the package is otherwise excepted from labeling by a provision in subpart E of this part, or part 173 of this subchapter. The first code is indicative of the primary hazard of the material. Additional label codes are indicative of subsidiary hazards. Provisions in § 172.402 may require that a label other than that specified in Column 6 be affixed to the package in addition to that specified in Column 6. No label is required for a material classed as a combustible liquid or for a Class 3 material that is reclassed as a combustible liquid. The codes contained in Column 6 are defined according to the following table:

LABEL SUBSTITUTION TABLE

Label code	Label name
1	Explosive.
1.1[1]	Explosive 1.1.[1]
1.2[1]	Explosive 1.2.[1]
1.3[1]	Explosive 1.3.[1]
1.4[1]	Explosive 1.4.[1]
1.5[1]	Explosive 1.5.[1]
1.6[1]	Explosive 1.6.[1]
2.1	Flammable Gas.
2.2	Non-Flammable Gas.
2.3	Poison Gas.
3	Flammable Liquid.
4.1	Flammable Solid.
4.2	Spontaneously Combustible.
4.3	Dangerous When Wet.
5.1	Oxidizer.
5.2	Organic Peroxide.
6.1 (I)[2]	Poison.
6.1 (II)[2]	Poison.
6.1 (III)[2]	Keep Away From Food.
6.2	Infectious Substance.
7	Radioactive.
8	Corrosive.
9	Class 9.

[1] Refers to the appropriate compatibility group letter.

[2] The packing group for a material is indicated in column 5 of the table.

* * * * *

§ 172.101 [Amended]

10. In § 172.101, the following changes are made to the Hazardous Materials Table:

a. In Column (5), the heading is revised to read ''PG''.

b. For the entry ''Ethyl methyl ether'', in Column (8B), the nonbulk packaging reference is revised to read ''201''.

c. In column (6) the heading is revised to read ''Label codes'', and:

(1) The word ''EXPLOSIVE'' is removed in each place it appears;

(2) The words ''FLAMMABLE GAS'' are removed and replaced with ''2.1'' in each place they appear;

(3) The words ''NONFLAMMABLE GAS'' are removed and replaced with ''2.2'' in each place they appear;

(4) The words ''POISON GAS'' are removed and replaced with ''2.3'' in each place they appear;

(5) The words ''FLAMMABLE LIQUID'' are removed and replaced with ''3'' in each place they appear;

(6) The words ''FLAMMABLE SOLID'' are removed and replaced with ''4.1'' in each place they appear;

(7) The words ''SPONTANEOUSLY COMBUSTIBLE'' are removed and replaced with ''4.2'' in each place they appear;

(8) The words ''DANGEROUS WHEN WET'' are removed and replaced with ''4.3'' in each place they appear;

(9) The word ''OXIDIZER'' is removed and replaced with ''5.1'' in each place it appears;

(10) The words ''ORGANIC PEROXIDE'' are removed and replaced with ''5.2'' in each place they appear;

(11) The word ''POISON'' is removed and replaced with ''6.1'' in each place it appears;

(12) The words ''KEEP AWAY FROM FOOD'' are removed and replaced with ''6.1'' in each place they appear;

(13) The words ''INFECTIOUS SUBSTANCE'' are removed and replaced with ''6.2'' in each place they appear;

(14) The word ''RADIOACTIVE'' is removed and replaced with ''7'' in each place it appears;

(15) The word ''CORROSIVE'' is removed and replaced with ''8'' in each place it appears;

(16) The word ''CLASS'' is removed in each place it appears; and

(17) For the entries ''Organic peroxide type B, liquid''; ''Organic peroxide type B, liquid, temperature controlled''; ''Organic peroxide type B, solid''; and ''Organic peroxide type B, solid, temperature controlled'' the label entries are revised to read ''5.2, 1''.

Appendix A to § 172.101—[Amended]

11. In Appendix A to § 172.101, in ''Table 1—Hazardous Substances Other Than Radionuclides'', the second column, ''Synonyms'', is removed.

§ 172.201 [Amended]

12. In § 172.201, paragraph (b) is removed and reserved.

13. In § 172.203, paragraph (i)(4) is added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(i) * * *

(4) The name of the shipper.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 173.11, § 173.324, § 173.444, § 173.446, § 173.451, § 173.463, § 173.477, § 173.478 [Removed]

15. Sections 173.11, 173.324, 173.444, 173.446, 173.451, 173.463, 173.477 and 173.478 are removed.

§ 173.314 [Amended]

16. In § 173.314, paragraph (h) is removed and reserved.

§ 173.453 [Amended]

17. In the introductory text of § 173.453, the wording ''§§ 173.451 through'' is revised to read ''§§ 173.457 and''.

PART 174—CARRIAGE BY RAIL

18. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 174.7, § 174.12, § 174.33, § 174.45, § 174.69, § 174.100, § 174.107, § 174.109, § 174.208, § 174.280, § 174.380 [Removed]

Subpart H (§§ 174.410–174.480)—[Removed]

Subpart I (§§ 174.510–174.580)—[Removed]

Subpart L (§§ 174.800 and 174.810)—[Removed]

Subpart M (§ 174.840)—[Removed]

19. Sections 174.7, 174.12, 174.33, 174.45, 174.69, 174.100, 174.107, 174.109, 174.208, 174.280, 174.380, Subpart H consisting of §§ 174.410, 174.430, 174.450, and 174.480, Subpart I consisting of §§ 174.510, 174.515, and 174.580, Subpart L consisting of §§ 174.800, and 174.810, and Subpart M consisting of § 174.840 are removed.

§ 174.615 [Amended]

20. In § 174.615, paragraph (a) is removed and reserved.

PART 175—CARRIAGE BY AIRCRAFT

21. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.45 and § 175.640 [Removed]

22. Sections 175.45 and 175.640 are removed.

PART 176—CARRIAGE BY VESSEL

23. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 176.33, § 176.79, § 176.331, § 176.419, § 176.906 [Removed]

24. Sections 176.33, 176.79, 176.331, 176.419, and 176.906 are removed.

§ 176.76 [Amended]

25. In § 176.76, paragraphs (f), (g)(1) and (g)(4) are removed, introductory text of paragraph (g) is redesignated as paragraph (f) introductory text, and paragraphs (g)(2), (g)(3), and (g)(5) are redesignated as paragraphs (f)(1), (f)(2), and (f)(3), respectively and paragraphs (h) and (i) are redesignated as paragraphs (g) and (h), respectively.

§ 176.78 [Amended]

26. In § 176.78, paragraphs (g)(4) and (g)(5) are removed and reserved.

27. In § 176.800, paragraph (a) is revised to read as follows:

§ 176.800 General stowage requirements.

(a) Each package required to have a Class 8 (corrosive) label thereon being transported on a vessel must be stowed clear of living quarters, and away from foodstuffs and cargo of an organic nature.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

28. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

29. In § 177.800, paragraph (d) is added to read as follows:

§ 177.800 Purpose and scope of this part and responsibility for compliance and training.

* * * * *

(d) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

§ 177.803, § 177.805, § 177.806, § 177.807, § 177.808, § 177.809, § 177.811, § 177.812, § 177.813, § 177.814, § 177.815, § 177.825, § 177.826, § 177.836, § 177.844, § 177.853, § 177.855, § 177.856, § 177.857, § 177.858, § 177.859, § 177.860, § 177.861 [Removed]

30. Sections 177.803, 177.805, 177.806, 177.807, 177.808, 177.809, 177.811, 177.812, 177.813, 177.814, 177.815, 177.825, 177.826, 177.836, 177.844, 177.853, 177.855, 177.856, 177.857, 177.858, 177.859, 177.860, and 177.861 are removed.

§ 177.821 [Amended]

31. In § 177.821, paragraphs (c), (d), (e), and (f) are removed.

32. In § 177.823, the section heading is revised and new paragraphs (b) and (c) are added to read as follows:

§ 177.823 Movement of motor vehicles in emergency situations.

* * * * *

(b) *Disposition of contents of cargo tank when unsafe to continue.* In the event of a leak in a cargo tank of such a character as to make further transportation unsafe, the leaking vehicle should be removed from the traveled portion of the highway and every available means employed for the safe disposal of the leaking material by preventing, so far as practicable, its spread over a wide area, such as by digging trenches to drain to a hole or depression in the ground, diverting the liquid away from streams or sewers if possible, or catching the liquid in containers if practicable. Smoking, and any other source of ignition, in the vicinity of a leaking cargo tank is not permitted.

(c) *Movement of leaking cargo tanks.* A leaking cargo tank may be transported only the minimum distance necessary to reach a place where the contents of the tank or compartment may be disposed of safely. Every available means must be utilized to prevent the leakage or spillage of the liquid upon the highway.

33. In § 177.837, paragraph (a) is revised to read as follows:

§ 177.837 Class 3 (flammable liquid) materials.

* * * * *

(a) *Engine stopped.* Unless the engine of a cargo tank motor vehicle is to be used for the operation of a pump, no Class 3 material shall be loaded into, or on, or unloaded from any cargo tank motor vehicle while the engine is running.

* * * * *

§ 177.838 [Amended]

34. In § 177.838, paragraphs (d) and (e) are removed and reserved.

PART 178—SPECIFICATIONS FOR PACKAGINGS

35. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.346–3, § 178.346–4, § 178.346–5, § 178.346–6, § 178.346–7, § 178.346–8, § 178.346–9, § 178.346–12, § 178.346–14, § 178.346–15, § 178.347–3, § 178.347–4, § 178.347–6, § 178.347–7, § 178.347–8, § 178.347–9, § 178.347–11, § 178.347–12, § 178.347–14, § 178.347–15, § 178.348–3, § 178.348–4, § 178.348–5, § 178.348–6, § 178.348–7, § 178.348–8, § 178.348–11, § 178.348–12, § 178.348–14, § 178.348–15 [Removed]

36. Sections 178.346–3, 178.346–4, 178.346–5, 178.346–6, 178.346–7, 178.346–8, 178.346–9, 178.346–12, 178.346–14, 178.346–15, 178.347–3, 178.347–4, 178.347–6, 178.347–7, 178.347–8, 178.347–9, 178.347–11,

178.347–12, 178.347–14, 178.347–15, 178.348–3, 178.348–4, 178.348–5, 178.348–6, 178.348–7, 178.348–8, 178.348–11, 178.348–12, 178.348–14, and 178.348–15 are removed.

Subpart J—[Amended]

37. In subpart J, § 178.346–10, § 178.346–11, and § 178.346–13 are redesignated as § 178.346–3 through § 178.346–5, respectively; §§ 178.347–5, 178.347–10, and 178.347–13 are redesignated as §§ 178.347–3 through 178.347–5, respectively; and §§ 178.348–9, 178.348–10, and 178.348–13 are redesignated as §§ 178.348–3 through 178.348–5, respectively.

PART 179—SPECIFICATIONS FOR TANK CARS

38. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 179.100–2, § 179.100–5, § 179.100–11, § 179.100–22, § 179.104, § 179.104–1, § 179.104–2, § 179.104–3, § 179.104–4, § 179.106–179.106–4, § 179.200–2, § 179.200–5, § 179.200–12, § 179.200–20, § 179.200–26, § 179.202–179.202–22, § 179.220–2, § 179.220–5, § 179.220–12, § 179.220–21, § 179.220–27, § 179.300–2, § 179.300–5, § 179.300–11, § 179.400–2, § 179.400–26, § 179.500–2, § 179.500–9 [Removed]

39. Sections 179.100–2, 179.100–5, 179.100–11, 179.100–22, 179.104, 179.104–1, 179.104–2, 179.104–3, 179.104–4, 179.106— 179.106–4, 179.200–2, 179.200–5, 179.200–12, 179.200–20, 179.200–26, 179.202—179.202–22, 179.220–2, 179.220–5, 179.220–12, 179.220–21, 179.220–27, 179.300–2, 179.300–5, 179.300–11, 179.400–2, 179.400–26, 179.500–2, and 179.500–9 are removed.

§ 179.400–6 [Amended]

40. In § 179.400–6, paragraph (a) is removed and reserved.

Issued in Washington, DC on April 1, 1996, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. 96–9555 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–60–P

federal register

Monday
April 29, 1996

Part VIII

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107, et al.

Elimination of Unnecessary and Duplicative Hazardous Materials Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 176, 177, 178, and 179

[Docket HM–222A; Admt. Nos. 107–37, 171–140, 172–147, 173–248, 174–82, 175–55, 176–39, 177–86, 178–112, and 179–51]

RIN 2137–AC69

Elimination of Unnecessary and Duplicative Hazardous Materials Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is removing unnecessary, obsolete, and duplicative regulations contained in the Hazardous Materials Regulations (HMR). In addition, RSPA is eliminating approximately 100 pages of the CFR by reformatting the Hazardous Materials Table and List of Hazardous Substances and Reportable Quantities. The intended effect of this action is to enhance compliance with the HMR by making them shorter and easier to use. This action responds to President Clinton's March 4, 1995 memorandum to heads of departments and agencies calling for a review of all agency regulations.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Gale or Jennifer K. Antonielli, (202) 366–8553; Office of Hazardous Materials Standards, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations to eliminate or revise those regulations that are outdated or in need of reform. In addition, the President directed front line regulators to ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations. In response to the President's directive, RSPA performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and associated procedural rules (49 CFR Parts 106, 107 and 110). In April and July, 1995, RSPA published notices in the Federal Register (60 FR 17049 and 60 FR 38888, respectively) that announced public meetings and requested comments on ways to improve the HMR and the kind and quality of services RSPA's customers expect. RSPA held 12 public meetings and received over 50 written comments in response to the Federal Register notices. Based on its review of the HMR and on written and oral comments received from the public on regulatory reform, RSPA issued a notice of proposed rulemaking (NPRM) on October 13, 1995, under Docket HM–222A (60 FR 53321). The NPRM proposed to eliminate over 100 sections of the HMR and to reformat the Hazardous Materials Table and Hazardous Substances Table. This is one of several rulemakings initiated by RSPA in response to its regulatory review, public meetings, and comments.

II. Summary of Amendments

RSPA received approximately 42 comments to the NPRM from chemical manufacturers and distributors, offerors, carriers, and packaging manufacturers, and State enforcement agencies. These commenters were generally supportive of RSPA's proposals in the NPRM. The primary concerns raised by commenters were about proposals to: (1) reformat the § 172.101 Hazardous Materials Table (HMT) and the List of Hazardous Substances and Reportable Quantities; (2) placard holder dimensional specifications; and (3) remove general guidance in Part 177 on emergency response activities for hazardous materials transportation accidents or incidents. Commenters also raised concerns that were beyond the scope of the proposed rule; however, they may be considered in future rulemakings.

RSPA believes this final rule will enhance compliance by reducing the number of regulations in the HMR and making them easier to use. As a result of having fewer pages, RSPA foresees the possibility of consolidating the two CFR volumes into one.

A. Reformatting the Hazardous Materials Table and Hazardous Substances Table

Several commenters stated that RSPA's proposal to reformat the label column of the HMT by identifying labels by class/division number rather than class name would make the HMR more difficult to use. One commenter added that adoption of the proposal would complicate the process of determining a label for a material. Commenters opposing this change stated that this proposal makes both teaching and applying the HMR more difficult and may create a significant burden on users of the HMR. One commenter stated that adding a table preceding the HMT to identify which label corresponds to a label code in Column (6) is impractical, especially for the infrequent user of the HMR. Another commenter added that this proposal would not enhance clarity of the HMR or the HMT because users of the HMR often overlook the instructions to the HMT and would be forced to flip between the two tables to determine the required labels. Some commenters claimed this proposal would increase the likelihood of errors. One commenter recommended that RSPA place the ''numerical identifier table'' within the margins of each page of the HMT for the reader's convenience. Another commenter suggested that if RSPA modifies the HMT, the agency should focus on reducing the size of the columns and adjusting the format. Another commenter stated that use of Roman numerals to distinguish poisons may be confused with Packing Group numerals.

Some commenters supported RSPA's proposal but recommended that RSPA inform and educate all affected persons, including emergency responders, of this change to ensure compliance with the HMR. One commenter recommended that RSPA revise the proposed heading of Column (6) to read ''Label code(s)'' to indicate that more than one label code may be specified for certain shipping descriptions.

RSPA disagrees with those commenters who stated that label codes would create confusion and lead to non-compliance and is reformatting the HMT to remove and replace Column (6) that specifies label names with a new Column (6) that specifies label codes. The numerical label codes directly correspond to numerical hazard classes and divisions which have been in place in the HMR for over five years. If a person is properly trained in accordance with subpart G of Part 172, there should be no confusion as to the class or required label for a given shipping description. In addition, through the distribution of more than four million Emergency Response Guidebooks, emergency responders have been informed of the UN hazard class system, and what the respective codes represent. RSPA believes that the benefits of eliminating over 80 pages of the CFR outweigh the minor inconvenience of using a label code rather than a label name. In the new Column (6) of the HMT, RSPA identifies the labels required by class or division number instead of spelling out the class name. For example, the POISON and KEEP AWAY FROM FOOD labels are identified as ''6.1'' and FLAMMABLE LIQUID label is identified as ''3''. Also, RSPA is adding a table to the

instructions to the HMT that clearly states which label is required for each numerical identifier.

Commenters were generally supportive of RSPA's proposal to remove the column of synonyms from appendix A to § 172.101. However, one commenter requested that RSPA reevaluate its proposal to remove the synonym column because many shippers refer to this column to determine a proper shipping name for a product. Another commenter recommended that RSPA replace the synonyms with Chemical Abstract System (CAS) Registry numbers because they provide a more reliable cross reference and are accessible to most users of the HMR. The commenter stated that CAS numbers would provide non-chemist shippers with valuable information to identify a hazardous substance. In addition to being beyond the scope of this rulemaking, RSPA believes that adding CAS numbers to the HMT would be of little value to the regulated community and would significantly add to the size of the HMR. RSPA also notes that CAS numbers can be found in the EPA's list of hazardous substances in 40 CFR 302.4. Therefore, RSPA is not adopting the commenter's suggestion.

RSPA recognizes these commenters' concerns that synonyms of hazardous substances provide guidance to shippers in determining hazardous substances. However, because all synonyms are specifically listed as hazardous substances in Appendix A to § 172.101, RSPA is removing the synonym column to simplify the Table and the HMR.

B. Reporting Requirements

One of the goals of the President's Regulatory Reinvention Initiative was to decrease, as far as practical, the reports that are required to be submitted to the government. As proposed in the NPRM, RSPA is eliminating §§ 173.11 and 177.826, which require carriers and shippers of flammable cryogenic liquids in bulk packagings to register with RSPA. RSPA also is amending, as proposed, § 107.504 by decreasing the frequency that manufacturers of cargo tanks are required to register with RSPA from three years to six years. RSPA also is removing a requirement in § 107.111 that RSPA publish in the Federal Register a list of those persons who request party status to an exemption. This change will enable RSPA to expedite the processing of requests for party status to exemptions.

C. Unnecessary Sections

Part 110

§ 110.30(a)(4) Grant application. RSPA proposed to remove the requirement that applicants for training and planning grants provide a written statement explaining whether the State or Indian tribe assesses and collects fees on the transportation of hazardous materials and whether such fees are used solely to carry out purposes related to the transportation of hazardous materials. Several commenters opposed RSPA's decision to remove the provision in § 110.30(a)(4). The commenters stated that ''because of the Congressional mandate to review this information prior to the award of the training segment of the Grants, we believe, at a minimum, that RSPA cannot unilaterally eliminate this requirement without Congressional approval.'' RSPA believes that the effect on the hazardous materials grants program of removing § 110.30(a)(4) requires further study and, therefore, RSPA is not removing § 110.30(a)(4).

Part 172

Appendix C to Part 172 Dimensional Specifications for Recommended Placard Holder. This appendix provides specific dimensions for a recommended placard holder. Some commenters expressed concern in regard to RSPA's proposal to remove specifications for placard holders from the HMR. Commenters stated that the placard specification is widely used and beneficial in reducing the potential for loss of placards during transportation. Commenters believed that removal of the placard holder dimensional specifications would lead to more confusion and noncompliance, and recommended that RSPA retain the placard holder specifications. RSPA concurs with the commenters and is not removing the specifications for the placard holder and is not revising § 172.516 as proposed.

Part 173

§ 173.10 Tank car shipments. This section contains specific requirements for offerors of tank cars containing certain hazardous materials. RSPA proposed to remove this section because RSPA believed it to be inconsistent with current industry practice. One commenter disagreed with RSPA and stated that additional justification is needed before RSPA removes this section from the HMR. Upon further review, RSPA is not removing § 173.10 from the HMR. Corresponding changes were not proposed in § 174.204 or § 174.304, which contain similar requirements applicable to rail carriers and it would be inappropriate to remove only § 173.10. RSPA will reevaluate the need for these sections in a future rulemaking action.

§ 173.324 Ethyl methyl ether. This section provides non-bulk packaging requirements specific to ethyl methyl ether. Instead of having a specific packaging section for this material, RSPA is revising its packaging reference in Column (8B) of the HMT to read ''§ 173.201'' for non-bulk packaging authorizations and is removing § 173.324.

§ 173.451 Fissile materials—general requirements. This section states that fissile radioactive material packages must comply with requirements of §§ 173.457 through 173.459. RSPA believes this section is unnecessary and is removing it. In addition, a reference to § 173.451 contained in § 173.453 is removed.

§ 173.477 Approval for export shipments. This section sets forth procedures for obtaining an approval for export shipments of packages for which an International Atomic Energy Agency certificate of competent authority has been issued. RSPA is removing this section because the requirements for export shipments of hazardous materials, including radioactive materials, are specified in § 171.12.

§ 173.478 Notification to competent authorities for export shipments. This section requires shippers who export Type B quantities of Class 7 material to notify the competent authority of each country through which or into which the package is to be transported, prior to the first shipment. The shipper is required to submit copies of all relevant competent authority certificates. RSPA is removing this section because the requirements for export shipments of hazardous materials, including Class 7 material, are specified in § 171.12.

Part 174

§ 174.16 Removal and disposition of hazardous materials at destination. This section prescribes requirements for delivering hazardous materials to non-agency and agency stations and disposing of the materials in the event that they are not removed from a carrier's property by the consignee of the materials. RSPA proposed to remove § 174.16 because it is outdated and unnecessary. Two commenters requested that RSPA retain this section. They stated that removal of this section would increase the likelihood of unauthorized or illegal access to explosives and that the requirements of § 174.16 should be the minimum standard for carriers of explosives.

RSPA believes that the ramifications of removing this section from the HMR need further review and, therefore, has decided against removing § 174.16.

§ 174.20 Local or carrier restrictions. This section states that carriers may impose local restrictions when local conditions present an unsafe transportation environment. Also, § 174.20 states that carriers must report all carrier restrictions to the Bureau of Explosives. RSPA stated in the NPRM that it was proposing to remove § 174.20 because it believes that centralizing a list of all rail carrier restrictions should be an industry practice and not a regulatory requirement. Two commenters disagreed with RSPA's proposal to remove § 174.20, stating that the section is necessary for safety and that carriers should be allowed to impose local restrictions. RSPA believes that the effect of removing this section from the HMR on the railroad industry requires further study and, therefore, RSPA is not removing § 174.20 from the HMR.

§ 174.33 Lost or destroyed labels and placards./§ 176.33 Labels./§ 177.815 Lost or destroyed labels. These sections require carriers to maintain an adequate supply of labels and placards in case labels or placards become lost or destroyed. Several commenters were concerned that removing these sections would allow carriers to move hazardous materials packages without their proper labels, and recommended that RSPA retain these sections. RSPA disagrees. By removing these sections, RSPA is not allowing carriers to transport hazardous materials that are not in compliance with the HMR. As specified in the HMR, shippers may not offer and carriers may not transport hazardous materials unless they are properly packaged, marked, labeled and placarded. This basic requirement is not eliminated by removal of these sections. Accordingly, §§ 174.33, 176.33, and 177.815 are removed as proposed.

§ 174.107 Shipping days for Division 1.1 or 1.2 (Class A explosive) materials. This section prescribes requirements for carriers to designate days in which Division 1.1 or 1.2 materials are accepted and delivered. RSPA proposed to remove this section because it generally applies to a shipment of explosives by a rail express carrier which is no longer a common practice. One commenter stated that, though this is no longer a common practice, this section should be retained as the minimum standard for such shipments by rail. RSPA believes that, by removing unnecessary and redundant regulations, the HMR will be an easier set of regulations to follow, thus increasing compliance and safety. Section 174.107 is unnecessary because it addresses a type of transportation that is no longer a common practice. Therefore, RSPA is removing § 174.107 from the HMR.

§ 174.109 Non-agency shipments. This section provides requirements for Class 1 shipments accepted by a carrier at a non-agency station. RSPA is removing this section because it is no longer necessary.

§ 174.280 Division 2.3 (poisonous gas) materials with foodstuffs. This section provides a prohibition from transporting packages labeled POISON GAS with foodstuffs. RSPA proposed to remove this section because Division 2.3 materials present a hazard if inhaled but do not pose a significant hazard to foodstuffs or edible material. One commenter stated that contamination of foodstuffs by Division 2.3 material is possible when the integrity of the packaging is compromised. RSPA is not aware of any Division 2.3 material that would pose a significant hazard to foodstuffs; and this amendment is consistent with the regulations for highway transportation. No incidents have been reported involving the transportation of foodstuffs and Division 2.3 materials in the same motor vehicle. Therefore, RSPA is removing this section from the HMR as proposed.

§ 174.410 Special handling requirements for matches. This section provides special handling requirements for strike-anywhere matches. RSPA proposed to remove this section because it believes the section is no longer necessary based on current packaging requirements in Part 173 for strike-anywhere matches. One commenter stated that this section provides a minimum standard for the safe transport of strike-anywhere matches and suggested that it be retained. RSPA believes that this section is no longer necessary and is removing it from the HMR.

§ 174.450 Fires. This section addresses disposition of cotton or charcoal which has been damaged in a fire. One commenter opposed the proposed removal of this section and stated that if these mitigation requirements are not retained, carriers will not undertake these measures. RSPA disagrees and believes that the procedures are outmoded and inappropriate as a regulatory standard. Therefore, RSPA is removing this section from the HMR.

§ 174.510 Special handling requirements for nitrates. This section prescribes requirements for carriers of nitrates to ensure that the rail car is closed, clean and free of projections before loading the nitrates. RSPA is removing this section because the requirements of subpart C of part 174 adequately cover the loading of this material in a rail car.

§ 174.57 Cleaning cars./§ 174.515 Cleaning cars; potassium permanganate./ § 174.615(a) Cleaning cars. Sections 174.515 and 174.615(a) require that rail cars be cleaned following the carriage of potassium permanganate or Division 6.1 materials, respectively. Section 174.57 requires that rail cars carrying any hazardous material that has leaked from a package be carefully cleaned. RSPA proposed to remove §§ 174.515 and 174.615(a) because it believes that the requirements of subpart C of part 174 adequately cover the cleaning of rail cars that previously contained these materials. Commenters stated that all three of these sections should be retained in order to protect worker safety and cross-contamination of products. RSPA agrees that the general provisions of § 174.57, which require that all rail cars must be cleaned when there is leakage of hazardous materials, should be retained in order to assure proper cleaning of rail cars. However, RSPA believes that retention of § 174.57 makes §§ 174.515 and 174.615 redundant and, therefore, is removing these two sections from the HMR.

§ 174.840 Special loading and handling requirements for asbestos./ § 175.640 Special requirements for Class 9 (miscellaneous hazardous) material./ § 176.906 Stowage and handling of asbestos./ § 177.844 Class 9 (miscellaneous hazardous) materials. These sections prescribe requirements for minimization of occupational exposure to asbestos. RSPA proposed to eliminate these sections because it believes that other Federal regulations more than adequately address occupational exposures to workers. Commenters requested that RSPA retain these sections and stated that RSPA is required by Congress to promulgate regulations for the safe transportation of hazardous materials, including the loading, unloading and storage incidental thereto. One commenter stated that ''it is inappropriate for RSPA to withdraw its jurisdiction simply because another Federal agency regulation infringes on RSPA's area of responsibility.'' RSPA continues to believe that other Federal regulations more than appropriately address occupational exposures to workers. Therefore, there is no need for RSPA to maintain these additional requirements and RSPA is removing these sections from the HMR.

Part 176

§ 176.79 Spaces exposed to carbon monoxide or other hazardous vapors. This section prescribes occupational requirements for personnel exposed to carbon monoxide vapors. In the NPRM, RSPA stated that the provisions of § 176.79 are governed under 46 CFR Part 97. A commenter stated that 46 CFR Part 97 only applies to inspected vessels, i.e., those vessels required to be issued certificates of inspection under the provisions of 46 U.S.C., and not vessels of foreign nations. Therefore, the commenter stated that personnel on non-inspected and foreign vessels, which constitute the vast majority of vessels carrying hazardous materials in the U.S. waters, would not be afforded any protection from carbon monoxide vapors.

RSPA acknowledges that the requirements in 46 CFR Part 97 only apply to inspected vessels, but it is inappropriate to regulate under the HMR worker protection from carbon monoxide vapors being emitted from trucks or other mechanized equipment used aboard vessels. This issue is not unique to hazardous materials transportation. Therefore, RSPA is removing this section from the HMR.

Part 177

§ 177.811 Astray shipments. This section prescribes requirements for a package that has lost its label. The section states that a carrier must place a FLAMMABLE LIQUID label on a package that has lost its label. RSPA is removing the requirements of § 177.811 because current industry practices and compliance with Part 172 of the HMR (e.g., proper shipping name and identification number markings on packages) make it very unlikely that a carrier will have ''no knowledge'' of the contents of a package of hazardous materials.

§ 177.813 Inefficient containers. This section states that experience gained on damaged packages must be recorded by the Bureau of Explosives (BOE) to determine if a packaging should be prohibited from use. This action is no longer taken by the BOE; therefore, this section is removed.

§ 177.823 Marking and placarding of motor vehicles. RSPA received comments concerning the proposed removal of provisions for transportation of leaking cargo tanks in part 177. Several commenters stated that relocating the provisions for transportation of leaking cargo tanks from § 177.856 to § 177.823 would cause confusion since the heading of this section refers to marking and placarding of motor vehicles. RSPA is relocating the provisions for leaking cargo tanks from § 177.856 to § 177.823. However, in order to eliminate any confusion, RSPA is revising the heading of § 177.823 to read ''Movement of motor vehicles in emergency situations.''

§ 177.837(a) Class 3 (flammable) liquid materials. Paragraph (a) of this section requires that the engine of a motor vehicle must be turned off when the vehicle is being loaded with Class 3 materials. RSPA proposed to remove this restriction because it is no longer necessary and often not practical, especially for application to diesel engines during cold weather. Two commenters requested that RSPA retain the requirements stating that an operating motor vehicle engine represents an ignition source. Commenters also stated that National Fire Protection Standards require that the motor of a cargo tank motor vehicle be shut down throughout the transfer operations of flammable liquids. Two commenters supported the proposal and stated that it is very difficult to restart a diesel engine if it becomes too cold and keeping the engine running could facilitate the removal of the trailer in the event of an emergency.

The provision in paragraph (a) of § 177.837 applies to all motor vehicles loading or unloading flammable liquids including those transporting non-bulk packages, not just to cargo tank motor vehicles. Based on this broad application, RSPA believes that it is not necessary to shut off the engine of all motor vehicles loading or unloading non-bulk packages of flammable liquids. However, RSPA agrees with those commenters who stated that the engines of cargo tank motor vehicles carrying Class 3 material should be shut off during loading/unloading operations. Accordingly, RSPA is not removing paragraph (a) but is revising it so that it only applies to cargo tank motor vehicles.

§ 177.838 Class 4 materials, Class 5 and Division 4.2 materials. Section 177.838(d) prescribes requirements for ''loose or baled nitrate of soda bags'' and § 177.838(e) prescribes blocking and bracing requirements for ''strike-anywhere matches''. RSPA is removing § 177.838(d) because ''loose or baled nitrate of soda bags'' are no longer routinely transported and, therefore, it is unnecessary. RSPA is removing § 177.838(e) because these modal operational requirements are no longer necessary based on current packaging requirements for strike-anywhere matches.

§ 177.853 Transportation and delivery of shipments. RSPA proposed to remove paragraphs (b) and (c) of this section which prescribe general requirements on the movement of hazardous materials. The provisions of paragraph (a) were proposed to be moved to § 177.800. Two commenters stated that it is premature to remove paragraphs (b) and (c) until RSPA determines when transportation begins and ends. RSPA believes that removing paragraphs (b) and (c) does not impinge on its ability to determine the definition of ''in transportation.'' The provisions found in paragraphs (b) and (c) address areas that should be handled through responsible business practices and not regulatory requirements.

§ 177.855 Accidents; Class 1 (explosive) materials./ § 177.856 Accidents; Class 3 (flammable liquid) materials./§ 177.857 Accidents; Class 4 (flammable solid) and Class 5 (oxidizing) materials./§ 177.858 Accidents; Class 8 (corrosive) materials./§ 177.859 Accidents; Class 2 (gases) materials./§ 177.860 Accidents or leakage; Division 6.1 (poisonous) or Division 2.3 (poisonous gas) materials./ § 177.861 Accidents; Class 7 (radioactive) materials. These sections prescribe general guidance on emergency response activities. RSPA proposed to remove these sections because of the addition of the emergency response provisions in Part 172. Several commenters requested that RSPA retain these sections because these provisions should be in addition to, and not in lieu of, the emergency response information of Part 172. One commenter stated that in order to protect the hazardous materials industry from intrusion from other Federal and State agencies into the area of hazardous materials transportation, RSPA should retain these sections. One commenter, who agreed with RSPA's proposal to remove these sections, stated that responders probably do not use the provisions in these sections in an emergency situation.

RSPA disagrees with commenters who stated that these sections should be retained in order to keep other Federal and State agencies from regulating the actions to be taken in the event of a transportation-related incident involving hazardous materials. RSPA continues to believe that these sections may not provide appropriate required actions to protect the public or the environment. The emergency response information required to be carried with hazardous materials is a much better source of information relative to the initial mitigation actions to be taken. Most of these sections were written prior to current standards addressing emergency response operations. The

means and mechanisms of responding to hazardous materials incidents have evolved greatly since these sections were introduced into the HMR. The Environmental Protection Agency and the Occupational Safety and Health Administration have regulations addressing environmental clean-up and emergency response operations and have expertise in this area. Fire departments and other emergency response organizations are better equipped and trained to handle hazardous materials transportation incidents. In addition, these sections apply to motor carriers only. They do not apply to the emergency responders, other than motor carrier personnel, who are called upon to respond to hazardous materials transportation incidents. Based on the foregoing, RSPA is removing the accident mitigation provisions in §§ 177.855–177.861 from the HMR.

D. Duplicative Sections

The following is a listing of those sections that are removed from the HMR because they are duplicative or refer the reader to a section of general applicability. In removing the sections listed below, RSPA believes that no substantive regulatory requirements are being removed. For example, RSPA is removing §§ 174.480 and 174.580 because these requirements are already covered under § 174.680. Several commenters were confused by RSPA's proposal to remove some of these sections and believed that RSPA was actually removing regulatory requirements. This is not the case. RSPA is merely consolidating provisions of the HMR to make a smaller and less burdensome set of regulations.

List of Affected Sections

171.13 Emergency regulations.
173.314(h) Requirements for compressed gases in tank car tanks.
173.444 Labeling requirements.
173.446 Placarding requirements.
173.463 Packaging and shielding-testing for integrity.
174.7 Compliance and training.
174.12 Intermediate shippers and carriers.
174.45 Reporting hazardous materials incidents.
174.69 Removal of placards and car certifications after unloading.
174.100 Forbidden Class 1 (explosive) materials.
174.208 Rail cars, truck bodies, or trailers with fumigated or treated lading.
174.380 Class 3 (flammable liquid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.
174.430 Special handling requirements for Division 4.2 (pyroforic liquid) materials.
174.480 Class 4 (flammable solid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.
174.580 Division 5.1 (oxidizer) materials, with a subsidiary hazard of Division 6.1 (poisonous materials), with foodstuffs.
174.615 Cleaning cars.
174.800 Special handling requirements for Class 8 (corrosive) materials.
174.810 Special handling requirements for wet electric storage batteries.
175.45 Reporting hazardous materials incidents. (With applicable change to § 171.15 and 171.16)
176.76 (f), (g)(1),(4) Transport vehicles, freight containers, and portable tanks containing hazardous materials.
176.78(g), (4),(5) Use of powered-operated industrial trucks on board vessels.
176.331 Transportation of Class 3 (flammable) liquids with foodstuffs.
176.419 Class 4 (flammable solids) or Class 5 (oxidizers and organic peroxides) materials transported with foodstuffs.
176.800 General stowage requirements. (last sentence)
177.803 Export and import shipments by domestic carriers by motor vehicles.
177.805 Canadian shipments and packagings.
177.806 U.S. Government material.
177.807 Reporting hazardous materials incidents.
177.808 Connecting carrier shipments.
177.809 Carrier's material and supplies.
177.812 Containers required.
177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.
177.821(c) (d)(f) Hazardous materials forbidden or limited for transportation.
177.825 Routing and training requirements for Class 7 (radioactive) materials.
177.836 Nonexplosive material.
178.346–3 Structural integrity.
178.346–4 Joints.
178.346–5 Manhole assemblies.
178.346–6 Supports and anchoring.
178.346–7 Circumferential reinforcement.
178.346–8 Accident damage protection.
178.346–9 Pumps, piping, hoses and connections.
178.346–12 Gauging devices.
178.346–14 Marking.
178.346–15 Certification.
178.347–3 Structural integrity.
178.347–4 Joints.
178.347–6 Supports and anchoring.
178.347–7 Circumferential reinforcement.
178.347–8 Accident damage protection.
178.347–9 Pumps, piping, hoses and connections.
178.347–11 Outlets.
178.347–12 Gauging devices.
178.347–14 Marking.
178.347–15 Certification.
178.348–3 Structural Integrity.
178.348–4 Joints.
178.348–5 Manhole assemblies.
178.348–6 Supports and anchoring.
178.348–7 Circumferential reinforcement.
178.348–8 Accident Damage Protection.
178.348–11 Outlets.
178.348–12 Gauging devices.
178.348–14 Marking.
178.348–15 Certification.
179.100–2 Approval.
179.100–5 Bursting pressure.
179.100–11 Tank mounting.
179.100–22 Certificate of construction.
179.104 Special requirements for spec. 105A200–F tank car tanks.
179.104–1 Tanks built under these specifications must meet the requirements of §§ 179.100, 179.101, and when applicable §§ 179.102 and 179.104.
179.104–2 Type.
179.104–3 Tank mounting.
179.104–4 Welding.
179.106 [Reserved]
179.200–2 Approval.
179.200–5 Bursting pressure.
179.200–12 Tank mounting. See § 179.10.
179.200–20 Interior heater systems.
179.200–26 Certificate of construction.
179.202—179.202–22 [Reserved]
179.220–2 Approval.
179.220–5 Bursting pressure.
179.220–12 Tank mounting.
179.220–21 Interior heating systems.
179.220–27 Certificate of construction.
179.300–2 Approval.
179.300–5 Bursting pressure.
179.300–11 Tank mounting.
179.400–2 Approval.
179.400–6(a) Bursting and buckling pressure.
179.400–26 Certificate of construction.
179.500–2 Approval.
179.500–9 Tank mounting.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under

section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined the effective date of Federal preemption for these requirements is October 1, 1996.

This final rule removes unnecessary, obsolete and duplicative regulations governing the transportation of hazardous materials, and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 12778

Any interested person may petition RSPA's Administrator for reconsideration of this final rule within 30 days of publication of this rule in the Federal Register, in accordance with the procedures set forth at 49 CFR 106.35. Neither the filing of a petition for reconsideration nor any other administrative proceeding is required before the filing of a suit in court for review of this rule.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on persons subject to the HMR.

Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

Regulation Identifier Number (RIN)

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

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107, 171, 172, 173, 174, 175, 176, 177, 178, and 179 are amended to read as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

§ 107.111 [Amended]

2. In § 107.111, paragraph (d) is removed and reserved.

§ 107.504 [Amended]

3. In § 107.504(a) and (c), the phrase ''three years'' is removed and replaced with the phrase ''six years'' each place it appears.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.13 [Removed]

5. Section 171.13 is removed.

6. In § 171.15, paragraph (b), the introductory text is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

* * * * *

(b) Except for transportation by aircraft, each notice required by paragraph (a) of this section shall be given to the Department by telephone (toll-free) on 800–424–8802. Notice involving shipments transported by aircraft must be given to the nearest FAA Civil Aviation Security Office by telephone at the earliest practical

moment after each incident in place of the notice to the Department. Notice involving etiologic agents may be given to the Director, Centers for Disease Control, U.S. Public Health Service, Atlanta, Ga. (800) 232–0124, in place of the notice to the Department or (toll call) on 202–267–2675. Each notice must include the following information:

* * * * *

7. In § 171.16, paragraph (b) is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001; and, for incidents involving transportation by aircraft, a copy of the report shall also be sent to the FAA Civil Aviation Security Office nearest the location of the incident. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 172.101, paragraph (g) is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(g) *Column 6: Labels.* Column 6 specifies codes which represent the hazard warning labels required for a package filled with a material conforming to the associated hazard class and proper shipping name, unless the package is otherwise excepted from labeling by a provision in subpart E of this part, or part 173 of this subchapter. The first code is indicative of the primary hazard of the material. Additional label codes are indicative of subsidiary hazards. Provisions in § 172.402 may require that a label other than that specified in Column 6 be affixed to the package in addition to that specified in Column 6. No label is required for a material classed as a combustible liquid or for a Class 3 material that is reclassed as a combustible liquid. The codes contained in Column 6 are defined according to the following table:

LABEL SUBSTITUTION TABLE

Label code	Label name
1	Explosive.
1.1[1]	Explosive 1.1.[1]
1.2[1]	Explosive 1.2.[1]
1.3[1]	Explosive 1.3.[1]
1.4[1]	Explosive 1.4.[1]
1.5[1]	Explosive 1.5.[1]
1.6[1]	Explosive 1.6.[1]
2.1	Flammable Gas.
2.2	Non-Flammable Gas.
2.3	Poison Gas.
3	Flammable Liquid.
4.1	Flammable Solid.
4.2	Spontaneously Combustible.
4.3	Dangerous When Wet.
5.1	Oxidizer.
5.2	Organic Peroxide.
6.1 (I)[2]	Poison.
6.1 (II)[2]	Poison.
6.1 (III)[2]	Keep Away From Food.
6.2	Infectious Substance.
7	Radioactive.
8	Corrosive.
9	Class 9.

[1] Refers to the appropriate compatibility group letter.

[2] The packing group for a material is indicated in column 5 of the table.

* * * * *

§ 172.101 [Amended]

10. In § 172.101, the following changes are made to the Hazardous Materials Table:

a. In Column (5), the heading is revised to read ''PG''.

b. For the entry ''Ethyl methyl ether'', in Column (8B), the nonbulk packaging reference is revised to read ''201''.

c. In column (6) the heading is revised to read ''Label codes'', and:

(1) The word ''EXPLOSIVE'' is removed in each place it appears;

(2) The words ''FLAMMABLE GAS'' are removed and replaced with ''2.1'' in each place they appear;

(3) The words ''NONFLAMMABLE GAS'' are removed and replaced with ''2.2'' in each place they appear;

(4) The words ''POISON GAS'' are removed and replaced with ''2.3'' in each place they appear;

(5) The words ''FLAMMABLE LIQUID'' are removed and replaced with ''3'' in each place they appear;

(6) The words ''FLAMMABLE SOLID'' are removed and replaced with ''4.1'' in each place they appear;

(7) The words ''SPONTANEOUSLY COMBUSTIBLE'' are removed and replaced with ''4.2'' in each place they appear;

(8) The words ''DANGEROUS WHEN WET'' are removed and replaced with ''4.3'' in each place they appear;

(9) The word ''OXIDIZER'' is removed and replaced with ''5.1'' in each place it appears;

(10) The words ''ORGANIC PEROXIDE'' are removed and replaced with ''5.2'' in each place they appear;

(11) The word ''POISON'' is removed and replaced with ''6.1'' in each place it appears;

(12) The words ''KEEP AWAY FROM FOOD'' are removed and replaced with ''6.1'' in each place they appear;

(13) The words ''INFECTIOUS SUBSTANCE'' are removed and replaced with ''6.2'' in each place they appear;

(14) The word ''RADIOACTIVE'' is removed and replaced with ''7'' in each place it appears;

(15) The word ''CORROSIVE'' is removed and replaced with ''8'' in each place it appears;

(16) The word ''CLASS'' is removed in each place it appears; and

(17) For the entries ''Organic peroxide type B, liquid''; ''Organic peroxide type B, liquid, temperature controlled''; ''Organic peroxide type B, solid''; and ''Organic peroxide type B, solid, temperature controlled'' the label entries are revised to read ''5.2, 1''.

Appendix A to § 172.101—[Amended]

11. In Appendix A to § 172.101, in ''Table 1—Hazardous Substances Other Than Radionuclides'', the second column, ''Synonyms'', is removed.

§ 172.201 [Amended]

12. In § 172.201, paragraph (b) is removed and reserved.

13. In § 172.203, paragraph (i)(4) is added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(i) * * *

(4) The name of the shipper.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 173.11, § 173.324, § 173.444, § 173.446, § 173.451, § 173.463, § 173.477, § 173.478 [Removed]

15. Sections 173.11, 173.324, 173.444, 173.446, 173.451, 173.463, 173.477 and 173.478 are removed.

§ 173.314 [Amended]

16. In § 173.314, paragraph (h) is removed and reserved.

§ 173.453 [Amended]

17. In the introductory text of § 173.453, the wording ''§§ 173.451 through'' is revised to read ''§§ 173.457 and''.

PART 174—CARRIAGE BY RAIL

18. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 174.7, § 174.12, § 174.33, § 174.45, § 174.69, § 174.100, § 174.107, § 174.109, § 174.208, § 174.280, § 174.380 [Removed]

Subpart H (§§ 174.410–174.480)—[Removed]

Subpart I (§§ 174.510–174.580)—[Removed]

Subpart L (§§ 174.800 and 174.810)—[Removed]

Subpart M (§ 174.840)—[Removed]

19. Sections 174.7, 174.12, 174.33, 174.45, 174.69, 174.100, 174.107, 174.109, 174.208, 174.280, 174.380, Subpart H consisting of §§ 174.410, 174.430, 174.450, and 174.480, Subpart I consisting of §§ 174.510, 174.515, and 174.580, Subpart L consisting of §§ 174.800, and 174.810, and Subpart M consisting of § 174.840 are removed.

§ 174.615 [Amended]

20. In § 174.615, paragraph (a) is removed and reserved.

PART 175—CARRIAGE BY AIRCRAFT

21. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.45 and § 175.640 [Removed]

22. Sections 175.45 and 175.640 are removed.

PART 176—CARRIAGE BY VESSEL

23. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 176.33, § 176.79, § 176.331, § 176.419, § 176.906 [Removed]

24. Sections 176.33, 176.79, 176.331, 176.419, and 176.906 are removed.

§ 176.76 [Amended]

25. In § 176.76, paragraphs (f), (g)(1) and (g)(4) are removed, introductory text of paragraph (g) is redesignated as paragraph (f) introductory text, and paragraphs (g)(2), (g)(3), and (g)(5) are redesignated as paragraphs (f)(1), (f)(2), and (f)(3), respectively and paragraphs (h) and (i) are redesignated as paragraphs (g) and (h), respectively.

§ 176.78 [Amended]

26. In § 176.78, paragraphs (g)(4) and (g)(5) are removed and reserved.

27. In § 176.800, paragraph (a) is revised to read as follows:

§ 176.800 General stowage requirements.

(a) Each package required to have a Class 8 (corrosive) label thereon being transported on a vessel must be stowed clear of living quarters, and away from foodstuffs and cargo of an organic nature.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

28. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

29. In § 177.800, paragraph (d) is added to read as follows:

§ 177.800 Purpose and scope of this part and responsibility for compliance and training.

* * * * *

(d) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

§ 177.803, § 177.805, § 177.806, § 177.807, § 177.808, § 177.809, § 177.811, § 177.812, § 177.813, § 177.814, § 177.815, § 177.825, § 177.826, § 177.836, § 177.844, § 177.853, § 177.855, § 177.856, § 177.857, § 177.858, § 177.859, § 177.860, § 177.861 [Removed]

30. Sections 177.803, 177.805, 177.806, 177.807, 177.808, 177.809, 177.811, 177.812, 177.813, 177.814, 177.815, 177.825, 177.826, 177.836, 177.844, 177.853, 177.855, 177.856, 177.857, 177.858, 177.859, 177.860, and 177.861 are removed.

§ 177.821 [Amended]

31. In § 177.821, paragraphs (c), (d), (e), and (f) are removed.

32. In § 177.823, the section heading is revised and new paragraphs (b) and (c) are added to read as follows:

§ 177.823 Movement of motor vehicles in emergency situations.

* * * * *

(b) *Disposition of contents of cargo tank when unsafe to continue.* In the event of a leak in a cargo tank of such a character as to make further transportation unsafe, the leaking vehicle should be removed from the traveled portion of the highway and every available means employed for the safe disposal of the leaking material by preventing, so far as practicable, its spread over a wide area, such as by digging trenches to drain to a hole or depression in the ground, diverting the liquid away from streams or sewers if possible, or catching the liquid in containers if practicable. Smoking, and any other source of ignition, in the vicinity of a leaking cargo tank is not permitted.

(c) *Movement of leaking cargo tanks.* A leaking cargo tank may be transported only the minimum distance necessary to reach a place where the contents of the tank or compartment may be disposed of safely. Every available means must be utilized to prevent the leakage or spillage of the liquid upon the highway.

33. In § 177.837, paragraph (a) is revised to read as follows:

§ 177.837 Class 3 (flammable liquid) materials.

* * * * *

(a) *Engine stopped.* Unless the engine of a cargo tank motor vehicle is to be used for the operation of a pump, no Class 3 material shall be loaded into, or on, or unloaded from any cargo tank motor vehicle while the engine is running.

* * * * *

§ 177.838 [Amended]

34. In § 177.838, paragraphs (d) and (e) are removed and reserved.

PART 178—SPECIFICATIONS FOR PACKAGINGS

35. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.346–3, § 178.346–4, § 178.346–5, § 178.346–6, § 178.346–7, § 178.346–8, § 178.346–9, § 178.346–12, § 178.346–14, § 178.346–15, § 178.347–3, § 178.347–4, § 178.347–6, § 178.347–7, § 178.347–8, § 178.347–9, § 178.347–11, § 178.347–12, § 178.347–14, § 178.347–15, § 178.348–3, § 178.348–4, § 178.348–5, § 178.348–6, § 178.348–7, § 178.348–8, § 178.348–11, § 178.348–12, § 178.348–14, § 178.348–15 [Removed]

36. Sections 178.346–3, 178.346–4, 178.346–5, 178.346–6, 178.346–7, 178.346–8, 178.346–9, 178.346–12, 178.346–14, 178.346–15, 178.347–3, 178.347–4, 178.347–6, 178.347–7, 178.347–8, 178.347–9, 178.347–11,

178.347–12, 178.347–14, 178.347–15, 178.348–3, 178.348–4, 178.348–5, 178.348–6, 178.348–7, 178.348–8, 178.348–11, 178.348–12, 178.348–14, and 178.348–15 are removed.

Subpart J—[Amended]

37. In subpart J, § 178.346–10, § 178.346–11, and § 178.346–13 are redesignated as § 178.346–3 through § 178.346–5, respectively; §§ 178.347–5, 178.347–10, and 178.347–13 are redesignated as §§ 178.347–3 through 178.347–5, respectively; and §§ 178.348–9, 178.348–10, and 178.348–13 are redesignated as §§ 178.348–3 through 178.348–5, respectively.

PART 179—SPECIFICATIONS FOR TANK CARS

38. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 179.100–2, § 179.100–5, § 179.100–11, § 179.100–22, § 179.104, § 179.104–1, § 179.104–2, § 179.104–3, § 179.104–4, § 179.106–179.106–4, § 179.200–2, § 179.200–5, § 179.200–12, § 179.200–20, § 179.200–26, § 179.202–179.202–22, § 179.220–2, § 179.220–5, § 179.220–12, § 179.220–21, § 179.220–27, § 179.300–2, § 179.300–5, § 179.300–11, § 179.400–2, § 179.400–26, § 179.500–2, § 179.500–9 [Removed]

39. Sections 179.100–2, 179.100–5, 179.100–11, 179.100–22, 179.104, 179.104–1, 179.104–2, 179.104–3, 179.104–4, 179.106— 179.106–4, 179.200–2, 179.200–5, 179.200–12, 179.200–20, 179.200–26, 179.202—179.202–22, 179.220–2, 179.220–5, 179.220–12, 179.220–21, 179.220–27, 179.300–2, 179.300–5, 179.300–11, 179.400–2, 179.400–26, 179.500–2, and 179.500–9 are removed.

§ 179.400–6 [Amended]

40. In § 179.400–6, paragraph (a) is removed and reserved.

Issued in Washington, DC on April 1, 1996, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. 96–9555 Filed 4–26–96; 8:45 am]

BILLING CODE 4910–60–P

federal register

Monday
April 29, 1996

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Harvest Information Program: Participating States; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD73

Migratory Bird Harvest Information Program; Participating States for the 1996–97 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) herein proposes to amend the Migratory Bird Harvest Information Program (hereinafter Program) regulations. The Service plans to add Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont (beginning with the 1996–97 hunting season) to the list of participating States. This regulatory action will continue to require all licensed hunters who hunt migratory game birds in participating States to register as migratory game bird hunters and provide their name, address, and date of birth to the State licensing authority. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds in participating States. The quality and extent of information about harvests of migratory game birds must be improved in order to better manage these populations. Hunters' names and addresses are necessary to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the Service will conduct the harvest surveys.

DATES: The written comment period for the proposed rule will end on May 29, 1996.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028. Comments received will be available for public inspection during normal business hours in Building 158, 10815 Loblolly Pine Drive (Gate 4, Patuxent Environmental Science Center), Laurel, Maryland 20708–4028.

FOR FURTHER INFORMATION CONTACT: Larry J. Hindman, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, P.O. Box 68, Wye Mills, Maryland 21679, (410) 827–8612, FAX (410) 827–5186.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to expand the Program to include the States of Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont beginning in the 1996–97 hunting season.

Background

The purpose of this cooperative Program is to annually obtain a nationwide sample frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys. State wildlife agencies will provide the sample frame by annually collecting the name, address, and date of birth of each licensed migratory bird hunter in the State. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter provide a brief summary of his or her migratory bird hunting activity for the previous year. States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published in the June 24, 1991, Federal Register (56 FR 28812). A final rule that established the Program and initiated a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published in the March 19, 1993, Federal Register (58 FR 15093). The pilot phase was completed following the 1993–94 migratory bird hunting seasons in California, Missouri, and South Dakota.

A State/Federal technical group was formed to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Changes incorporated into the Program as a result of the technical group's evaluation were specified in a final rule, published in the October 21, 1994, Federal Register (59 FR 53334), that initiated the implementation phase of the Program.

Currently, all licensed hunters who hunt migratory game birds in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on or attached to the annual State hunting license or on a State-specific supplementary permit. The State may charge hunters a handling fee to compensate hunting-license agents and to cover the State's administrative costs for the Program.

The State/Federal technical group continues to evaluate the Program to determine the adequacy and timeliness of the sample frame and the time burden, cost, and other impacts on hunters, State license agents, State wildlife agencies, and the Service. Emphasis is currently on the time requirement for the sample frame and on alternative survey methods for special groups of unlicensed hunters (e.g., junior and senior hunters).

The Service's survey design calls for hunting-record forms to be distributed to hunters selected for the survey before they forget the details of their hunts. Because of this design requirement, States have only a short time to obtain hunter names and addresses from license vendors and to provide those names and addresses to the Service. Currently, participating States must send the required information to the Service within 30 calendar days of issuance of the hunting license or permit.

The Service has requested the cooperation of participating States to facilitate obtaining harvest estimates for hunters who are exempted from a permit requirement and those that are also exempted from State licensing requirements. This includes several categories of hunters such as junior hunters, senior hunters, landowners, and other special categories. Because exemptions and the methods for obtaining harvest estimates for exempt groups vary from State to State, the Service will incorporate these methods into individual memoranda of understanding with participating States.

Excluding from the Program those hunters who are not required to obtain an annual State hunting license also excludes their harvest from the estimates. The level of importance of the excluded harvest on the resulting estimates depends on how many hunters are excluded and on the number of birds they bag. If the level of importance is significant, excluding these hunters will result in serious bias. Minimum survey standards are being developed for exempted categories. States may require exempted hunters to obtain permits (e.g., Maryland required exempted hunters to obtain permits upon entry to the Program in 1994).

The Service previously stated that States will continue to be added to the Program until all States participate in 1998. A suggested implementation schedule was published in the October 21, 1994, Federal Register (59 FR 53334), and was revised in a final rule

published in the August 18, 1995, Federal Register (59 FR 43318). Three States (Arkansas, North Carolina, and Wisconsin) have requested one-year delays to enable them to implement improved licensing systems to better accommodate the Program.

Proposed Modifications to the Program

In addition to implementation of the Program in Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont, the Service proposes to modify the Program's implementation schedule by granting one-year delays to Arkansas, North Carolina, and Wisconsin.

NEPA Consideration

The establishment of the Harvest Information Program and options have been considered in the ''Environmental Assessment: Migratory Bird Harvest Information Program.'' Copies of this document are available from the Service at the address indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Regulatory Flexibility Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded that the rule would 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.*). This rule will eventually affect about 3–5 million migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates to the State licensing authority. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds.

The States may require a handling fee to cover their administrative costs. Many of the State hunting-license vendors are small entities, but this rule should not economically impact those vendors. Only migratory game bird hunters, individuals, would be required to provide this information, so this rule should not adversely affect small entities.

Collection of Information: Migratory Bird Harvest Information Program

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the U.S. Fish and Wildlife Service has received approval for this collection of information, with approval number 1018–0015, with the expiration date of August 31, 1998.

The information to be collected includes: the name, address, and date of birth of each licensed migratory bird hunter in each participating State. Hunters' names, addresses, and other information will be used to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. The Service needs and uses the information to improve the quality and extent of information about harvests of migratory game birds in order to better manage these populations.

All information is to be collected once annually from licensed migratory bird hunters in participating States by the State license authority. Participating States are required to forward the hunter information to the Service within 30 calendar days of license or permit issuance. Annual reporting and record keeping burden for this collection of information is estimated to average 0.015 hours per response for 1,301,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 19,515 hours. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Service Information Collection Clearance Officer, ms 224—ARLSQ, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

The Department considers public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

(2) Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(4) Minimizing the burden or the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not effect the deadline for the public to comment to the Department on the proposed regulations.

Executive Order 12866

This rule was not subject to OMB review under Executive Order 12866.

Executive Order 12612 - Federalism

The regulations do not have significant Federalism effects as provided in Executive Order 12612. Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. State harvest surveys presently cannot provide adequate national estimates of migratory game bird harvests for the following reasons: (1) some States do not now conduct annual harvest surveys or maintain accessible lists of hunter names and addresses; (2) comparable information is not available from all States because States have different survey procedures; (3) currently, many State license lists are not available in time to permit distribution of hunter records early in the hunting season; and (4) budget constraints often prevent States from conducting harvest surveys during certain years or could cause some States to eliminate them completely.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State Governments, or intrude on State policy or administration. Therefore, these regulations do not have significant Federalism effects and do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. In fact, the Service would cooperate with States in providing special surveys to meet mutual management needs, and increased cooperation between Federal and State agencies would reduce duplication of survey efforts.

These rules do not constitute a significant regulatory action as defined by Executive Order 12866, therefore an assessment of their effects on State

governments, under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), is not required. The States may require a handling fee from licensed migratory bird hunters to cover the administrative costs of implementing the Program, thus these rules will not have a significant economic impact on the States.

Executive Order 12360 - Taking of Individual Property Rights

Executive Order 12360 discussed guidelines for the taking of individual property rights. These rules, authorized by the Migratory Bird Treaty Act, do not affect any constitutionally-protected property rights. These rules would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Authorship

The primary author of this rule is Larry J. Hindman, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and record keeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR part 20 is proposed to be amended as set forth below.

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

2. Section 20.20 is revised to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) *Information collection requirements.* The collections of information contained in § 20.20 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The information will be used to provide a sampling frame for the national Migratory Bird Harvest Survey. Response is required from licensed hunters to obtain the benefit of hunting migratory game birds. Public reporting burden for this information is estimated to average 0.015 hours per response for 1,301,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total annual reporting and record keeping burden for this collection is estimated to be 19,515 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, MS-224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

(b) *General provisions.* Each person hunting migratory game birds in Alabama, California, Georgia, Idaho, Illinois, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, and Vermont shall have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the respective State hunting licensing authority and shall have on his or her person evidence, provided by that State, of compliance with this requirement.

(c) *Tribal exemptions.* Nothing in paragraph (b) shall apply to hunters on Federal Indian Reservations or to tribal members hunting on ceded lands.

(d) *State exemptions.* Nothing in paragraph (b) shall apply to those hunters who are exempted from State-licensing requirements in the State in which they are hunting.

(e) *Implementation schedule.* The Service is continuing to implement this Program over the next 2-year period from 1997–1998, which will incorporate approximately 1.5 million additional migratory bird hunters. It is proposed that the States participate on or before the following schedule:

1997—Arizona, Colorado, Florida, Kentucky, North Carolina, Ohio, South Carolina, Texas, and Virginia.

1998—Alaska, Arkansas, Connecticut, Delaware, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

Dated: March 25, 1996

Robert P. Davison

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–10524 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–55–F

federal register

Monday
April 29, 1996

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Harvest Information Program: Participating States; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD73

Migratory Bird Harvest Information Program; Participating States for the 1996–97 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) herein proposes to amend the Migratory Bird Harvest Information Program (hereinafter Program) regulations. The Service plans to add Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont (beginning with the 1996–97 hunting season) to the list of participating States. This regulatory action will continue to require all licensed hunters who hunt migratory game birds in participating States to register as migratory game bird hunters and provide their name, address, and date of birth to the State licensing authority. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds in participating States. The quality and extent of information about harvests of migratory game birds must be improved in order to better manage these populations. Hunters' names and addresses are necessary to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the Service will conduct the harvest surveys.

DATES: The written comment period for the proposed rule will end on May 29, 1996.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028. Comments received will be available for public inspection during normal business hours in Building 158, 10815 Loblolly Pine Drive (Gate 4, Patuxent Environmental Science Center), Laurel, Maryland 20708–4028.

FOR FURTHER INFORMATION CONTACT: Larry J. Hindman, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, P.O. Box 68, Wye Mills, Maryland 21679, (410) 827–8612, FAX (410) 827–5186.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to expand the Program to include the States of Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont beginning in the 1996–97 hunting season.

Background

The purpose of this cooperative Program is to annually obtain a nationwide sample frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys. State wildlife agencies will provide the sample frame by annually collecting the name, address, and date of birth of each licensed migratory bird hunter in the State. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter provide a brief summary of his or her migratory bird hunting activity for the previous year. States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published in the June 24, 1991, Federal Register (56 FR 28812). A final rule that established the Program and initiated a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published in the March 19, 1993, Federal Register (58 FR 15093). The pilot phase was completed following the 1993–94 migratory bird hunting seasons in California, Missouri, and South Dakota.

A State/Federal technical group was formed to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Changes incorporated into the Program as a result of the technical group's evaluation were specified in a final rule, published in the October 21, 1994, Federal Register (59 FR 53334), that initiated the implementation phase of the Program.

Currently, all licensed hunters who hunt migratory game birds in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on or attached to the annual State hunting license or on a State-specific supplementary permit. The State may charge hunters a handling fee to compensate hunting-license agents and to cover the State's administrative costs for the Program.

The State/Federal technical group continues to evaluate the Program to determine the adequacy and timeliness of the sample frame and the time burden, cost, and other impacts on hunters, State license agents, State wildlife agencies, and the Service. Emphasis is currently on the time requirement for the sample frame and on alternative survey methods for special groups of unlicensed hunters (e.g., junior and senior hunters).

The Service's survey design calls for hunting-record forms to be distributed to hunters selected for the survey before they forget the details of their hunts. Because of this design requirement, States have only a short time to obtain hunter names and addresses from license vendors and to provide those names and addresses to the Service. Currently, participating States must send the required information to the Service within 30 calendar days of issuance of the hunting license or permit.

The Service has requested the cooperation of participating States to facilitate obtaining harvest estimates for hunters who are exempted from a permit requirement and those that are also exempted from State licensing requirements. This includes several categories of hunters such as junior hunters, senior hunters, landowners, and other special categories. Because exemptions and the methods for obtaining harvest estimates for exempt groups vary from State to State, the Service will incorporate these methods into individual memoranda of understanding with participating States.

Excluding from the Program those hunters who are not required to obtain an annual State hunting license also excludes their harvest from the estimates. The level of importance of the excluded harvest on the resulting estimates depends on how many hunters are excluded and on the number of birds they bag. If the level of importance is significant, excluding these hunters will result in serious bias. Minimum survey standards are being developed for exempted categories. States may require exempted hunters to obtain permits (e.g., Maryland required exempted hunters to obtain permits upon entry to the Program in 1994).

The Service previously stated that States will continue to be added to the Program until all States participate in 1998. A suggested implementation schedule was published in the October 21, 1994, Federal Register (59 FR 53334), and was revised in a final rule

published in the August 18, 1995, Federal Register (59 FR 43318). Three States (Arkansas, North Carolina, and Wisconsin) have requested one-year delays to enable them to implement improved licensing systems to better accommodate the Program.

Proposed Modifications to the Program

In addition to implementation of the Program in Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont, the Service proposes to modify the Program's implementation schedule by granting one-year delays to Arkansas, North Carolina, and Wisconsin.

NEPA Consideration

The establishment of the Harvest Information Program and options have been considered in the ''Environmental Assessment: Migratory Bird Harvest Information Program.'' Copies of this document are available from the Service at the address indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Regulatory Flexibility Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded that the rule would 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.*). This rule will eventually affect about 3–5 million migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates to the State licensing authority. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds.

The States may require a handling fee to cover their administrative costs. Many of the State hunting-license vendors are small entities, but this rule should not economically impact those vendors. Only migratory game bird hunters, individuals, would be required to provide this information, so this rule should not adversely affect small entities.

Collection of Information: Migratory Bird Harvest Information Program

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the U.S. Fish and Wildlife Service has received approval for this collection of information, with approval number 1018–0015, with the expiration date of August 31, 1998.

The information to be collected includes: the name, address, and date of birth of each licensed migratory bird hunter in each participating State. Hunters' names, addresses, and other information will be used to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. The Service needs and uses the information to improve the quality and extent of information about harvests of migratory game birds in order to better manage these populations.

All information is to be collected once annually from licensed migratory bird hunters in participating States by the State license authority. Participating States are required to forward the hunter information to the Service within 30 calendar days of license or permit issuance. Annual reporting and record keeping burden for this collection of information is estimated to average 0.015 hours per response for 1,301,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 19,515 hours. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Service Information Collection Clearance Officer, ms 224—ARLSQ, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

The Department considers public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

(2) Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(4) Minimizing the burden or the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not effect the deadline for the public to comment to the Department on the proposed regulations.

Executive Order 12866

This rule was not subject to OMB review under Executive Order 12866.

Executive Order 12612 - Federalism

The regulations do not have significant Federalism effects as provided in Executive Order 12612. Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. State harvest surveys presently cannot provide adequate national estimates of migratory game bird harvests for the following reasons: (1) some States do not now conduct annual harvest surveys or maintain accessible lists of hunter names and addresses; (2) comparable information is not available from all States because States have different survey procedures; (3) currently, many State license lists are not available in time to permit distribution of hunter records early in the hunting season; and (4) budget constraints often prevent States from conducting harvest surveys during certain years or could cause some States to eliminate them completely.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State Governments, or intrude on State policy or administration. Therefore, these regulations do not have significant Federalism effects and do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. In fact, the Service would cooperate with States in providing special surveys to meet mutual management needs, and increased cooperation between Federal and State agencies would reduce duplication of survey efforts.

These rules do not constitute a significant regulatory action as defined by Executive Order 12866, therefore an assessment of their effects on State

governments, under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), is not required. The States may require a handling fee from licensed migratory bird hunters to cover the administrative costs of implementing the Program, thus these rules will not have a significant economic impact on the States.

Executive Order 12360 - Taking of Individual Property Rights

Executive Order 12360 discussed guidelines for the taking of individual property rights. These rules, authorized by the Migratory Bird Treaty Act, do not affect any constitutionally-protected property rights. These rules would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Authorship

The primary author of this rule is Larry J. Hindman, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and record keeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR part 20 is proposed to be amended as set forth below.

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

2. Section 20.20 is revised to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) *Information collection requirements.* The collections of information contained in § 20.20 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The information will be used to provide a sampling frame for the national Migratory Bird Harvest Survey. Response is required from licensed hunters to obtain the benefit of hunting migratory game birds. Public reporting burden for this information is estimated to average 0.015 hours per response for 1,301,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total annual reporting and record keeping burden for this collection is estimated to be 19,515 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, MS-224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

(b) *General provisions.* Each person hunting migratory game birds in Alabama, California, Georgia, Idaho, Illinois, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, and Vermont shall have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the respective State hunting licensing authority and shall have on his or her person evidence, provided by that State, of compliance with this requirement.

(c) *Tribal exemptions.* Nothing in paragraph (b) shall apply to hunters on Federal Indian Reservations or to tribal members hunting on ceded lands.

(d) *State exemptions.* Nothing in paragraph (b) shall apply to those hunters who are exempted from State-licensing requirements in the State in which they are hunting.

(e) *Implementation schedule.* The Service is continuing to implement this Program over the next 2-year period from 1997–1998, which will incorporate approximately 1.5 million additional migratory bird hunters. It is proposed that the States participate on or before the following schedule:

1997—Arizona, Colorado, Florida, Kentucky, North Carolina, Ohio, South Carolina, Texas, and Virginia.

1998—Alaska, Arkansas, Connecticut, Delaware, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

Dated: March 25, 1996

Robert P. Davison

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–10524 Filed 4–26–96; 8:45 am]

BILLING CODE 4310–55–F

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- Small disadvantaged business concerns; published 4-29-96

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- Retirement benefits orders; published 4-29-96

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- Mergers and acquisitions; premerger notification; reporting and waiting period requirements; published 3-28-96

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- Existing contracts modification; published 4-29-96

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- Tax exempt use property; lease term; published 4-29-96

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- Review and revision; comments due by 4-29-96; published 2-28-96

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th 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).

H.R. 3034/P.L. 104–133

To amend the Indian Self-Determination and Education Assistance Act to extend for two months the authority for promulgating regulations under the Act. (Apr. 25, 1996; 110 Stat. 1320)

Last List April 26, 1996

CFR CHECKLIST

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4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–026–00004–2)	23.00	Jan. 1, 1995
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1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
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1900–1939	(869–026–00022–1)	16.00	Jan. 1, 1995
1940–1949	(869–026–00023–9)	30.00	Jan. 1, 1995
1950–1999	(869–026–00024–7)	40.00	Jan. 1, 1995
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–026–00026–3)	23.00	Jan. 1, 1995
9 Parts:			
1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
*0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
*200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
1–199	(869–026–00035–2)	12.00	Jan. 1, 1995
200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
*220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–026–00038–7)	23.00	Jan. 1, 1995
500–599	(869–026–00039–5)	19.00	Jan. 1, 1995
600–End	(869–026–00040–9)	35.00	Jan. 1, 1995
13	(869–026–00041–7)	32.00	Jan. 1, 1995
14 Parts:			
1–59	(869–026–00042–5)	33.00	Jan. 1, 1995
60–139	(869–026–00043–3)	27.00	Jan. 1, 1995
140–199	(869–026–00044–1)	13.00	Jan. 1, 1995
200–1199	(869–026–00045–0)	23.00	Jan. 1, 1995
1200–End	(869–026–00046–8)	16.00	Jan. 1, 1995
15 Parts:			
*0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–026–00048–4)	26.00	Jan. 1, 1995
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
*150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–026–00052–2)	25.00	Jan. 1, 1995
17 Parts:			
1–199	(869–026–00054–9)	20.00	Apr. 1, 1995
200–239	(869–026–00055–7)	24.00	Apr. 1, 1995
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–026–00060–3)	11.00	Apr. 1, 1995
19 Parts:			
1–140	(869–026–00061–1)	25.00	Apr. 1, 1995
141–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00069–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
§§ 1.641–1.850	(869–026–00094–8)	25.00	Apr. 1, 1995
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–026–00097–2)	25.00	Apr. 1, 1995
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–026–00101–4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[6] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–026–00110–3)	21.00	July 1, 1995
100–499	(869–026–00111–1)	9.50	July 1, 1995
500–899	(869–026–00112–0)	36.00	July 1, 1995
900–1899	(869–026–00113–8)	17.00	July 1, 1995
1900–1910 (§§ 1901.1 to 1910.999)	(869–026–00114–6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
1911–1925	(869–026–00116–2)	27.00	July 1, 1995
1926	(869–026–00117–1)	35.00	July 1, 1995
1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–026–00120–1)	20.00	July 1, 1995
700–End	(869–026–00121–9)	30.00	July 1, 1995
31 Parts:			
0–199	(869–026–00122–7)	15.00	July 1, 1995
200–End	(869–026–00123–5)	25.00	July 1, 1995
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–026–00124–3)	32.00	July 1, 1995
191–399	(869–026–00125–1)	38.00	July 1, 1995
400–629	(869–026–00126–0)	26.00	July 1, 1995
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–026–00128–6)	21.00	July 1, 1995
800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–026–00132–4)	24.00	July 1, 1995
34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–026–00138–3)	37.00	July 1, 1995
37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–026–00143–0)	40.00	July 1, 1995
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
72–85	(869–026–00148–1)	41.00	July 1, 1995
86	(869–026–00149–9)	40.00	July 1, 1995
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–026–00153–7)	40.00	July 1, 1995
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–026–00155–3)	26.00	July 1, 1995
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–026–00159–6)	9.50	July 1, 1995
101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
200–499	(869–026–00181–2)	19.00	Oct. 1, 1995
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
2 (Parts 252–299)	(869–026–00191–0)	13.00	Oct. 1, 1995
3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–026–00194–4)	31.00	Oct. 1, 1995
29–End	(869–026–00195–2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995
1200–End	(869–026–00202–9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–026–00053–1)	36.00	Jan. 1, 1995
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Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.